

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Tennessee Motor Vehicle Commission

DIVISION: Regulatory Boards within the Department of Commerce and Insurance

SUBJECT: Recreational Vehicle Dealers

STATUTORY AUTHORITY: Tennessee Code Annotated Section 55-17-402 provides the Commission with those powers and duties necessary and proper to enable it to carry out the provisions and objectives of this part, including, but not limited to, the authority to promulgate reasonable substantive and procedural rules as they relate to the operation of Title 55, Chapter 17, Part 4. Tennessee Code Annotated, Section 55-17-406, authorizes the Commission to set biennial fees for recreational vehicle dealer licenses. There is no federal law or regulation mandating promulgations of such rule or establishing guidelines relevant for such.

EFFECTIVE DATES: December 20, 2016 through June 30, 2017

FISCAL IMPACT: This rule is not estimated to have a probable increase or decrease in state and local government revenue and expenditures. This rule will maintain the current status quo for recreational vehicle dealers to be able to sell such in the state of Tennessee without a lapse in sales.

STAFF RULE ABSTRACT: This proposed rule creates a new licensing classification for recreational vehicle dealers as required pursuant to 2016 Tennessee Public Chapter 781. Previously, recreational vehicle dealers were subsumed within the general motor vehicle dealer classification.

### **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 will not have a projected 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, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

This rule would only have an effect on current licensed motor vehicle dealers that sell new recreational vehicles. There are approximately 28 licensed recreational vehicle dealers in Tennessee. Using the guidelines set by the Governor's Office of Diversity Business Enterprise, a small business is considered one that has total gross receipts of no more than ten million dollars (\$10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis. Given this definition, it is believed that the vast majority of recreational vehicle dealers in Tennessee would qualify as a small business. An additional cost is not associated with these rules. The legislature through 2016 Tenn. Pub. Ch. 781 requires current licensed motor vehicle dealers who sell recreational vehicles to obtain a distinctively named "recreational vehicle dealer" license to sell what is newly defined as "recreational vehicles" (separate from motor vehicles).

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

This rule is not expected to have any substantial reporting, recordkeeping or other administrative costs because all of these rules are currently in place against these recreational vehicle dealers who currently hold a motor vehicle dealer license.

(3) A statement of the probable effect on impacted small businesses and consumers.

Small businesses will see no probable effect because the compliance impact will be net-neutral. These amendments to the dealer license will provide consumers with all the same protections they receive against motor vehicle dealers.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

The Commission believes that this change is not burdensome, intrusive or costly and – as such – there do not appear to be any alternatives that would reasonably be expected to be less burdensome.

(5) A comparison of the proposed rule with any federal or state counterparts.

States, such as Florida, Arkansas, Georgia and Kentucky have separate licensing schemes between recreational vehicle dealers and motor vehicle dealers. There are no known federal counterparts to these rules.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exemption from these rules would not be expected to be beneficial for small businesses because these rules set the requirements in order to obtain the new license created by the legislature under 2016 Tenn. Pub. Ch. 781. Such new license requires a fee, however, that fee is the same as previously paid by all motor vehicle dealers of \$400. Further, this set of rules provides for a pro-rated fee for all currently licensed motor vehicle dealers who require a recreational vehicle dealer license on January 1, 2017 (other than those who sell both new motor vehicles and recreational vehicles).

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule creates a new licensing classification for recreational vehicle dealers as required pursuant to 2016 Tenn. Pub. Ch. 781. Previously, recreational vehicle dealers were subsumed within the general motor vehicle dealer classification.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tennessee Code Annotated § 55-17-402 provides the Commission with those powers and duties necessary and proper to enable it to carry out the provisions and objectives of this part including but not limited to the authority to promulgate reasonable substantive and procedural rules as they relate to the operation of Chapter 17, part 4. T.C.A. § 55-17-406 authorizes the Commission to set biennial fees for recreational vehicle dealer licenses. There is no federal law or regulation mandating promulgations of such rule or establishing guidelines relevant for such.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All current and future recreational vehicle dealers, recreational vehicle manufacturers, and their professional organization, the Recreational Vehicle Industry Association (RVIA) will be most directly affected by this rule. Those persons and association urge adoption of this rule in order to allow them to obtain licensure and conduct business in the state of Tennessee.

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

There are no known attorney general opinions or judicial rulings that directly relate to this rule.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

This rule is not estimated to have a probable increase or decrease in state and local government revenue and expenditures. This rule will maintain the current status quo for recreational vehicle dealers to be able to sell such in the state of Tennessee without a lapse in sales.

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

Matthew Reddish – Assistant General Counsel  
TN Department of Commerce and Insurance

Paula Shaw – Executive Director  
TN Motor Vehicle Commission  
TN Department of Commerce and Insurance

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

Matthew Reddish -- Assistant General Counsel  
TN Department of Commerce and Insurance

Paula Shaw -- Executive Director  
TN Motor Vehicle Commission  
TN Department of Commerce and Insurance

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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

None.

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Sequence Number: 09-30-16  
 Rule ID(s): 6312  
 File Date: 9/21/16  
 Effective Date: 12/20/16

## Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 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 ninety (90) days of 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 ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	Tennessee Motor Vehicle Commission
<b>Division:</b>	Department of Commerce and Insurance Regulatory Boards Division
<b>Contact Person:</b>	Matthew Reddish
<b>Address:</b>	500 James Robertson Parkway, Nashville, TN
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<b>Email:</b>	Matthew.E.Reddish@tn.gov

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

- Amendment  
 New  
 Repeal

**Rule(s) (ALL chapters and rules contained in filing must be listed here.** If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0960-01	General Rules
Rule Number	Rule Title
0960-01-07	Zoning Restrictions
0960-01-08	Dealer Applications
0960-01-09	Signs
0960-01-10	Reasonable Business Hours
0960-01-11	Inspection of Business Records
0960-01-12	Advertising of Motor Vehicles
0960-01-14	License Fees
0960-01-15	Liability Insurance and Workers' Compensation
0960-01-16	Automobile Auction Minimum Requirements
0960-01-18	Exemptions for Auctions of Motor Vehicles for Estate Sales and for Nursing or Health Care Home Expenses
0960-01-20	Sales of Used Motor Vehicles by Unlicensed Individuals

0960-01-21	Motor Vehicle Dealer Facilities
0960-01-22	Surety Bonds
0960-01-24	Sales Tax Identification Number
0960-01-25	Business License
0960-01-26	Salesperson License

Amendments

Chapter 0960-01 [General Rules] Table of Contents is amended by deleting the table of contents and substituting the following language subject to the effectiveness of Proposed Rule filed 7/7/16, sequence 07-13-16 for purposes of Rule 0960-01-.29.

Rules  
of  
Tennessee Motor Vehicle Commission

Chapter 0960-01  
General Rules

Table of Contents

0960-01-.01 Definitions	0960-01-.19 Compliance with State and Federal Laws and Regulations
0960-01-.02 Warranty Service	0960-01-.20 Sales of Used Motor Vehicles <u>or Recreational Vehicles</u> by Unlicensed Individuals
0960-01-.03 Warranty Charges and Sales Incentive Audits	0960-01-.21 Motor Vehicle <u>or Recreational Vehicle</u> Dealer Facilities
0960-01-.04 Computation of Warranty Charges	0960-01-.22 Surety Bonds
0960-01-.05 Approval of Requested Labor Rates	0960-01-.23 Mail from Commission and Complaints
0960-01-.06 Notice of Termination, Cancellation	0960-01-.24 Sales Tax Identification Number
0960-01-.07 Zoning Restrictions	0960-01-.25 Business License
0960-01-.08 Dealer Applications	0960-01-.26 Salesperson Licenses
0960-01-.09 Signs	0960-01-.27 Lemon Law
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0960-01-.11 Inspection of Business Records	0960-01-.29 Disclosure of Rebuilt or Salvage Motor Vehicles
0960-01-.12 Advertising of Motor Vehicles <u>or Recreational Vehicles</u>	
0960-01-.13 Civil Penalties	
0960-01-.14 License Fees	
0960-01-.15 Liability Insurance and Workers' Compensation	
0960-01-.16 Automobile Auction Minimum Requirements	
0960-01-.17 Motor Vehicle Shows	
0960-01-.18 Exemptions for Auctions of Motor Vehicles <u>or Recreational Vehicles</u> for Estate Sales and for Nursing or Health Care Home Expenses	

0960-01-.07 Zoning Restrictions is amended by deleting the rule in its entirety and substituting the following language so as amended the rule reads:

All applicants for a motor vehicle or recreational vehicle dealer's license shall file with their application a statement from the proper local authority that the location or the proposed location of the dealer's established place of business complies with all applicable local zoning requirements.

Authority: T.C.A. §§ 55-17-107, ~~and 55-17-111(a)~~, 55-17-402, and 55-17-405.

0960-01-.08(1) & (3) Dealer Applications is amended by deleting paragraphs (1) and (3) in their entirety and substituting the following language so as amended paragraphs (1) and (3) read:

- (1) An applicant for a license to sell motor vehicles shall comply with T.C.A. § 55-17-111 and shall provide the Commission with all information required by this section. An applicant for a license to sell recreational vehicles shall comply with T.C.A. § 55-17-405 and shall provide the Commission with all information required by this section.
- (3) A motor vehicle or recreational vehicle dealer applicant shall provide to the Commission a compiled financial statement indicating a minimum net worth of at least Ten Thousand Dollars (\$10,000.00). The compiled financial statement must be prepared in accordance with generally accepted accounting principles by a certified public accountant or public accountant dated not

earlier than twelve (12) months prior to the date of the application, and a copy of the same must be furnished to the Commission along with any changes to the statement.

Authority: T.C.A. §§ ~~55-17-107, and 55-17-111, 55-17-402, and 55-17-405.~~

0960-01-.09 Signs is amended by deleting the rule in its entirety and substituting the following so the rule as amended reads:

All motor vehicle or recreational vehicle dealers shall install signs at their established place of business identifying them as a motor vehicle or recreational vehicle dealer. Such sign shall consist of letters no less than eight (8) inches in height and shall not advertise any other business or product.

Authority: T.C.A. §§ ~~59-1702(a) and 59-1707(a),~~ 55-17-107 and 55-17-402.

0960-01-.10 Reasonable Business Hours is amended by deleting the rule in its entirety and substituting the following language so the rule as amended reads:

All motor vehicle or recreational vehicle dealers shall be open at their established place of business during reasonable business hours, and these hours shall be posted either on the door to the dealership, in a window of the dealership or on the dealership's sign. For this section, "reasonable business hours" means at least three days a week for a minimum of twelve hours (12) total during the week. The reasonable business hours must be between 8:00 a.m. and 7:00 p.m., and at least eight (8) of the hours must be on Monday, Tuesday, Wednesday, Thursday or Friday.

Authority: T.C.A. §§ ~~55-17-107, and 55-17-402.~~

0960-01-.11(1) and (2) Inspection of Business Records is amended by inserting the phrase "or recreational vehicles" after the phrase "motor vehicles" in paragraph (1). The rule is further amended by inserting the phrase "or recreational vehicle" to paragraph (2) after the phrase "motor vehicle" so as amended paragraphs (1) and (2) read:

- (1) All persons licensed by the Commission shall make available for inspection during normal business hours by the Commission or its duly authorized representative, all books, records and other memorandums of all transactions, transfers and/or sales of motor vehicles or recreational vehicles, and dead files (any paperwork from an uncompleted deal where a credit application is received or a buyer's/purchase order is prepared).
- (2) All records shall be kept on site or at a location where the records can be accessed in a reasonable amount of time. Proof of ownership and consignment agreements of each motor vehicle or recreational vehicle possessed shall be maintained at the location of the dealership or at a dealership which owns the licensee. Temporary tag logs shall be kept at the dealership of the licensee to which the tags were issued. Records may be kept in written or electronic format.

Authority: T.C.A. §§ ~~55-17-107, and 55-17-402.~~

0960-01-.12(1) through (7) Advertising of Motor Vehicles or Recreational Vehicles is amended by deleting paragraphs (1)-(7) in their entirety and substituting the following language so that as amended, paragraphs (1) through (7) read:

- (1) General Principles.
  - (a) All advertising in any form of media including any oral, written, graphic or pictorial statement made in the course of soliciting business, including without limitation, a statement or representation contained in a notice, sign, poster, display, circular, pamphlet, or letter, on radio, the Internet, via an on-line computer service, or on television, must conform to all applicable provisions of this chapter in addition to any other applicable Tennessee state or federal laws and regulations.

- (b) False, misleading or deceptive advertising of motor vehicles or recreational vehicles is prohibited.
  - (c) Any disclosures of material facts in the advertising of motor vehicles or recreational vehicles must be made in a clear and conspicuous manner.
- (2) Advertising of New Motor Vehicles or Recreational Vehicles.
- (a) If a motor vehicle or recreational vehicle advertisement pertains to a specific new vehicle, the advertisement must indicate the stock number of that vehicle.
  - (b) If a motor vehicle or recreational vehicle advertisement pertains to a new vehicle which is not then in stock, the advertisement must disclose that the vehicle is to be ordered from a manufacturer, distributor, wholesaler or other identified source.
  - (c) A group of similar motor vehicles or recreational vehicles may be advertised by one stock number, as long as the advertised price of each vehicle of that group is the same.
- (3) Advertising of Used Motor Vehicles or Recreational Vehicles.
- (a) If an advertised motor vehicle or recreational vehicle is required by T.C.A. Title 55, Chapter 3 to be titled as a used motor vehicle or recreational vehicle, the advertisement shall disclose that the motor vehicle or recreational vehicle is “used”, or “pre-titled”, or “previously owned”, or words of similar import or intent.
  - (b) If a motor vehicle or recreational vehicle advertisement pertains to either a specific used vehicle or group of used vehicles, the advertisement must indicate the stock number of at least one of the vehicles.
- (4) Price Advertising.
- (a) If the price of a motor vehicle or recreational vehicle is advertised, the advertisement:
    - 1. Shall include in the advertised price all costs and charges and any additional fees payable by the purchaser of the vehicle advertised.
    - 2. Shall separately describe any additional fee includable under (a)(1) of this paragraph, and state clearly and conspicuously the amount thereof.
    - 3. Shall state the following are not included in the advertised price:
      - (i) the cost of optional equipment selected by the purchaser; and
      - (ii) State and local taxes, tags, registration and title fees.
    - 4. Shall not state an advertised price which includes any trade-in allowance, down payment, capitalized cost reduction or any funds which the consumer is expected to pay in order to reduce the cost of the vehicle to the advertised price, other than rebates from the manufacturer or distributor to all consumers. However, the use of a down payment or a capitalized cost reduction as a term of credit is acceptable. If the rebate from manufacturers or distributors to all customers is utilized in order to reduce the price, then that fact must be disclosed in the advertisement.
    - 5. If on a new motor vehicle or recreational vehicle, shall not state that the advertised price has been discounted unless the price is discounted from the manufacturer’s suggested retail price (M.S.R.P.).
  - (b) When the “suggested retail price” of a new motor vehicle or recreational vehicle is advertised by a manufacturer, distributor, factory representative, or distributor

representative, that price must include all charges (other than those for optional equipment); except, however, that destination charges and sales taxes must be specifically excluded.

- (c) No motor vehicle or recreational vehicle advertisement may indicate the price of a motor vehicle or recreational vehicle in terms of the "invoice," "factory invoice," or "dealer invoice" unless:
  - 1. The invoiced price is the actual price of the manufacturer or distributor to the dealer; and
  - 2. The advertisement discloses any other material factors that may affect the ultimate cost to the dealer, such as manufacturer incentives and awards and dealer hold back.
- (d) Unsubstantiated selling claims and misleading statements or inferences including the use of superlatives are strictly prohibited. Examples include: "write your own deal," "name your own price," "we are number 1 in car sales," "lowest price in the south."
- (e) If the price and/or terms of sale or lease of a specific motor vehicle or recreational vehicle, or group of motor vehicles or recreational vehicles is advertised, the motor vehicle or recreational vehicle(s) shall be presented and sold at the advertised price and/or terms. Unless the advertisement states that the advertised price and/or terms are effective for only a specific time period or expire at a specific time, the period of time the price and/or terms remain effective is five (5) days following the last date said advertisement is published in any advertising medium.
- (5) Reduced interest rates. No reduced interest rate on motor vehicle or recreational vehicle financing may be advertised if the cost thereof should be directly or indirectly borne by the buyer unless the advertisement discloses that such rate will affect the negotiated price of the vehicle to the buyer.
- (6) Trade-in allowance. No motor vehicle or recreational vehicle advertisement may include a "guarantee" or "minimum" trade-in allowance unless the advertisement also states the price of the vehicle in accordance with paragraph (4) of this rule.
- (7) Identification. All advertising in all forms of media, including computer generated advertising, initiated from this state shall identify the motor vehicle or recreational vehicle dealer by name and/or dealer license number.

Authority: T.C.A. §§ 55-17-107(1) ~~and~~ 55-17-402.

0960-01-.14(1) License Fees is amended by inserting the phrase "or recreational vehicle" to subparagraph (i) after the phrase "motor vehicle." Paragraph (1) is further amended by inserting a new subparagraph after existing subparagraph (l) and renumbering the remaining subparagraphs. The rule is further amended by adding paragraph (2) to the rule, so as amended subparagraphs (i), (m) through (o), and paragraph (2) shall read:

- (1)
  - (i) For each motor vehicle or recreational vehicle show permit, two hundred dollars (\$200.00);
  - (m) For each recreational vehicle dealer, four hundred dollars (\$400.00) after January 1, 2017;
  - ~~(m)~~(n) A four hundred dollar (\$400.00) fee will be assessed per re-inspection of an applicant when re-inspection is necessitated by an action or inaction of the applicant;
  - ~~(n)~~(o) Twenty-five percent (25%) of all license application fees will be forfeited if the applicant fails to submit all required documentation within ninety (90) days of receipt of the application. Any applicant refund must be requested in writing. Documents will be

returned to the applicant after ninety (90) days from the initial receipt.

- (2) \_\_\_\_\_
- (a) Any motor vehicle dealer licensed to sell new recreational vehicle line-makes whose license is issued or renewed on or before December 31, 2016, shall receive a pro-rated recreational vehicle dealer license for the length of term stated on its license without further payment of licensure fees. This subparagraph applies only to those line-makes such dealer is licensed to sell on or before December 31, 2016. Additional line-makes added on or after January 1, 2017 shall require payment of all applicable licensure fees.
  - (b) Any motor vehicle dealer licensed to sell both new motor vehicle and new recreational vehicle line-makes under a single license issued prior to December 31, 2016 who sells new recreational and motor vehicles after December 31, 2016, shall apply for and obtain a new recreational vehicle dealer license for each line-make it intends to sell on or after January 1, 2017.
  - (c) This paragraph (2) shall expire on January 1, 2019.

Authority: T.C.A. §§ 55-17-107, 55-17-111, 55-17-112, 55-17-112, ~~and 55-17-302,~~ 55-17-402, 55-17-405, and 55-17-406.

0960-01-.15(1) & (3) Liability Insurance and Workers' Compensation is amended by inserting "or recreational vehicle" after each instance the phrase "motor vehicle" appears so as amended paragraphs (1) and (3) read:

- (1) An applicant for a motor vehicle or recreational vehicle dealer license or an automobile auction license shall submit to the Commission with each application for license a certificate of comprehensive garage liability insurance, which covers all premises and operations as listed in the application for license, in a minimum amount of coverage of Three Hundred Thousand Dollars (\$300,000.00) per occurrence.
- (3) All motor vehicle or recreational vehicle dealers shall comply with the applicable workers' compensation laws of the State of Tennessee.

Authority: T.C.A. §§ 55-17-107, ~~and 55-17-402.~~

0960-01-.16(1) Automobile Auction Minimum Requirements is amended by deleting the paragraph in its entirety and substituting with the following language so the paragraph as amended reads:

- (1) Except as otherwise provided in this Chapter or state law, automobile auctions shall be licensed by the Motor Vehicle Commission and shall be wholesale transactions wherein the buyers are licensed motor vehicle or recreational vehicle dealers or their authorized agents. Unlicensed individuals are prohibited from buying automobiles or other motor vehicle or recreational vehicles at automobile auctions unless otherwise exempted. Motor vehicle or recreational vehicle dealers may bring no more than five (5) employees with them to an automobile auction to assist them in the evaluation of automobiles offered for auction and/or the transportation of those automobiles purchased. These employees are not permitted to participate in the auction process (bidding, buying or selling).

Authority: T.C.A. §§ 55-17-107, 55-17-109, ~~and 55-17-111,~~ and 55-17-402.

0960-01-.18(1) Exemptions for Auctions of Motor Vehicles for Estate Sales and for Nursing or Health Care Home Expenses is amended by deleting paragraph (1) in its entirety and substituting instead the following language so as amended the rule reads:

- (1) The following shall be exempt from the licensing provisions of this Chapter:
  - (a) Estate Auctions. Up to five (5) motor vehicle or recreational vehicles owned and titled to the individual decedent may be placed for sale at auction with the decedent's other personal property.

- (b) Auction Sales for Expenses to be Utilized for Nursing or Health Care Home Expenses Purposes. Up to five (5) motor vehicle or recreational vehicles owned and titled to the individual for whom proceeds from the sale will be used to fund nursing or health care home expenses may be placed at auction.

Authority: T.C.A. §§ 55-17-107(1)- ~~and 55-17-402.~~

0960-01-.20(1) & (3) Sales of Used Motor Vehicles by Unlicensed Individuals is amended by inserting the phrase "or recreational vehicle" after each instance the phrase "motor vehicle" appears. The rule is further amended by inserting the phrase "or recreational vehicles" after each instance the phrase "motor vehicles" appears so that as amended paragraphs (1) and (3) read:

- (1) Unless otherwise provided by T.C.A. Title 55, Chapter 17 et seq., and these regulations, an individual may sell or offer to sell up to five (5) used motor vehicles or recreational vehicles registered and titled in his/her name within a twelve (12) month period without a motor vehicle or recreational vehicle dealer's license.
- (3) If an individual sells or offers to sell more than five (5) vehicles within a twelve (12) month period, he/she shall be found in violation of this rule for engaging in the unlicensed sale of motor vehicles or recreational vehicles.

Authority: T.C.A. §§ 55-17-107, 55-17-109, ~~and 55-17-110,~~ and 55-17-402.

0960-01-.21(1)-(2) and (4)-(5) Motor Vehicle Dealer Facilities is amended by deleting the language of those paragraphs in their entirety and substituting the following language so as amended paragraphs (1)-(2) and (4)-(5) read:

- (1) The facility must be physically separate and apart from any other businesses and shall not include any private residence, tent or temporary stand. The facility may be connected to another business facility provided there is a permanent wall from floor to ceiling between the two businesses and the motor vehicle or recreational vehicle facility has a separate outside entrance and exit. Any doors between the businesses shall be permanently sealed.
- (2) The facility shall contain adequate office space (a minimum of 288 square feet) for processing sales and purchases of motor vehicles or recreational vehicles. The facility shall also contain restroom accommodations.
- (4) The facility shall have immediate and contiguous access to and exclusive dedicated use of a motor vehicle or recreational vehicle storage or display lot capable of accommodating fifteen (15) motor vehicle or recreational vehicles of the dealership's product line. A lot shall consist of compacted gravel, chert, stone or similar materials and shall not include public lands, unimproved land or residential driveways. The facility shall also contain a minimum of three (3) parking spots dedicated for customer parking.
- (5) The facility shall be used exclusively for buying, selling, renting, displaying, advertising, demonstrating, servicing or repairing motor vehicles or recreational vehicles or selling functional or nonfunctional parts, including accessories, safety equipment and vehicle branded clothing.

Authority: T.C.A. §§ 55-17-107, ~~and 55-17-114,~~ and 55-17-402.

0960-01-.22(1) Surety Bonds is amended by deleting the paragraph in its entirety and substituting the following language so that the paragraph as amended reads:

- (1) The surety bond required by T.C.A. Title 55, Chapter 17, Section 111(g) and T.C.A. Title 55, Chapter 17, section 405(g) must remain and continue in force for as long as the licensee remains licensed. Upon notice of cancellation, the licensee shall either cease business operations until proof of minimum coverage is provided, or provide evidence of minimum coverage from another provider.

Authority: T.C.A. §§ 55-17-107, ~~and 55-17-111,~~ and 55-17-402.

0960-01-.24 Sales Tax Identification Number is amended by adding "or recreational vehicle" after each instance the phrase "motor vehicle" appears so as amended the rule shall read:

All motor vehicle or recreational vehicle dealers and automobile auctions shall obtain and hold a current sales tax identification number indicating their business as that of a motor vehicle or recreational vehicle dealer. Upon expiration of a sales tax identification number, the licensee shall either cease business operations, or provide evidence of a valid sales tax identification number. The dealer's or automobile auction's license shall be invalid during the period of time without a sales tax identification number.

Authority: T.C.A. §§ 55-17-107, ~~and 55-17-111,~~ and 55-17-402.

0960-01-.25 Business License is amended by adding "or recreational vehicle" after each instance that the phrase "motor vehicle" appears so as amended the rule shall read:

All motor vehicle or recreational vehicle dealers and automobile auctions shall obtain and hold a current city and county business license indicating their business as that of a motor vehicle or recreational vehicle dealer. Upon expiration of a business license, the licensee shall either cease business operations, or provide evidence of licensure. The dealer's or automobile auction's license shall be invalid during the period of time without a business license.

Authority: T.C.A. §§ 55-17-107, ~~and 55-17-111,~~ and 55-17-402.

0960-01-.26 Salesperson Licenses is amended by deleting the rule in its entirety and substituting with the following language, so as amended, the rule reads:

- (1) An individual who has submitted a complete application and the required fees to the Motor Vehicle Commission for a motor vehicle salesperson's license may work as a trainee under the supervision of a licensed salesperson while the license application is pending. An individual whose salesperson's license has been denied, suspended or revoked may not work as a trainee.
- (2) A licensed motor vehicle salesperson may sell motor vehicles or recreational vehicles at any motor vehicle or recreational vehicle dealership owned by the employer listed on their salesperson's license.
- (3) An individual may not hold a motor vehicle salesperson's license for more than one (1) motor vehicle or recreational vehicle dealer at any time.

Authority: T.C.A. §§ 55-17-107, 55-17-109, 55-17-110, ~~and 55-17-113,~~ and 55-17-402.

\* 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)
Eddie Roberts	x				
Stan Norton	x				
Ian Leavy	x				
Nathaniel Jackson	x				
Don Parr				x	
Stephen Tomaso	x				
Lynn Webb				x	
B. Joe Clayton	x				
Ronald Fox	x				
Kahren White				x	
Stan McNabb	x				
Reed Trickett				x	
Jim Galvin Jr.	x				
John S. Murrey	x				
Donnie Hatcher				x	
Farrar Schaeffer Vaughan	x				

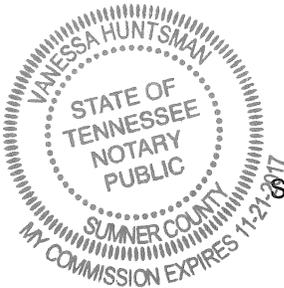
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Motor Vehicle Commission on July 25, 2016 and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition 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 ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 9-7-16

Signature: Matthew Reddish

Name of Officer: Matthew Reddish

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: Sept. 7, 2016

Notary Public Signature: Vanessa Huntsman

My commission expires on: Nov. 21, 2017

Rules of the Tennessee Motor Vehicle Commission

- 0960-01-.07 Zoning Restrictions
- 0960-01-.08 Dealer Applications
- 0960-01-.09 Signs
- 0960-01-.10 Reasonable Business Hours
- 0960-01-.11 Inspection of Business Records
- 0960-01-.12 Advertising of Motor Vehicles
- 0960-01-.14 License Fees
- 0960-01-.15 Liability Insurance and Workers' Compensation
- 0960-01-.16 Automobile Auction Minimum Requirements
- 0960-01-.18 Exemptions for Auctions of Motor Vehicles for Estate Sales and for Nursing or Health Care Home Expenses
- 0960-01-.20 Sales of Used Motor Vehicles by Unlicensed Individuals
- 0960-01-.21 Motor Vehicle Dealer Facilities
- 0960-01-.22 Surety Bonds
- 0960-01-.24 Sales Tax Identification Number
- 0960-01-.25 Business License
- 0960-01-.26 Salesperson License

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.

*Herbert H. Slatery III*  
 \_\_\_\_\_  
 Herbert H. Slatery III  
 Attorney General and Reporter

*9/19/2016*

\_\_\_\_\_  
Date

**Department of State Use Only**

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

*9/21/16*

Effective on: \_\_\_\_\_

*12/20/16*

*Tre Hargett*

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

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## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Department of State

DIVISION: Charitable Solicitations, Fantasy Sports and Gaming

SUBJECT: Fantasy Sports Operators

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 47-14-5601

EFFECTIVE DATES: December 25, 2016 through June 30, 2017

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rules are substantially similar to the Emergency Rules promulgated on June 29, 2016 to implement the Fantasy Sports Act of 2016, which serves to license and regulate sports operators offering fantasy sports contests to Tennessee consumers. These rules make minor changes to the Emergency Rules as follows:

- Rule 1360-03-05-.03(d) adds the language "to the extent the information is within the control of the fantasy sports operator" to clarify that disclosure of ownership interest will be required to the extent possible and within the control of the fantasy sports operator.
- Rule 1360-03-05-.03(d)(1) is clarified to state that members holding more than a 5% ownership interest must be disclosed.
- Rule 1360-03-05-.03(d)(2) is clarified to state that partners in general, limited or limited liability partnerships holding more than a 5% ownership interest must be disclosed.
- Rule 1360-03-05-.03(e) is clarified so that corporate stockholders are required to have background checks if they are involved in the day to day management of fantasy sports contests and operations.
- Rule 1360-03-05-.03(e)(4), which speaks to conditional approval of an applicant's application pending receipt of FBI Identify History Summaries is removed. This provision is no longer necessary since the application "amnesty" period has expired.
- Rule 1360-03-05-.06(4)(a) contained a typo. The last sentence of the first paragraph substitutes "operator" for "player." Likewise, several grammatical changes were made throughout the rules.

## **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

No public comments were received. A memorandum indicating same is attached hereto.

# State of Tennessee



**Tre Hargett**  
Secretary of State

**Department of State**  
State Capitol  
Nashville, TN 37243-0305  
(615) 741-2819

**Mary Beth Thomas**  
General Counsel

## MEMORANDUM

TO: Tre Hargett  
Secretary of State

FROM: Mary Beth Thomas, Esq.

DATE: September 13, 2016

RE: Secretary of State – Fantasy Sports Rulemaking Hearing Rules

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The Secretary of State's office gave public notice on July 13, 2016 of a hearing on proposed rules governing oversight of fantasy sports operators that would take place on August 29, 2016.

The hearing took place on August 29, 2016. The Department did not receive any public comments, either before or during the hearing.

## **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

(Insert statement here)

These rules impact small businesses in that they will authorize small fantasy sports operators to operate in Tennessee. Our office has worked with smaller operators in developing these rules in an effort to understand their business model. We have also created a staggered licensure fee structure to take into account 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)

These rules do not have a projected impact on local governments beyond implementing the regulatory structure for the receipt of the tax that was part of the Fantasy Sports Act, a portion of which tax is received by the counties.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules are substantially similar to the Emergency Rules promulgated on June 29, 2016 to implement the Fantasy Sports Act of 2016, which serves to license and regulate sports operators offering fantasy sports contests to Tennessee consumers. These rules make minor changes to the Emergency Rules as follows:

- Rule 1360-03-05-.03(d) adds the language “to the extent the information is within the control of the fantasy sports operator” to clarify that disclosure of ownership interest will be required to the extent possible and within the control of the fantasy sports operator.
- Rule 1360-03-05-.03(d)(1) is clarified to state that members holding more than a 5% ownership interest must be disclosed.
- Rule 1360-03-05-.03(d)(2) is clarified to state that partners in general, limited or limited liability partnerships holding more than a 5% ownership interest must be disclosed.
- Rule 1360-03-05-.03(e) is clarified so that corporate stockholders are required to have background checks if they are involved in the day to day management of fantasy sports contests and operations.
- Rule 1360-03-05-.03(e)(4), which speaks to conditional approval of an applicant’s application pending receipt of FBI Identify History Summaries is removed. This provision is no longer necessary since the application “amnesty” period has expired.
- Rule 1360-03-05-.06(4)(a) contained a typo. The last sentence of the first paragraph substitutes “operator” for “player.” Likewise, several grammatical changes were made throughout the rules.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The Fantasy Sports Act, which is part of the Tennessee Consumer Protection Act, T.C.A. § 47-18-5601, requires the implementation of these rules. The Act authorizes fantasy sports operators to offer fantasy sports contests to Tennessee consumers in accordance with the provisions of the Act.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Tennesseans playing fantasy sports will be impacted by these rules, which contain significant consumer protection provisions. Fantasy sports operators will be impacted by these rules, and have been involved in many conversations regarding their operations and the interplay of regulations in their businesses. Overall the operators have been supportive of the regulations.

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

On April 5, 2016, prior to the passage of the Fantasy Sports Act, the Attorney General issued Opinion No. 16-13, which stated that fantasy sports contests fall within the definition of illegal gambling, although they are a game of skill to a degree that separates them from being a lottery, which is constitutionally prohibited. The Attorney General’s opinion specifically stated that the General Assembly has the power to exclude fantasy sports contests from the definition of gambling, as long as they are not otherwise constitutionally prohibited. The Fantasy Sports Act specifically exempts these fantasy sports contests from the definition of gambling. These rules were promulgated to be consistent with the Act’s requirements and purpose.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These rules set the fees that fantasy sports operators must pay to obtain a license to operate from the Department of State. The Department has set fees at a level commensurate with what it expects to be the cost of overseeing the regulation of the industry. Thus, the Department does not anticipate that there will be any increase or decrease in revenue from the fees contained herein.

The Fantasy Sports Act imposed a tax at a rate of 6% on adjusted revenues of fantasy sports operators from contests played by players located in Tennessee. The total estimated annual revenue from this tax is \$252,630, with 60% allocated to the general fund, 20% to local governments, 10% to an administrative fund and 10% to the Department of Revenue. These rules do not impact the revenue tax contained in the Act.

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

Mary Beth Thomas  
General Counsel  
Office of Secretary of State Tre Hargett

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

Mary Beth Thomas  
General Counsel  
Office of Secretary of State Tre Hargett

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Mary Beth Thomas  
General Counsel  
Secretary of State Tre Hargett  
State Capitol, First Floor  
600 Charlotte Ave.  
Nashville, Tennessee 37243

[Mary.beth.thomas@tn.gov](mailto:Mary.beth.thomas@tn.gov)

(615) 741-2819

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

**Department of State  
Division of Publications**

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Nashville, TN 37243  
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**For Department of State Use Only**

Sequence Number: 09-32-16  
Rule ID(s): 6313  
File Date: 9/26/16  
Effective Date: 12/25/16

# Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

<b>Agency/Board/Commission:</b>	Department of State
<b>Division:</b>	Charitable Solicitations, Fantasy Sports and Gaming
<b>Contact Person:</b>	Mary Beth Thomas
<b>Address:</b>	State Capitol, 1 <sup>st</sup> Floor, Nashville, Tennessee
<b>Zip:</b>	37215
<b>Phone:</b>	615-741-2819
<b>Email:</b>	mary.beth.thomas@tn.gov

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

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1360-03-05	Rules Related to the Fantasy Sports Act
Rule Number	Rule Title
1360-03-05-.01	Purpose and Scope
1360-03-05-.02	Definitions
1360-03-05-.03	Initial Application for Licensure
1360-03-05-.04	Renewal Application for Licensure
1360-03-05-.05	Approval of Licensure
1360-03-05-.06	Registration of Players/Know Your Customer Requirements
1360-03-05-.07	Player Account Activity
1360-03-05-.08	Player Funds and Required Reserve
1360-03-05-.09	Account Monitoring to Prevent Misuse
1360-03-05-.10	Certain State Employees Prohibited From Playing
1360-03-05-.11	Annual Reporting and Audits
1360-03-05-.12	Schedule of Range of Civil Penalties for Violations of the Fantasy Sports Act
1360-03-05-.13	Additional Authorized Fees

(Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to [http://sos.tn.gov/sites/default/files/forms/Rulemaking\\_Guidelines\\_August2014.pdf](http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf))

CHAPTER 1360-03-05  
RULES RELATED TO THE FANTASY SPORTS ACT

TABLE OF CONTENTS

1360-03-05-.01 Purpose and Scope  
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1360-03-05-.10 Certain State Employees Prohibited From Playing  
1360-03-05-.11 Annual Reporting and Audits  
1360-03-05-.12 Schedule of Range of Civil Penalties for Violations of the Fantasy Sports Act  
1360-03-05-.13 Additional Authorized Fees

1360-03-05-.01 PURPOSE AND SCOPE.

These rules are promulgated for the purpose of implementing the Fantasy Sports Act and for providing additional guidance to the fantasy sports industry and Tennessee consumers with regard to the operation of fantasy sports contests within the State of Tennessee and/or for the use of Tennessee citizens. These rules are also promulgated for the purpose of establishing appropriate fees for the application, licensure, and civil penalty components of the Fantasy Sports Act. These rules shall only apply to fantasy sports contests when an entry fee is paid by a fantasy sports player for participation in a fantasy sports contest.

Statutory authority: T.C.A. § 47-18-5601.

1360-03-05-.02 DEFINITIONS. As used in these rules, the following terms are defined as follows:

- (1) "Adjusted Revenue" means the amount equal to the total entry fees collected from all players (regardless of the players' location) entering the fantasy sports contest less winnings paid to players in the contest, for the fantasy sports operator's most recent fiscal year.
- (2) "Attorney General and Reporter" or "Attorney General" means the Attorney General and Reporter of the State of Tennessee or his or her authorized designee.
- (3) "Auto draft" means athlete selection offered by a fantasy sports operator that does not involve any input or control by a player.
- (4) "Beginning player" means any player who has entered fewer than fifty-one (51) contests offered by a single fantasy sports operator, and who has not qualified as a Highly Experienced Player.
- (5) "Clearly and conspicuously" means:
  - (a) To disclose in such a way that the disclosure is made through the same means through which the communication is presented.
  - (b) Requires that if the communication is visual, the disclosure is placed in close proximity to relevant claims, expressed in clear and plain language and syntax, and the size, contrast,

location, and other characteristics stand out from other visual elements so that the disclosure is prominently displayed and unavoidable.

- (c) Requires that the disclosure is repeated if necessary, visible for a sufficient duration, and does not necessitate scrolling.
  - (d) Requires that if the communication is audio, the disclosure is presented at adequate volume and cadence, and
  - (e) Requires that the disclosure is made before the consumer makes a decision to accept an offer.
- (6) "Daily fantasy sports contest" is any fantasy sports contest other than a season-long fantasy sports contest, as defined herein.
- (7) "Entry fee" means any valuable consideration including, but not limited to, cash or a cash equivalent, that a fantasy sports operator requires in order to participate in a fantasy sports contest.
- (8) "Fantasy sports contest"
- (a) Means:
    - 1. An online simulated game in which players are subject to an entry fee to assemble imaginary teams of athletes;
    - 2. Players are offered an award or prize made known to the players in advance of the online simulated game; and
    - 3. The winning outcome of which reflects in part the relative knowledge and skill of the participants and is determined predominantly by the accumulated statistical results of the performance or finishing position of athletes in underlying amateur or professional competitions; and
  - (b) Does not include:
    - 1. A contest in which the operator allows the players to auto draft athletes or to choose between pre-selected teams of athletes;
    - 2. A contest that offers or awards a prize to the winner of, or athletes in, the underlying competition itself; and
    - 3. A contest where the winning outcome is based on the score, point spread, or any performance or performances of any single actual team or combination of teams or solely on any single performance of an athlete or participant in any single actual event.
- (9) "Fantasy sports contest platform" means any online method by which access to a fantasy sports contest is provided, including, but not limited to a website, smart phone, or other application providing access to a fantasy sports contest.
- (10) "Fantasy sports operator" means a person that offers fantasy sports contests through an online digital platform.
- (11) "Fantasy sports operator contractor" means any person or entity who works pursuant to an independent contract with a fantasy sports operator and who has access to nonpublic portions of the fantasy sports operator's office, the fantasy sports operator's nonpublic computer network, or the fantasy sports operator's proprietary information that may affect how the fantasy sports contest is played.
- (12) "Highly experienced player" means a person who has either:
- (a) Entered more than five hundred (500) contests offered by a single fantasy sports operator; or

- (b) Won more than five (5) fantasy sports prizes, and which the total value of the prizes is two thousand five hundred dollars (\$2,500) or more.
- (13) "Knowingly" means to have known or should have known.
- (14) "Minor" means any person under eighteen (18) years of age.
- (15) "Person" has the same meaning as defined in T.C.A. § 47-18-103.
- (16) "Player" means a person who participates in a fantasy sports contest offered by a fantasy sports operator.
- (17) "Private contest" means a fantasy sports contest established among players known to each other and the terms and any prize of which are not established by a fantasy sports operator.
- (18) "Prize" means a prize, award, incentive, promotion, or anything of value, including, but not limited to, money, contest credits, merchandise, or admission to another fantasy sports contest.
- (19) "Resident percentage" means, for each fantasy sports contest, the percentage, rounded to the nearest tenth of a percent (0.1%) of the total entry fees collected from Tennessee consumers divided by the total entry fees collected from all players, regardless of the players' location, of the fantasy sports contest.
- (20) "Script" means a list of commands that a fantasy-sports-related computer program can execute and that are created by players, or by third parties for the use of players, to automate processes on a fantasy sports contest platform.
- (21) "Season-long fantasy sports contest" means a fantasy sports contest offered by a fantasy sports operator that is conducted over an entire sports season.
- (22) "Secretary of State" or "Secretary" means the Secretary of State for the State of Tennessee, or his or her authorized designee.
- (23) "Tennessee consumer" means a consumer located in this state at the time the person enters a fantasy sports contest.

Statutory authority: T.C.A. § 47-18-5601.

#### 1360-03-05-.03 INITIAL APPLICATION FOR LICENSURE.

- (1) Application information. Any person seeking to be a licensed fantasy sports operator shall submit an application to the Secretary of State, using a form available from the Secretary of State, with the following information:
  - (a) Name. The name of the applicant.
  - (b) Primary contact. The designated contact person for the applicant, a telephone number, address, and email address for that contact.
  - (c) Location. The physical address of the applicant's principal place of business.
  - (d) Disclosure of ownership. To the extent the information is within the control of the fantasy sports operator, a complete disclosure of the true ownership of the fantasy sports operator as follows:
    - 1. For limited liability companies (hereinafter, "LLC"), including professional LLCs, provide the full name, address, and telephone number of each member of the LLC having an ownership interest of five percent (5%) or more of the LLC. If the member is not a natural person, disclose the true ownership of the member (and successive levels of ownership, if necessary) until a natural person or another corporate entity is disclosed. If another

corporate entity is disclosed, provide a complete disclosure of that corporate entity's ownership in accordance with the specific rules for that entity contained herein (and successive levels of ownership, if necessary).

2. For general, limited, or limited liability partnerships, provide the full name, address, and telephone number of each partner having an ownership interest of five percent (5%) or more of the partnership. If the partner is not a natural person, disclose the true ownership of the partner (and successive levels of ownership if necessary) until a natural person, or another corporate entity, is disclosed. If another corporate entity is disclosed, provide a complete disclosure of that corporate entity's ownership in accordance with the specific rules for that entity contained herein (and successive levels of ownership, if necessary).
  3. For a corporation, provide the full name, address, and telephone number of any natural person or entity having an ownership interest of five percent (5%) or more of the outstanding shares of the corporation. If a corporate entity is disclosed, provide a complete disclosure of that corporate entity's ownership in accordance with the specific rules for that entity contained herein (and successive levels of ownership, if necessary).
  4. The intent of this rule is to require, to the fullest extent that the individual or corporate structure of an applicant allows, disclosure of names of individual natural persons who have a significant ownership interest in a fantasy sports operator.
- (e) Criminal Record. The applicant's criminal record, if any, as specified below:
1. Information regarding the criminal record, if any, of the following individuals, if those individuals are involved in the day to day management of fantasy sports contests and/or operations, and as applicable to the entity's corporate structure:
    - (i) Each partner of a partnership holding five percent (5%) or more of the partnership;
    - (ii) Each member of a limited liability company holding five percent (5%) or more of the LLC;
    - (iii) Each director and officer of a non-publicly held corporation;
    - (iv) Each director and officer of a publicly held corporation, and/or operations; and
    - (v) Each stockholder of five percent (5%) or more of a corporation.
  2. An applicant, and the individuals identified in subpart (e)(1) above, shall have a duty to disclose on the application whether they have been convicted of a crime (other than traffic violations and convictions that have been expunged), and if so, the nature of the crime, the date, place of the conviction, and the legal disposition of the case.
  3. An applicant, and the individuals identified in subpart (e)(1) above, shall obtain a criminal background check (an "Identity History Summary") from the Federal Bureau of Investigation. The applicant must submit, with its application, either the completed Identity History Summary, or documentation showing that the Identity History Summary was requested prior to submitting the application.
  4. Evidence of an applicant's (including any of the individuals identified in subpart (e)(1) above) conviction or plea of guilty or nolo contendere for a felony, or a misdemeanor involving fraud, dishonesty, breach of trust, gambling, or moral turpitude, within the ten (10) years prior to the date of application shall be grounds for denial of an application.
- (f) Interest in other fantasy sports operators. Disclosure of any ownership interest held by (as applicable in accordance with the corporate structure of the entity) a policy making manager, a partner of a partnership, a member of a limited liability company, a director or officer of a corporation, a stockholder of five percent (5%) or more of a corporation, in any fantasy sports

operator, or any entity previously or currently licensed by another entity that licenses fantasy sports operators or similar entities.

- (g) Description of operations. A description and address of any physical facility operated by the fantasy sports operator, if any, in this state, the number of employees, and the nature of the facility's business.
- (h) Information regarding player deposits.
  - 1. The applicant's policies and procedures for limiting each player to one continuous and active account.
  - 2. The applicant's policies and procedures for limiting individual player deposits to no more than two thousand five hundred dollars (\$2,500) per month.
  - 3. The applicant's policies and procedures for temporarily or permanently increasing a player's deposit limit, at the request of the player, to an amount above two thousand five hundred dollars (\$2,500) per month.
- (i) Information and documentation regarding the reserve, segregated account, or Escrow Fund Account established pursuant to Rules 1360-03-05-.08(2).
- (j) Information regarding verification of identity. A copy of the policies and procedures adopted to verify the identity of players seeking to establish accounts.
- (k) Confirmation of tax clearance. A certificate of tax clearance issued by the Commissioner of the Tennessee Department of Revenue which states that the applicant is current on all taxes, fees, and penalties to the satisfaction of the Commissioner; or a statement that the applicant has no current obligation to the Commissioner because it is a newly registered entity in Tennessee.
- (l) Confirmation of registration with the Division of Business Services. A statement that the applicant is registered with the Secretary of State's Division of Business Services, and the applicant's control number issued by the Division of Business Services.
- (m) Financial information. The fantasy sports operator shall provide the following initial financial information:
  - 1. The total amount of adjusted revenue earned by the fantasy sports operator for the prior fiscal year.
  - 2. A calculation of the resident percentage for the prior fiscal year.
  - 3. The total amount of all winnings earned by fantasy sports players (including non-Tennessee consumers) for the prior fiscal year.
  - 4. Audited financial statements prepared in accordance with the attestation standards established by the American Institute of Certified Public Accountants for the most recent completed fiscal year and audited or unaudited financial statements for the most recent completed fiscal quarter.
  - 5. The Secretary of State may inquire regarding additional financial information, or seek additional financial documentation, within his or her discretion.
- (n) Information and documents concerning operational compliance.
  - 1. The applicant's policies and procedures related to the prevention of minor participation in fantasy sports contests.

2. The applicant's policies and procedures related to advertisements, including the applicant's policies and procedures related to accurate representations concerning chances of winning and the number of persons winning.
3. The applicant's policies and procedures related to the applicant's compliance with the Federal Trade Commission, Guides Concerning Use of Endorsements and Testimonials in Advertising, compiled in 16 CFR § 225.
4. The applicant's policies and procedures relating to assistance available to problem gamblers.
5. The applicant's policies and procedures relating to implementation and enforcement of self-limitations and self-exclusions requested by players.
6. The applicant's policies and procedures related to protection of player deposits, including policies and procedures related to the following:
  - (i) Prevention of unauthorized withdrawals from player accounts by fantasy sports operators or others;
  - (ii) Reporting and responding to complaints by a player regarding the handling of the player's account; and
  - (iii) Closure of player accounts.
7. The applicant's policies and procedures related to account monitoring to prevent misuse of accounts, including policies and procedures related to the following:
  - (i) Detection and prevention of misuse of proxy servers;
  - (ii) Location verification;
  - (iii) Prevention of the use of unauthorized scripts; and
  - (iv) Prevention of the use of pre-selected teams.
8. The applicant's policies and procedures related to the prevention of unauthorized play by the following individuals:
  - (i) Fantasy sports operator employees, fantasy sports operator contractors, and any spouse, children, or parents of any sports operator employee or contractor;
  - (ii) Professional or amateur athletes whose individual statistics or performance may be used to determine any part of the outcome of a fantasy sports contest; and
  - (iii) Any sports agent, team employee, referee, or league official associated with any athletic competition that is the subject of fantasy sports contests.
9. The applicant's policies and procedures relating to fantasy sports contests for beginning players, including policies and procedures related to the following:
  - (i) Explanation of contest play;
  - (ii) Identification of highly experienced players, including symbols or other identification used;
  - (iii) Recommending beginning player only contests and low cost private contests;
  - (iv) Percentage of contests open only to beginning players and that exclude highly experienced players;

- (v) Prevention of access by highly experienced players to beginner player contests directly or through a proxy; and
  - (vi) Suspension of accounts of highly experienced players who participate in contests for beginning players only.
10. The applicant's policies and procedures relating to the locking of fantasy sports contests.
  11. The applicant's policies and procedures relating to the restriction of the number of entries per fantasy sports contest per player.
- (2) The application shall be signed by an officer or director, member, or partner, as applicable in accordance with the fantasy sports operator's corporate structure and must include a notarized affirmation as follows:
 

My name is \_\_\_\_\_ and I serve as the (title) of (fantasy sports operator). I swear or affirm to the best of my knowledge, information, and belief, that the information submitted on this application is true and correct, and that I have made a good faith effort to verify the information submitted herein.
  - (3) The applicant shall submit a non-refundable application fee in the form of a check made payable to the Department of State in the amount of three hundred dollars (\$300). Review of the applicant's application will not begin until receipt of the application fee.
  - (4) The application, supporting documentation, and fee may be hand delivered or mailed to the Office of the Secretary of State, Division of Charitable Solicitations, Fantasy Sports, and Gaming, attn: Director; at 312 Rosa L. Parks Blvd., 8th Floor, Nashville, Tennessee 37243.

Statutory authority: T.C.A. § 47-18-5601.

1360-03-05-.04 RENEWAL APPLICATION FOR LICENSURE.

- (1) Any person seeking to renew its application to be a licensed fantasy sports operator shall submit a renewal application, in a form available from the Secretary of State, no later than forty-five (45) days prior to the expiration of the prior year's license, containing the following information:
  - (a) All information required in an initial application, as set forth in Rule 1360-03-05-.03 except for the following:
    1. Identity History Summary from the Federal Bureau of Investigation for individuals who have previously submitted criminal background reports as part of the application process and who have not self-disclosed any new criminal history; and
    2. Financial statements required by Rule 1360-03-05-.03(1)(m)(4).
- (2) The application shall be signed by an officer or director, member, partner, or individual otherwise authorized by the organization, as applicable in accordance with the fantasy sports operator's corporate structure and must include a notarized affirmation as follows:
 

My name is \_\_\_\_\_ and I serve as the (title) of (fantasy sports operator). I swear or affirm to the best of my knowledge, information, and belief, that the information submitted on this application is true and correct, and that I have made a good faith effort to verify the information submitted herein.
- (3) The applicant shall submit a nonrefundable renewal application fee in the form of a check in the amount of three hundred dollars (\$300) made payable to the Department of State. Review of the applicant's renewal application will not begin until receipt of the application fee.
- (4) The renewal application, supporting documentation and fee may be hand delivered or mailed to the Office of the Secretary of State, Division of Charitable Solicitations, Fantasy Sports, and Gaming; attn: Director, at 312 Rosa L. Parks Blvd., 8th Floor, Nashville, Tennessee 37243.

Statutory authority: T.C.A. § 47-18-5601.

1360-03-05-.05 APPROVAL OF LICENSURE.

- (1) The Secretary of State shall review each license application and renewal application received and either approve or deny the application within thirty (30) days of receipt of a fully completed application, as determined by the Secretary of State. The Secretary of State has the discretion to approve or deny the application based on the adequacy of the information submitted and will notify the designated contact person of his or her decision by certified mail.
- (2) Each license issued shall be valid for a period of one (1) year following the date of notification of approval by the Secretary of State.
- (3) If the license, or renewal license, is granted, the licensee must remit payment in accordance with the following schedule, within ten (10) days of receipt of the notification letter approving the application or renewal application.
  - (a) For fantasy sports operators with annual adjusted revenue, multiplied by the resident percentage, equal to or greater than \$2,000,000.....\$75,000.
  - (b) For fantasy sports operators with annual adjusted revenue, multiplied by the resident percentage, equal to or greater than \$1,000,000 but less than \$2,000,000..... \$50,000.
  - (c) For fantasy sports operators with annual adjusted revenue, multiplied by the resident percentage, equal to or greater than \$500,000 but less than \$1,000,000.....\$22,500.
  - (d) For fantasy sports operators with annual adjusted revenue, multiplied by the resident percentage, equal to or greater than \$100,000 but less than \$500,000.....\$10,000.
  - (e) For fantasy sports operators with annual adjusted revenue, multiplied by the resident percentage, equal to or greater than \$50,000 but less than \$100,000.....\$5,000.
  - (f) For fantasy sports operators with annual adjusted revenue, multiplied by the resident percentage, equal to or greater than \$10,000 but less than \$50,000.....\$2,500.
  - (g) For fantasy sports operators with annual adjusted revenue, multiplied by the resident percentage, less than \$10,000.....\$1,000.
- (4) Payments will be accepted in the form of a check made payable to the Department of State.
- (5) License fees are nonrefundable.

Statutory authority: T.C.A. § 47-18-5601.

1360-03-05-.06 REGISTRATION OF PLAYERS/KNOW YOUR CUSTOMER REQUIREMENTS

- (1) Registration. Before allowing a player to create an account, including for free play, a fantasy sports operator must first collect:
  - (a) The name of the individual; and
  - (b) The individual's date of birth showing the individual is 18 years of age or older;
- (2) Deposits and withdrawals. No player shall be permitted to deposit or withdraw any funds until the individual has conducted the Identity Verification required by Rule 1360-03-05.06(4) and provided the following information:
  - (a) The physical address where the individual resides; and

- (b) Any other information required by the fantasy sports operator to independently verify the identity of the player making a deposit or withdrawal.
- (3) Single account. A fantasy sports operator shall limit each player to one active and continuously used account. Fantasy sports operators shall implement rules and clearly and conspicuously publish procedures to terminate all accounts of any player that establishes or seeks to establish more than one username or more than one account, whether directly or by use of another person as a proxy. Such procedures may allow a fantasy sports player that establishes or seeks to establish more than one username or more than one account, for one time only, to retain one account provided that the fantasy sports operator investigates and makes a good faith determination that the fantasy sports player's conduct was not intended to obtain a competitive advantage. A player who has established more than one username or account will not be entitled to retain any winnings earned from any account during the time period that more than one username or account is active. A fantasy sports operator must require that any subsequent action by a player of establishing or seeking to establish more than one username or more than one account will result in the fantasy sports operator prohibiting that player from establishing another future account with that fantasy sports operator within a period of two years.
- (4) Identify verification. A fantasy sports operator shall use commercially and technologically reasonable means to independently verify the identity of the individual making a deposit or a withdrawal. Third party entities may be used to verify the identity of a player.
  - (a) If a fantasy sports operator determines that the information provided by a player to make a deposit or process a withdrawal is inaccurate or incapable of verification, or violates its policies and procedures, the fantasy sports operator shall, within ten days, require the submission of additional information that can be used to verify the identity of the player. If such information is not provided or does not result in verification of the player's identity, the fantasy sports operator shall:
    1. Immediately suspend the player's account and not allow the player to participate in any further fantasy sports contests;
    2. Retain any winnings attributable to the player;
    3. Refund the balance of deposits made to the account to the source of such deposit or by issuance of a check; and
    4. Deactivate the account.
  - (b) Prior to verification of the player's identity in accordance with this rule, the player shall not be permitted to make deposits or withdraw funds from his or her account.
- (5) Username and password. A player must be provided with (or create) an electronic identifier such as a digital certificate or an account description and a password to log into an account on a fantasy sports contest platform.
  - (a) The fantasy sports operators must allow players to change their passwords and should remind them to do so on a regular basis.
  - (b) Where a player has forgotten his or her password, the fantasy sports operator must provide a secure process for the re-authentication of the player and the retrieval and/or resetting of the password. Any and all processes for dealing with lost player user IDs or passwords must be clearly described to the player and sufficiently secure.
  - (c) When a player logs into the fantasy sports platform, either the most recent time and date of login must be displayed, or the player must be able to access information listing the time and date of any contest entries and any withdrawals or deposits that have taken place in his or her account the last 30 days.

- (d) Each fantasy sports contest must have a unique identifier assigned by the fantasy sports operator which distinguishes entries into that contest from entries into other contests.
- (6) Minors prohibited. Only players age 18 and over may participate in fantasy sports contests.
- (a) A fantasy sports operator must deny account registration to any person who enters a birthdate which indicates that he or she is a minor;
  - (b) A fantasy sports operator shall implement commercially and technologically reasonable procedures to prevent access to fantasy sports contests by minors on its fantasy sports platform, including but not limited to independent verification of age using information obtained from independent sources outside of the player seeking to open an account. Third party services may be used to verify the age of a player; and
  - (c) A fantasy sports operator shall clearly and conspicuously display, on web pages that are accessed prior to registering for a fantasy sports contest, a statement that it is illegal for persons under the age of 18 to engage in fantasy sports contests in Tennessee. This statement must be clearly and conspicuously displayed by the fantasy sports operator.
- (7) Player affirmations. Fantasy sports operators, must include the following provisions in any Terms of Service or Terms of Use.
- (a) That the information provided to the operator by the individual to register is accurate;
  - (b) That the individual has been informed, and acknowledges, that as an authorized player he or she is prohibited from allowing any other person access to or use of their fantasy sports player account; and
  - (c) That the individual acknowledges that his or her account activity and winnings may be disclosed to the Secretary of State, the Department of Revenue and any other applicable state or federal entities.

Statutory authority: T.C.A. § 47-18-5601.

#### 1360-03-05-.07 PLAYER ACCOUNT ACTIVITY.

- (1) Amount of Monthly Deposits. No player shall be permitted to deposit more than two thousand five hundred dollars (\$2,500), of cash or a cash equivalent, per month with a fantasy sports operator unless the player demonstrates that he or she should be entitled to increase its monthly deposit limits in accordance with these rules and the published rules of the fantasy sports operator.
- (a) No player shall be granted an increase in his or her deposit limit prior to verification of their identity in accordance with these rules.
  - (b) No player who is classified as a beginning player shall be allowed to request an increase in their deposit limit.
  - (c) In order to be eligible for a deposit limit increase, a player must demonstrate, to the fantasy sports operator's reasonable satisfaction, that he or she qualifies for an increase under policies and procedures established by the fantasy sports operator, based on the player's annual income or net worth.
  - (d) Fantasy sports operators shall establish and publish reasonable procedures for increasing a player's deposit limit, but in no circumstances shall such deposit limits be increased unless the player has an annual income of more than \$150,000 (or \$300,000 jointly with a spouse) or financial net worth greater than \$500,000, calculated as follows:
    - 1. Any individual whose net worth, or joint net worth with that individual's spouse, exceeds five hundred thousand dollars (\$500,000).

- (i) For purposes of calculating net worth under this subsection, the individual's primary residence shall not be included as an asset;
  - (ii) Indebtedness that is secured by the individual's primary residence, up to the estimated fair market value of the primary residence at the time of the request for account increase, shall not be included as a liability (except that the amount of such indebtedness outstanding at the time of the request for account increase exceeds the amount outstanding sixty (60) days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability; and
  - (iii) Indebtedness that is secured by the individual's primary residence in excess of the estimated fair market value of the primary residence at the time of the request for account increase shall be included as a liability.
2. Any individual who had an individual gross income in excess of one hundred fifty thousand dollars (\$150,000) in each of the two (2) most recent years, or joint income with that individual's spouse in excess of three hundred thousand dollars (\$300,000) in each of those years and has a reasonable expectation of reaching the same income level in the current year.
- (2) Enforcement of self-exclusion. A fantasy sports operator must take all reasonable steps to immediately refuse service to or otherwise enact appropriate restrictions that prevent an individual who has set limitations in accordance with T.C.A. § 47-18-5605(a)(12) from entering fantasy sports contests. These policies and procedures include, without limitation, the following:
- (a) The maintenance of a registry of those individuals who have self-imposed limitations on their account, including the name, address, and account details of individuals who have self-imposed restrictions on their account;
  - (b) The closing of the player's account held by the individual who has self-excluded;
  - (c) Employee training to ensure enforcement of these policies and procedures;
  - (d) Provisions precluding an individual who has self-excluded from being allowed to again engage in fantasy sports contests until a reasonable amount of time of not less than thirty (30) days has passed since the individual self-excluded; and
  - (e) Fantasy sports operators shall take all reasonable steps to prevent any marketing material from being sent to an individual who has self-excluded.
- (3) Recordkeeping requirements. The fantasy sports operator shall maintain the following records, for a period of five (5) years, beginning with the date each player account was created, and make these records available for inspection at the request of the Secretary of State or the Attorney General and Reporter:
- (a) The date of each fantasy sports contest played;
  - (b) The classification of the player, i.e., Beginning or Highly Experienced;
  - (c) The entry fee paid for each fantasy sports contest played;
  - (d) The prize, if any, awarded for each fantasy sports contest played;
  - (e) All deposits and withdrawals made from each account; and
  - (f) The date and description of any self-imposed limitation taken by any player.

1360-03-05-.08 PLAYER FUNDS AND REQUIRED RESERVE.

- (1) Player funds.
  - (a) A fantasy sports operator shall not allow a player to transfer funds to any other player.
  - (b) After a player's identity has been verified, a player must be allowed to withdraw funds maintained in his or her account, whether such account is opened or closed. Such requests must be honored within five (5) business days of the request, unless the fantasy sports operator believes in good faith that the player engaged in either fraudulent conduct or other conduct that would put the fantasy sports operator in violation of the law, in which case the fantasy sports operator may decline to honor the request for withdrawal for a reasonable investigatory period until its investigation is resolved, provided that it gives notice to the player of the nature of the investigation of the account. For purposes of this provision, a request for withdrawal will be considered honored if it is processed by the fantasy sports operator notwithstanding a delay by a payment processor, credit card issuer, or the custodian of a financial account.
  - (c) A fantasy sports operator shall not allow a player's account to be overdrawn unless caused by payment processing issues outside of the control of the fantasy sports operator.
  - (d) A fantasy sports operator shall neither extend credit to a player nor allow the deposit of funds into an account that is derived from the extension of credit by affiliates or agents of the operator. For purposes of this subsection, credit shall not be deemed to have been extended where, although funds have been deposited into an account, the operator is awaiting actual receipt of such funds in the ordinary course of business.
- (2) Protection of player funds and required reserve. Funds held in player accounts and all funds constituting prize funds owed, or that may be owed based on contest participation, to player accounts of Tennessee consumers shall be protected in one of the following ways: (a) the creation and maintenance of a reserve as set forth in Rule 1360-03-05-.08(2)(a); (b) by deposit in a special purpose segregated account that is maintained and controlled by a properly constituted corporate entity as set forth in Rule 1360-03-05-.08(2)(b); or (c) by deposit in a qualified escrow account as set forth in Rule 1360-03-05-.08(2)(c).
  - (a) Reserve. A fantasy sports operator may maintain a reserve in the form of cash, cash equivalents, an irrevocable letter of credit, a bond, or a combination thereof to protect player funds.
    1. The amount of the reserve shall be equal to, at a minimum, the sum of all authorized players' funds held in player accounts of Tennessee consumers for use in fantasy sports contests plus all prize funds that are owed, or that may be owed based on contest participation by Tennessee consumers, until payment is made on the prize.
    2. The reserve agreements must reasonably protect the reserve against claims of the operator's creditors other than the authorized players for whose benefit and protection the reserve is established, and must provide that:
      - (i) The reserve is established and held in trust for the benefit and protection of authorized players to the extent the fantasy sports operator holds money in player accounts for players.
      - (ii) The reserve must not be released, in whole or in part, except upon written instruction or approval of the Secretary of State. The reserve must be available within sixty (60) days of the written demand or written instruction. If the reserve is released to the Secretary of State, he or she may interplead the funds in the Davidson County Chancery Court for distribution to the authorized players for whose protection and benefit the account was established and to other such

persons as the court determines are entitled thereto, or shall take such other steps as necessary to effect the proper distribution of the funds, or may do both.

- (iii) The fantasy sports operator may receive income accruing on the reserve, without obtaining permission from the Secretary of State.
  - (iv) The fantasy sports operator has no interest in or title to the reserve.
  - (v) Tennessee law and this section govern the agreements and the operator's interest in the reserve and income accruing on the reserve.
3. If the reserve is maintained in the form of cash, cash equivalent, or an irrevocable letter of credit, it must be held or issued by a federally insured financial institution. If the reserve is maintained in the form of a bond, it must be written by a bona fide insurance carrier. Reserves in the form of cash, cash equivalent, and irrevocable letter of credit must be established pursuant to a written agreement between the fantasy sports operator and the financial institution or insurance carrier, but the fantasy sports operator may engage an intermediary company or agent to deal with the financial institution or insurance carrier, in which event the reserve may be established pursuant to written agreements between the fantasy sports operator and the intermediary, and the intermediary and the financial institution or insurance carrier.
  4. The proposed reserve arrangement is not effective for purposes of complying with Rule 1360-03-05-.08(2) until the Secretary of State's approval has been obtained.
  5. The reserve arrangement agreements may be amended only with the prior written approval of the Secretary of State.
- (b) Special purpose segregated account with a separate corporate entity. A fantasy sports operator may establish a special purpose segregated account that is maintained and controlled by a properly constituted corporate entity that is not the fantasy sports operator and whose governing board includes one or more corporate directors who are independent of the fantasy sports operator and of any corporation related to or controlled by the fantasy sports operator.
1. The special purpose segregated account with a separate corporate entity must hold, at a minimum, the sum of all authorized player funds held in player accounts of Tennessee consumers for use in fantasy sports contests, plus all prize funds that are owed or that may be owed, based on contest participation by Tennessee consumers, until payment is made on the prize.
  2. The special purpose segregated account must reasonably protect the funds against claims of the operator's creditors other than the authorized players for whose benefit and protection the special purpose segregated fund is established, and must provide that:
    - (i) The segregated account is established and held in trust for the benefit and protection of authorized players.
    - (ii) The fantasy sports operator may receive income accruing on the segregated account. However, the fantasy sports operator has no interest in or title to the segregated account.
    - (iii) The funds in the segregated account held for the benefit of Tennessee consumers may only be distributed for the following:
      - (I) To the fantasy sports operator for payment to players upon completion of fantasy sports contests or otherwise for the reconciliation of player accounts;
      - (II) For income earned on the account, to the fantasy sports operator;

- (III) To the Secretary of State in the event that the fantasy sports operator's license expires, is surrendered, or is otherwise revoked. The Secretary of State may interplead the funds in the Davidson County Chancery Court for distribution to the authorized players for whose protection and benefit the account was established and to other such persons as the court determines are entitled thereto, or shall take such other steps as necessary to effect the proper distribution of the funds, or may do both;
    - (IV) As authorized in writing in advance by any agreement approved by the Secretary of State.
  - 3. The corporate entity must require a unanimous vote of all corporate directors to file bankruptcy.
  - 4. The corporate entity must obtain permission from the Secretary of State prior to filing bankruptcy or entering into receivership.
  - 5. The corporate entity must have articles of incorporation that prohibit commingling of funds with that of the fantasy sports operator except as necessary to reconcile the accounts of players with sums owed by those players to the fantasy sports operator.
  - 6. The corporate entity must be restricted from incurring debt other than to fantasy sports players pursuant to the rules that govern their accounts for contests.
  - 7. The corporate entity must be restricted from taking on obligations of the fantasy sports operator other than obligations to players pursuant to the rules that govern their accounts for contests.
  - 8. The corporate entity must be prohibited from dissolving, merging or consolidating with another company (other than a special purpose corporate entity established by another fantasy sports operator that meets the requirements of this section) while there are unsatisfied obligations to fantasy sports players.
- (c) A fantasy sports operator who solely operates season-long fantasy sports contests may establish a qualified escrow fund account for the benefit and protection of players' funds. This account will be maintained by a financial institution approved by the Secretary of State.
- 1. The fantasy sports operator must enter into and execute an escrow fund agreement, the form for which is available from the Secretary of State.
  - 2. The fantasy sports operator shall deposit in the escrow fund account the sum of all players' funds held in players' accounts belonging to Tennessee consumers for use in fantasy sports contests plus all prize funds that are owed, or may be owed, based on contest participation by Tennessee consumers, until payment is made on the prize.
  - 3. All funds held in the escrow fund account shall be held, invested, and disbursed in accordance with the terms and conditions of the escrow fund agreement upon approval of the Secretary of State.
  - 4. The escrow fund agreement allows distribution of funds, and any income thereon, under very limited circumstances, and only upon express approval of the Secretary of State for the following:
    - (i) Distribution to the fantasy sports operator for payment to players upon completion of fantasy sports contests up to a maximum of four (4) times per year.
    - (ii) To the Secretary of State in the event that the fantasy sports operator's license expires, is surrendered, or is otherwise revoked. The Secretary of State may interplead the funds in the Davidson County Chancery Court for distribution to the

authorized players for whose protection and benefit the reserve was established and to other such persons as the court determines are entitled thereto, or shall take such other steps as are necessary to effect the proper distribution of the funds, or may do both.

(iii) To allow for the distribution of income to the fantasy sports operator.

5. The escrow fund account shall be available only to those fantasy sports operators who operate season-long fantasy sports contests that would require access to their escrow fund account for payment of claims no more than four (4) times per year.

(d) Each fantasy sports operator shall submit to the Secretary of State all information and copies of documents verifying its proposed arrangements pursuant to Rule 1360-03-05-.08(2), including copies of the agreements described herein. The Secretary of State shall determine whether the agreements and arrangements satisfy the purposes and requirements of this section, may require appropriate changes, or withhold approval if they do not, and shall notify the fantasy sports operator of the determination.

(e) In the event that a fantasy sports operator's reserve, segregated account or escrow fund is not sufficient to cover, at a minimum, the sum of player funds held in player accounts belonging to Tennessee consumers for use in fantasy sports contests plus all prize funds that are owed or may be owed, based on contest participation by Tennessee consumers, until payment is made on the prize, the operator must, within twenty-four (24) hours, notify the Secretary of State of this fact in writing and must indicate the steps the fantasy sports operator has taken to remedy the deficiency.

(f) The Secretary of State may require that the reserve, segregated account, or qualified escrow fund, be increased to correct any deficiency or for good cause to protect authorized players.

Statutory authority: T.C.A. § 47-18-5601.

#### 1360-03-05-.09 ACCOUNT MONITORING TO PREVENT MISUSE.

(1) Proxy servers. Fantasy sports operators shall not allow fantasy sports players to use proxy servers for the purpose of misrepresenting their identity or location in order to engage in fantasy sports contests.

(2) Location verification. In order to prevent the unauthorized use of a player's account, a fantasy sports operator offering daily fantasy sports contests must use technologically and commercially reasonable measures to reasonably detect the physical location of a player attempting to access his or her account and to monitor for simultaneous logins to a single account from geographically inconsistent locations. A fantasy sports operator may use a third party to provide these location services.

(a) The geolocation service or application must be able to perform as follows:

1. Detect location notwithstanding the use of a proxy server;

2. Detect location when routing through a Virtual Private Network (VPN);

3. Use GPS data when the player seeks access from a mobile device or network and prohibit users from entering contests or depositing funds if GPS is not turned on;

4. Check location each time the player attempts to enter a contest or make a deposit; and

5. Utilize a mechanism to alert the fantasy sports operator if an account is being accessed from geographically inconsistent locations. For example, technology that alerts the fantasy sports operator that login locations were identified that would be impossible to travel between in the time reported.

- (b) The fantasy sports operator should implement procedures to disable account access if the fantasy sports operator receives information that an account is being accessed from a location that indicates that there is a likelihood of unauthorized or improper access.
- (3) Scripts. A fantasy sports operator shall not permit the use of unauthorized scripts that give players an unfair advantage over other players in fantasy sports contests and shall use commercially reasonable efforts to monitor for and prevent the use of such scripts.
- (a) Authorized scripts shall be programs or scripts that are incorporated as a game feature and shall be clearly and conspicuously published and thereby made available to all players.
  - (b) A script that is not authorized under section (a) will be deemed to offer an unfair advantage over other players, for reasons including, but not limited to, its potential use to:
    1. Facilitate entry of multiple contests with a single line-up;
    2. Facilitate changes in many line-ups at one time;
    3. Facilitate use of commercial products designed and distributed by third parties to identify advantageous game strategies; or
    4. Gather information about the performance of others for the purpose of identifying or entering contests against daily fantasy sports players who are less likely to be successful.
  - (c) A fantasy sports operator may prohibit the use of any and all scripts.

Statutory authority: T.C.A. § 47-18-5601.

1360-03-05-.10 CERTAIN STATE EMPLOYEES PROHIBITED FROM PLAYING.

- (1) In addition to the individuals excluded from participation in fantasy sports contests pursuant to T.C.A. § 47-18-5605(a)(14), employees of the Secretary of State's office are excluded from participating in any fantasy sports contest involving a prize over five dollars (\$5.00) offered by any fantasy sports operator.
- (2) This subsection does not prohibit the Secretary of State from utilizing test accounts solely in order to measure or assess the functionality of the fantasy sports platform or the compliance with applicable laws and regulations; provided that these accounts must be closely monitored by the Secretary of State for any unauthorized use.
- (3) This section does not make a fantasy sports operator responsible for identifying Secretary of State employees participating in its contests.

Statutory authority: T.C.A. § 47-18-5601.

1360-03-05-.11 ANNUAL REPORTING AND AUDITS.

- (1) Annual Reports. No later than the first day of the fifth month following the close of the fantasy sports operator's fiscal year in which the fantasy sports operator was licensed, the fantasy sports operator shall submit a report to the Secretary of State containing the following information and documents pertaining to the prior fiscal year, or the portion of the prior fiscal year in which the fantasy sports operator was licensed:
  - (a) Tennessee consumer account information. The following information shall be submitted electronically (in either a Microsoft excel spreadsheet or a Microsoft access database) contained on a removable media device, e.g., a flash drive.
    1. The total number of Tennessee consumer accounts, broken down by beginning fantasy sports players and highly experienced fantasy sports players;

2. The number of new accounts established by Tennessee consumers;
  3. The number of accounts closed by Tennessee consumers;
  4. The total amount of entry fees received from Tennessee consumers;
  5. The total amount of prizes awarded to Tennessee consumers;
  6. The number of Tennessee consumers who requested a deposit limit increase;
  7. The number of deposit limit increases granted to Tennessee consumers;
  8. The number of accounts in which a Tennessee consumer was identified as a minor and the action taken as a result;
  9. The number and amount of refunds given to Tennessee consumers;
  10. The number of Tennessee consumers who requested additional limitations on their accounts pursuant to T.C.A. § 47-18-5605(a)(11), and the action taken as a result; and
  11. The number of Tennessee consumers who requested that their accounts be permanently closed.
- (b) The total amount of all winnings earned by fantasy sports players on online platforms supported by the fantasy sports operators.
- (2) Audit Reports. No later than the first day of the fourth month following the close of the fantasy sports operator's fiscal year in which the fantasy sports operator was licensed, the fantasy sports operator shall submit a full and complete copy of the audit prepared pursuant to T.C.A. § 47-18-5604. This audit shall include two components, a financial audit and a compliance audit as described below.
- (a) Financial audit. The fantasy sports operator shall submit a financial audit, prepared by a certified public accountant consistent with the attestation standards established by the American Institute of Certified Public Accountants, of the fantasy sports operator's financial operations and handling of player accounts and funds pursuant to the Fantasy Sports Act.
  - (b) Compliance audit. The fantasy sports operator shall submit a performance audit, prepared by a testing laboratory recognized by the Secretary of State to verify compliance with the operational aspects of the Fantasy Sports Act, including those set forth in T.C.A. § 47-18-5605, and to verify the integrity of the computer operating systems used to operate the fantasy sports contests.
    1. The Secretary of State will post the names of entities approved to conduct compliance audits on its website.
    2. A fantasy sports operator or testing laboratory can seek recognition of an alternative gaming laboratory for use in completing the compliance audit by submitting a written request to the Secretary of State. The Secretary of State will review the qualifications and experience of the gaming laboratory and determine whether to recognize that entity as an approved provider.

Statutory authority: T.C.A. § 47-18-5601.

1360-03-05-.12 SCHEDULE OF RANGE OF CIVIL PENALTIES FOR VIOLATIONS OF THE FANTASY SPORTS ACT.

- (1) The following violations may result in civil penalties from a minimum of five thousand dollars (\$5,000) to the maximum allowed by law:

- (a) Failure to use technologically reasonable means to prevent the use of proxy servers.
  - (b) Failure to use commercially reasonable means to verify a player's true identity and/or location.
  - (c) Failure to retain any record required to be retained in accordance with T.C.A. § 47-18-5603(c) or these rules.
  - (d) Failure to report any information required to be reported to the Secretary of State pursuant to the Fantasy Sports Act or these rules.
  - (e) Failure to clearly and conspicuously disclose rules regarding fantasy sports contests.
  - (f) Failure to provide information concerning assistance available to problem gamblers, in accordance with T.C.A. § 47-18-5605(a)(10).
  - (g) Failure to implement and/or enforce policies related to a player's self-imposed limitations as required by T.C.A. § 47-18-5605(a)(11) and (12).
  - (h) Failure to timely submit the annual audit required by T.C.A. § 47-18-5604(a)(2).
  - (i) Any other violation not specifically listed herein.
- (2) The following violations may result in civil penalties from a minimum of ten thousand dollars (\$10,000) to the maximum allowed by law:
- (a) Failure to restrict the number of allowable entries for fantasy sports contests in accordance with T.C.A. § 47-18-5605(a)(25).
  - (b) Knowingly allowing the use of unauthorized scripts, failing to monitor fantasy sports contests to detect the use of unauthorized scripts, and/or failing to follow the provisions of T.C.A. § 47-18-5605(a)(21)-(23).
  - (c) Violations of any of the requirements set forth in T.C.A. § 47-18-5605(a)(18)-(20) relating required disclosures, player activity, and fantasy sports contests involving beginning and experienced players.
  - (d) Misrepresenting the chances of winning and/or the number of persons willing fantasy sports contests, or failing to comply with the advertising requirements set forth in T.C.A. § 47-18-5605(a)(8) and (9).
- (3) The following violations may result in civil penalties from a minimum of fifteen thousand dollars (\$15,000) to the maximum allowed by law:
- (a) Knowingly allowing the use of auto-draft by players or offering pre-selected teams to players.
  - (b) Failure to limit each player to one (1) account and/or limit player deposits in accordance with T.C.A. § 47-18-5602(b)(7) and these rules.
  - (c) Failure to segregate player funds and/or maintain a player reserve in accordance with T.C.A. § 47-18-5602(b)(8) and (26) and these rules.
  - (d) Failure to implement and enforce the player fund protections set forth in T.C.A. § 47-18-5605(a)(13).
  - (e) Failure to implement and enforce the minor prevention protections set forth in T.C.A. § 47-18-5605 (a)(4)-(6).
- (4) The following violations may result in civil penalties from a minimum of twenty thousand dollars (\$20,000) to the maximum allowed by law:

- (a) Knowingly disclosing proprietary and nonpublic information or failing to monitor access to proprietary and nonpublic information in violation of T.C.A. § 47-18-5605(15) and/or (17)(B).
  - (b) Knowingly allowing a prohibited player to participate in a fantasy sports contest in violation of T.C.A. § 47-18-5605(14), (16), and/or (17).
- (5) The following violations may result in civil penalties of twenty-five thousand dollars (\$25,000):
- (a) Knowingly submitting false or misleading information, whether oral or written, to the Secretary of State.
  - (b) Directly or indirectly operating or promoting to Tennessee consumers a fantasy sports contest, or promoting a fantasy sports contest from this state to consumers outside of the state, without a license.
  - (c) Knowingly allowing any minor to participate in any fantasy sports contest.
- (6) These civil penalties may be assessed in addition to suspension, refusal to renew, or revocation of a license issued by the Secretary of State. These civil penalties are cumulative and supplementary to any remedies or actions available to the Office of the Attorney General and Reporter under the Fantasy Sports Act or otherwise provided by law. These civil penalties are cumulative and supplementary to any criminal prosecution pursuant to T.C.A. § 39-17-503.
- (7) These civil penalties may be assessed by the Secretary of State for each and every violation of the Fantasy Sports Act. Repeat occurrences of the same violation may result in separate civil penalties for each violation.

Statutory authority: T.C.A. § 47-18-5601.

1360-03-05-.13 ADDITIONAL AUTHORIZED FEES.

- (1) The Secretary of State is authorized to charge the following additional fees:
- (a) Late fee for any required filing.....\$25 per day.
  - (b) Correction of information fee.....\$25.
  - (c) Change of information fee.....\$25.

Statutory authority: T.C.A. § 47-18-5601

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

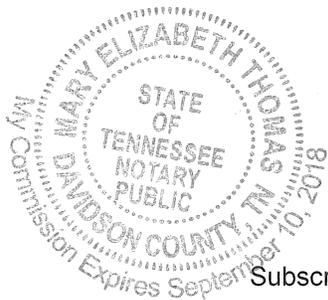
Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Dept. of State (board/commission/ other authority) on 8/29/16 (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: (mm/dd/yy) 7/12/16

Rulemaking Hearing(s) Conducted on: (add more dates). (mm/dd/yy) 8/29/16



Date: 9/21/16

Signature: [Handwritten Signature]

Name of Officer: Tre Hargett

Title of Officer: Secretary of State

Subscribed and sworn to before me on: 9/21/16

Notary Public Signature: [Handwritten Signature]

My commission expires on: 9/10/18

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.

[Handwritten Signature: Herbert H. Slaty III]  
 Herbert H. Slaty III  
 Attorney General and Reporter  
9/26/2016  
 Date

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Filed with the Department of State on: 9/26/16

Effective on: 12/25/16

[Handwritten Signature: Tre Hargett]  
 Tre Hargett  
 Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Health

DIVISION: Office of Health Care Facilities

SUBJECT: Abuse Registry

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-11-901

EFFECTIVE DATES: December 27, 2016 through June 30, 2017

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This is a new rule chapter being promulgated to set out the processes by which an individual is placed on and removed from the Registry.

## 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.

October 28, 2015  
Abuse Registry Rulemaking Hearing  
Public Hearing Comments

The Department received two written comments and one oral comment regarding the proposed new rule chapter.

The first written comment was submitted by the Department of Children's Services. The Department of Children's Services requested that Rule 1200-08-38-.04(3)(d) include the phrase "definitions unless release if such information is prohibited by applicable Federal or State law or regulation," at the end of the sentence.

This change was considered by the Department, and after consideration and consultation with representatives of the Department of Children's Services, it was determined that the language is unnecessary, because language is present in 1200-08-38-.04(2) which addresses the concern. (That language has now been amended slightly and moved to 1200-08-38-.04(3)).

Additionally, at the rulemaking hearing on October 28, 2015, Douglas E. Dimond, General Counsel to the Department of Children's Services, orally addressed the Department and asked for the same language to be included at the end of Rule 1200-08-38-.04(3).

The change was considered by the Department, and after consideration and consultation with representatives of the Department of Children's Services, it was determined that the language is unnecessary because language is present in 1200-08-38-.04(2)(now, 1200-08-38-.04(3)) which addresses the concern.

Lastly, the Department of Mental Health and Substance Abuse Services, requested that Rule 1200-08-38-.04(3)(f) be changed to read: "Information regarding the investigation and substantiation of the allegation or findings of the agency, examples of which may include the investigative report, investigative summary, documents, witness statements or other evidence supporting the allegations or findings of the agency, unless release of such information is prohibited by applicable Federal or State law or regulation."

This final request was considered by the Department and it was determined that the language is unnecessary because language is present in 1200-08-38-.04(2)(now, 1200-08-38-.04(3)) which addresses the concern.

### **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.

- (1) **The extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

These rules do not overlap, duplicate, or conflict with other federal, state, and local government rules.

- (2) **Clarity, conciseness, and lack of ambiguity in the rule or rules.**

These rules are established with clarity, conciseness, and lack of ambiguity.

- (3) **The establishment of flexible compliance and/or reporting requirements for small businesses.**

These rules do not establish flexible compliance and/or reporting requirements for small businesses.

- (4) **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.**

These rules do not establish friendly schedules or deadlines for compliance reporting requirements for small businesses.

- (5) **The consolidation or simplification of compliance or reporting requirements for small businesses.**

These rules do not consolidate or simplify compliance or reporting requirements for small businesses.

- (6) **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**

These rules do not establish performance standards for small businesses as opposed to design or operational standards required for the proposed rule.

- (7) **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.**

These rules do not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

**Name of Board, Committee or Council:** Abuse Registry

- 1. Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

These rules will affect persons being placed on the Abuse Registry and the governmental entities involved in such placement including: the Department of Developmental and Intellectual Disabilities, the Department of Mental Health and Substance Abuse Services, the Department of Human Services, Adult Protective Services Division, the Department of Children's Services, the Department of Health, the Department of Education, the Tennessee Bureau of Investigation, and the Bureau of TennCare.

- 2. Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

These rules will not create any additional reporting, recordkeeping or administrative costs.

- 3. Statement of the probable effect on impacted small businesses and consumers:**

Small businesses and consumers will benefit from these rules as persons who have abused, neglected, or misappropriated the property of vulnerable individuals will be removed from the practice of caring for such individuals, permanently or temporarily.

- 4. Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:**

There are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rules.

- 5. Comparison of the proposed rule with any federal or state counterparts:**

**Federal:** The Centers for Medicaid operates a nurse aid registry which operates much like the Tennessee Abuse Registry.

**State:** None.

- 6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.**

These rules do not provide exemptions for 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 proposed rule amendments should not have a financial impact on local governments.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This is a new rule chapter being promulgated to set out the processes by which an individual is placed on and removed from the Registry.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 68-11-901.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These rules will affect persons being placed on the Abuse Registry and the governmental entities involved in such placement.

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

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These rules should not result in any increase or decrease in state or local government revenues or expenditures.

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

Caroline Tippens, Assistant General Counsel, Department of Health, Office of General Counsel.

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

Caroline Tippens, Assistant General Counsel, Department of Health, Office of General Counsel.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Department of Health, Office of General Counsel, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, [Caroline.Tippens@tn.gov](mailto:Caroline.Tippens@tn.gov).

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

None.

**Department of State  
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Email: [publications.information@tn.gov](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 09-34-16  
Rule ID(s): 6315  
File Date: 9/28/16  
Effective Date: 12/27/16

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	Department of Health, Abuse Registry
<b>Division:</b>	Office of Health Care Facilities
<b>Contact Person:</b>	Caroline Tippens
<b>Address:</b>	665 Mainstream Drive, Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 741-1611
<b>Email:</b>	Caroline.Tippens@tn.gov

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

- Amendment  
 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
1200-08-38	Registry of Persons Who Have Abused, Neglected, Misappropriated, or Exploited the Property of Vulnerable Individuals
Rule Number	Rule Title
1200-08-38-.01	Scope of Rules
1200-08-38-.02	Definitions
1200-08-38-.03	Confidentiality of Records and Release of Information
1200-08-38-.04	Referrals of Reports of Abuse, Neglect, Misappropriation, or Exploitation to the Department
1200-08-38-.05	Department of Health's Notification of Intent to Place on the Registry
1200-08-38-.06	Requests for Removal from the Registry

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 1200-08-38  
Registry of Persons Who Have Abused, Neglected, Misappropriated, or Exploited the Property of Vulnerable  
Individuals

New Rule Chapter

Table of Contents

1200-08-38-.01 Scope of Rules  
1200-08-38-.02 Definitions  
1200-08-38-.03 Confidentiality of Records and Release of Information  
1200-08-38-.04 Referrals of Reports of Abuse, Neglect, Misappropriation, or Exploitation to the Department  
1200-08-38-.05 Department of Health's Notification of Intent to Place on the Registry  
1200-08-38-.06 Requests for Removal from the Registry

Preamble.

The purpose of the Registry of Persons Who Have Abused, Neglected, Misappropriated, or Exploited the Property of Vulnerable Individuals ("Registry") is to notify the public of those individuals who have been determined to have performed such acts against a vulnerable individual in the State of Tennessee. These rules outline procedures for reporting to the Registry and for seeking removal from the Registry.

1200-08-38-.01 Scope of Rules.

(1) These rules shall apply to the:

- (a) Notifications of intent to place any person suspected of abuse, neglect, misappropriation, or exploitation, as defined by the Registry of Persons Who Have Abused, Neglected, Misappropriated, or Exploited the Property of Vulnerable Individuals ("Registry") in T.C.A. Title 68, Chapter 11, Part 10;
- (b) Referrals made to the Department for placement on the Registry from any state or federal courts, Tennessee state government agencies, administrative bodies, Tennessee Bureau of Investigation or law enforcement agencies.
- (c) Notification to the individual of the individual's inclusion on the Registry;
- (d) Requests for information from the Department's Registry; and
- (e) Requests for removal from the Registry.

(2) Due Process.

- (a) Administrative due process consists of contested case hearings and appeals conducted in accordance with the procedures set forth in the Uniform Administrative Procedures Act, as set forth in T.C.A. Title 4, Chapter 5, Part 3 and Tenn. Comp. R. & Regs. 1360-04-01-.01 *et seq.*
- (b) Petitioners who have been denied removal from the Registry may appeal the state government agency's decision by requesting a contested case hearing, which will be conducted according to the Uniform Administrative Procedures Act, as set forth in T.C.A. Title 4, Chapter 5, Section 3 and Tenn. Comp. R. & Regs. 1360-04-01-.01 *et seq.*
- (c) Notice and opportunity to be heard will be accorded to an individual based on each state government agency's procedures and definitions.

Authority: T.C.A. §§ 68-11-1001 et. seq.

1200-08-38-.02 Definitions.

- (1) "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.
- (2) "Advisory Group" means a group convened by the state agency composed of persons with experience in the subject matter areas of the agency's work, or who by experience or education the agency determines are qualified to provide recommendations to the agency regarding a person's likelihood of committing further acts or omissions that led to the person's placement on the registry..
- (3) "Commissioner" means the Commissioner of the Tennessee Department of Health.
- (4) "Criminal disposition" means the disposition of criminal charges constituting an offense against a vulnerable person, either by conviction, or by pretrial diversion authorized by any court pursuant to Tennessee Code Annotated, T.C.A. Title 40, Chapter 15, or by an order deferring further proceedings and placing an individual on probation by post-trial diversion issued pursuant to T.C.A. Title 40, Chapter 35.
- (5) "Court" means any state or federal court.
- (6) "Department" means the Tennessee Department of Health.
- (7) "Designee" means the designee of the Commissioner of the Tennessee Department of Health.
- (8) "Exploitation" means, in cases that are investigated by the Department of Human Services, the improper use by a caretaker of funds that have been paid by a governmental agency to an adult or to the caretaker for the use or care of the adult.
- (9) "Facility" means any facility licensed by the Tennessee Department of Health, Office of Health Care Facilities under T.C.A. Title 68, Chapter 11, Part 2.
- (10) "Misappropriation" means any taking, possession, or use of the property of a vulnerable person the elements of which constitute any criminal offense involving such property, or that constitute a violation of a fiduciary duty of a caretaker of a vulnerable person.
- (11) "Neglect" means the failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness.
- (12) "Notification" means referrals made to the Department by any state government agency that finds that an individual has committed abuse, neglect, misappropriation, or exploitation of the property of a vulnerable person, pursuant to that state government agency's procedures and definitions.
- (13) "Offense against a vulnerable person" means any act that constitutes abuse, neglect, misappropriation or exploitation of the property of a vulnerable person even if the act does not constitute a criminal act, or a crime the elements of which constitute abuse, neglect, or misappropriation or exploitation of the property of a vulnerable person.
- (14) "Person" or "individual" means:
  - (a) any individual eighteen (18) years of age or older, or
  - (b) any individual younger than eighteen (18) years of age:
    - (i) who has been treated as an adult in a criminal court of competent jurisdiction, pursuant to T.C.A. Title 37, Chapter 1, Part 1, or
    - (ii) whose placement on the Registry is otherwise required by law.

- (c) However, the terms “vulnerable person” or vulnerable individual” shall have the meaning set forth in 1200-08-38-.02(18).
- (15) “Petitioner” means an individual seeking removal from the Registry.
- (16) “Property” means any interests of any type in real property, and all interests of any type in personal property whether in moneys or financial instruments of any type, goods, furnishings, and similar property. In those cases investigated by the Department of Human Services pursuant to Title 71, Chapter 5, part 1, property shall only consist of funds paid by a governmental agency to an “adult” as defined in T.C.A. § 71-6-102.
- (17) “Registry” means the registry maintained by the Department pursuant to T.C.A. Title 68, Chapter 11, Part 10, containing the names of any persons who, after receiving notice and opportunity to be heard, have been determined by Tennessee state government agencies or any state or federal court to have abused, neglected, misappropriated, or exploited the property of vulnerable persons.
- (18) “State Government Agency” means an agency of Tennessee state government and its successor agency and includes but is not limited to:
- (a) the Department of Intellectual and Developmental Disabilities;
  - (b) the Department of Mental Health and Substance Abuse Services;
  - (c) the Department of Human Services, Adult Protective Services Division;
  - (d) the Department of Children’s Services;
  - (e) the Department of Health;
  - (f) the Department of Education;
  - (g) the Tennessee Bureau of Investigation; and
  - (h) the Bureau of TennCare.
- (19) “Vulnerable person”, or “vulnerable individual,” means anyone who:
- (a) Is under eighteen (18) years of age; or
  - (b) Is (18) years of age or older and, by reason of advanced age or other physical or mental condition, is vulnerable to or has been determined to have suffered from abuse, neglect, or misappropriation or exploitation of property and is or has been:
    1. The subject of any report of harm, abuse, neglect, or exploitation of property made to any state government agency or investigative authority with responsibility to investigate those reports pursuant to T.C.A. Title 37, Chapter 1, Parts 1 or 6, or T.C.A. Title 71, Chapter 6, Part 1, or pursuant to any other law or regulation;
    2. Receiving protective services from a state government agency pursuant to law;
    3. The victim of any criminal offense that constitutes abuse, neglect, or misappropriation or exploitation of property;
    4. In the care of either a state government agency, an entity that is licensed or regulated by a state government agency, or in the care of an entity providing services under the provisions of a contract between that entity and a state government agency; or
    5. Receiving services in the person’s home from any agency licensed or regulated by or contracted to a state government agency, including, but not limited to home and

community-based services, home health care, or other health care-related services provided through state or federal funds to assist persons to remain in their homes.

Authority: T.C.A. §§ 68-11-1001 et. seq.

1200-08-38-.03 Confidentiality of Records and Release of Information.

- (1) Any and all reports, investigations, inspections, incident reports, or referrals made to the Department by facilities licensed pursuant to T.C.A. Title 68, Chapter 11, Part 2, regarding abuse, neglect, misappropriation, or exploitation of a vulnerable person are confidential.
- (2) The Department may not release information regarding the placement of an individual on the Registry by either the Department or any state government entity for abuse, neglect, misappropriation, or exploitation except as authorized pursuant to T.C.A. Title 68, Chapter 11, Part 10 and federal law or regulation.
- (3) The Department will maintain the confidentiality of information received to the extent required by state or federal law.

Authority: 42 C.F.R. § 488.332; T.C.A. §§ 63-11-211 and 68-11-1001 et. seq.

1200-08-38-.04 Referrals of Reports of Abuse, Neglect, Misappropriation, or Exploitation to the Department.

- (1) The Department's Office of Health Care Facilities investigates and makes referrals to the Registry based on its investigation of reports of abuse, neglect, or misappropriation of the property of vulnerable persons in facilities licensed or certified, pursuant to T.C.A. Title 68, Chapter 11, Part 2.
- (2) Any state government agency that finds that an individual has committed abuse, neglect, misappropriation, or exploitation of the property of a vulnerable person shall refer the individual to the Department for placement on the Registry within one hundred eighty (180) days of the completion of due process, unless release of such information is prohibited by applicable state or federal law. Due process is considered completed when an individual has fully exhausted all administrative and judicial remedies in accordance with the referring state government agency's standard procedures and the Uniform Administrative Procedures Act, as set forth in T.C.A. Title 4, Chapter 5, Part 3 and Tenn. Comp. R. & Regs. 1360-04-01-.01 et seq. This provision shall not apply to placement on the Registry by criminal disposition or judicial order in accordance with T.C.A. Title 68, Chapter 11, Part 10.
- (3) Referrals for placement on the Registry by other state government agencies shall include the following prerequisites.
  - (a) The applicable definition of vulnerable person, as set forth in 1200-08-38-.02(17);
  - (b) The location and/or facility where the abuse, neglect, misappropriation, or financial exploitation occurred;
  - (c) The identity of the caregiver or alleged perpetrator including:
    1. Name, street address, phone number, license or certificate number (if applicable), and other identifying contact information; and
    2. Date of birth and social security number.
  - (d) The nature and extent of the abuse, neglect, misappropriation, or exploitation and the applicable definition from the reporting agency of abuse, neglect, misappropriation, or exploitation according to the state government agency's procedures and definitions.
  - (e) The identity of the complainant which shall remain confidential;
  - (f) Information regarding the investigation and substantiation of the allegation or findings of the agency, examples of which may include the investigative report, investigative summary,

documents, witness statements or other evidence supporting the allegations or findings of the agency.

- (g) A statement summarizing the facts demonstrating that the person to be placed on the Registry received notice and an opportunity to show that he or she should not be placed on the Registry. The statement must include:
  - 1. Emergency, initial, or final administrative orders by a state government agency;
  - 2. Evidence of service of process meeting the requirements of Tenn. Comp. R. & Regs. 1360-04-01-.06(3); or
  - 3. In the case of a criminal disposition, a copy of the criminal disposition from the Tennessee Bureau of Investigation, or other federal, state, or local law enforcement agency, court, or criminal justice agency, verifying that a criminal disposition against the named individual was the result of an offense against a vulnerable person.
- (h) Any state government agency making referral to the Registry shall include an attestation that the requirements set forth in 1200-08-38-.04(3)(a-g) have been met.
- (i) A letter notifying the individual that the individual has been placed on the Registry will be sent to the individual's last known mailing address by United States Postal Service First Class mail and by Certified Mail.

Authority: T.C.A. §§ 68-11-211, 68-11-1003 and 42 U.S.C.A. § 5106a.

1200-08-38-.05 Department of Health's Notification of Intent to Place on the Registry.

- (1) The Department shall send a Notice of Intent to Place on the Registry when it receives information that an individual has abused, neglected, or misappropriated the property of a vulnerable person. The Department shall also send such a notice if it receives documentation from the TBI or other federal, state or local law enforcement agency or any court or criminal justice agency, substantiating that an offense against a vulnerable person has been committed by an individual whose name has not already been placed on the Registry.
- (2) The Notice of Intent to Place sent by the Department shall contain:
  - (a) The allegations supporting the determination that the individual has abused, neglected, or misappropriated the property of a vulnerable person;
  - (b) Notification that the individual may, within thirty (30) days of the date of the notice, request an administrative hearing by submitting a written request to the Tennessee Department of Health, Office of Health Care Facilities;
  - (c) Notice that the hearing will be a contested case hearing which will be conducted by an Administrative Law Judge or Hearing Officer pursuant to the Tennessee Administrative Procedures Act, set forth in T.C.A. Title 4, Chapter 5, Section 3 and Tenn. Comp. R. & Regs. 1360-04-01-.01 *et seq.*, and that the individual may be represented by an attorney at his or her own expense; and
  - (d) Notice that if the individual fails to request a hearing within thirty (30) days, the individual's name shall be placed on the Registry by default.
- (3) If the placement on the Registry is based on a referral from another state government agency, then the individual being placed will not be entitled or given opportunity to contest or dispute prior hearing conclusions, the content or terms of any prior criminal disposition, or the factual findings upon which the conclusion or disposition are based. Any hearing offered by the Department shall be limited to the accuracy of the report that the criminal disposition occurred, hearing conclusions were made, or any fact issue related to the correct identity of the individual. No such hearing will be given unless such challenge is made within sixty (60) days of notification of inclusion on the Registry.

- (4) Appeals in contested cases by the Department.
- (a) All appeals in contested cases shall be conducted in accordance with Uniform Administrative Procedures Act and rules of the Administrative Procedures Division.
  - (b) Initial Order. If an Administrative Law Judge orders an individual placed on the Registry via Initial Order, the Initial Order becomes a Final Order within fifteen (15) days after entry of the Initial Order, unless:
    - 1. The individual files a petition for appeal to the Commissioner or the Commissioner's designee stating the basis for the appeal within fifteen (15) days after the entry of the Initial Order. A Final Order will not be issued until the Commissioner or his designee has reviewed the Initial Order. A petition for appeal to the Department must be filed with the Administrative Procedures Division of the Secretary of State; or
    - 2. A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error, within fifteen (15) days after the Initial Order's entry. This petition must also be filed with the Administrative Procedures Division as listed above.
    - 3. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing.
    - 4. A new fifteen (15) day period for the filing of an appeal with the Department starts to run from the entry date of an order disposition of a petition for reconsideration, or from the twentieth (20th) day after filing of the petition, if no order is issued.
    - 5. A party may petition the Department for a stay of the Initial Order within seven (7) days after the entry of the Initial Order.
  - (c) Final Order.
    - 1. Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order with the Commissioner of the Department, or his designee, in which the petitioner shall state the specific reasons why the Initial Order was in error.
    - 2. If no action is taken by the Commissioner or his designee within twenty (20) days of filing of the petition, it is deemed denied.
  - (d) Judicial Review.
    - 1. If the individual is aggrieved with the outcome of a contested case hearing, the individual may seek judicial review of the Final Order by filing a petition for review in Chancery Court within sixty (60) days after the entry of a Final Order, or if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition.
    - 2. The filing of a petition for reconsideration does not extend the sixty (60) day period for judicial review, if the petition for reconsideration is not granted.
- (5) A letter notifying the individual that the individual has been placed on the Registry will be sent to the individual's last known mailing address by United States Postal Service First Class mail and by Certified Mail.

Authority: 42 C.F.R. § 488.335(d); T.C.A. §§ 4-5-301 et. seq, 4-5-315; 4-5-316; 4-5-317; 4-5-322; 68-11-1003; 68-11-1003; T.C.A. Title 4, Chapter 5, Part 3; and Tenn. Comp. R. & Regs. 1360-04-01-.01 et seq.

1200-08-38-.06 Requests for Removal from the Registry.

- (1) A petitioner seeking removal from the Registry must request removal in writing. Requests for removal may be submitted to the Office of Health Care Facilities.
- (2) In cases involving a request for removal from an individual placed by another state government agency, the Department shall forward the request for removal to the agency that initially referred the individual for placement on the Registry.
- (3) A state government agency that has referred a person for placement on the Registry may recommend to the Department the removal of the person's name if:
  - (a) The agency determines that the placement of the person's name on the registry was in error; or
  - (b) An advisory group, convened by such state agency, composed of persons with experience in the subject matter areas of the agency's work, or who by experience or education the agency determines are qualified to provide recommendations to the agency regarding a person's likelihood of committing further acts or omissions that led to the person's placement on the Registry determines, based upon evidence presented to the group, that removal of the person from the Registry is clearly warranted.
- (4) The advisory group may require the petitioner seeking removal to provide documentation supporting removal from the Registry, including, but not limited to:
  - (a) Tennessee Open Records Information Services (TORIS) background check conducted by the Tennessee Bureau of Investigation.
  - (b) Employment history from the time the petitioner was placed on the Registry;
  - (c) Statement from the petitioner regarding the circumstances of their placement on the Registry;
  - (d) Letters of reference;
  - (e) Information regarding petitioner's rehabilitative efforts after the circumstances leading to the placement, including but not limited to, continuing education; anger management; and with proper authorizations, evidence of therapy and/or alcohol and drug rehabilitation information.
- (5) The final decision regarding the recommendation for removal from the Registry shall be made by the state government agency. The recommendation shall be reduced to writing, giving the agency's reasons for the decision and mailed to the petitioner seeking removal. The state government agency shall provide a copy of the final decision to the Department.
- (6) If the decision is to remove the person from the Registry, the recommendation shall be sent to the Department and the person's name shall be removed by the Department.
- (7) If the petitioner seeking removal is dissatisfied with the determination made by the state government agency, the person shall be permitted to appeal. The appeal shall be conducted by the state government agency as a contested case hearing pursuant to the Uniform Administrative Procedures Act.
- (8) The decision and the written recommendations of the advisory group and the state government agency shall be open for public inspection, after redactions are made to comply with applicable confidentiality law.
- (9) A certified nurse aide's name may only be removed from the Registry when the following circumstances have been met:
  - (a) The individual was placed on the Registry on the basis of one (1) instance of neglect;
  - (b) The employment and personal history of the nurse aide do not reflect a pattern of abusive behavior or neglect; and

(c) At least one calendar year has expired from the date of placement on the Registry.

Authority: T.C.A. § 68-11-1003(g) and 42 U.S.C.A. § 1396r.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Health (board/commission/ other authority) on 10/28/2015 (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: 08/25/15 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 10/28/15 (mm/dd/yy)

Date: 9/14/16

Signature: Caroline R. Tippens

Name of Officer: Caroline Tippens  
Assistant General Counsel

Title of Officer: Department of Health

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

Notary Public Signature: Suzanne Mechkowski

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



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.

Herbert H. Statery III  
Herbert H. Statery III  
Attorney General and Reporter

9/21/2016  
Date

**Department of State Use Only**

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Filed with the Department of State on: 9/28/16

Effective on: 12/27/16

Tre Hargett  
Tre Hargett  
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Labor and Workforce Development

DIVISION: Bureau of Workers' Compensation

SUBJECT: Mediation and Hearing Procedures

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 50-6-101 et seq.

EFFECTIVE DATES: November 30, 2016 through June 30, 2017

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rulemaking hearing rules, as amended, provide the procedures and practices for the mediation, filing, and disposition of claims in the court of workers' compensation claims.

## 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.

## PUBLIC COMMENTS AND RESPONSES

Comment: No written or verbal comments were received by the Bureau.

Response: N/A.

## Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rulemaking 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.

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule: The amended rules will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or for those in the construction industry at least one employee. There should be no additional costs associated with these rule changes.
2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record. There is no additional record keeping requirement or administrative cost associated with these rule changes.
3. A statement of the probable effect on impacted small businesses and consumers: These rules should not have any impact on consumers or small businesses.
4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of these rules.
5. Comparison of the proposed rule with any federal or state counterparts: None.
6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule: Exempting small businesses could frustrate the small business owners' access to the services provided by the Bureau of Workers' Compensation and timely medical treatment for injured workers, which would be counter-productive.

## 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)

These proposed rules will have little, if any, impact on local governments.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules, as amended, provide the procedures and practices for the mediation, filing, and disposition of claims in the court of workers' compensation claims.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 50-6-101 et seq., as amended for injuries on or after July 1, 2014, made statutory changes to the Tennessee workers' compensation law and the adjudication of workers' compensation claims. These rules effectuate those changes.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All parties to a workers' compensation claim regarding an injury occurring on or after July 1, 2014, will be affected by the adoption or rejection of these rules.

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

None

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There will be little impact upon state or local government. Local governments have the option to accept the provisions of the workers' compensation laws pursuant to T.C.A. § 50-6-106. State government is excluded by statute.

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

Troy Haley, Legislative Liaison and Director of Administrative Legal Services

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

Troy Haley, Legislative Liaison and Director of Administrative Legal Services

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Tennessee Bureau of Workers' Compensation  
220 French Landing Drive  
Floor 1-B  
(615) 532-0179  
Troy.Haley@tn.gov

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

None

**Department of State**  
**Division of Publications**  
 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower  
 Nashville, TN 37243  
 Phone: 615-741-2650  
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**For Department of State Use Only**

Sequence Number: 09-01-16  
 Rule ID(s): 6292  
 File Date: 9/1/16  
 Effective Date: 11/30/16

## Rulemaking Hearing Rule(s) Filing Form

*Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.*

<b>Agency/Board/Commission:</b>	Tennessee Department of Labor and Workforce Development
<b>Division:</b>	Bureau of Workers' Compensation
<b>Contact Person:</b>	Troy Haley
<b>Address:</b>	220 French Landing Drive 1-B
<b>Phone:</b>	615-532-0179
<b>Email:</b>	troy.haley@tn.gov

*Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:*

<b>ADA Contact:</b>	Troy Haley
<b>Address:</b>	220 French Landing Drive 1-B
<b>Phone:</b>	615-532-0179
<b>Email:</b>	troy.haley@tn.gov

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0800-02-21	Mediation and Hearing Procedures
Rule Number	Rule Title
0800-02-21-01	Scope
0800-02-21-02	Definitions
0800-02-02-03	Computation of Time
0800-02-21-04	Ombudsman
0800-02-21-05	Representation by Counsel
0800-02-21-06	Foreign Attorneys
0800-02-21-07	Fees
0800-02-21-08	Forms
0800-02-21-09	Service of Documents
0800-02-21-10	Commencement of Alternative Dispute Resolution
0800-02-21-11	Alternative Dispute Resolution Proceedings
0800-02-21-12	Request for Hearing and Docketing of Cases
0800-02-21-13	Scheduling Hearing
0800-02-21-14	Expedited Hearing
0800-02-21-15	Copies of Medical Records

0800-02-21-.16	Discovery
0800-02-21-.17	Post-Discovery Alternative Dispute Resolution
0800-02-21-.18	Compensation Hearing Procedure
0800-02-21-.19	Settlement Approvals
0800-02-21-.20	Voluntary Dismissal – Nonsuit
0800-02-21-.21	State Employee Claims

Amended Rules  
Chapter 0800-02-21  
Mediation and Hearing Procedures

**0800-02-21-.01 SCOPE.**

These rules govern the procedures for resolution of workers' compensation disputes, including informal resolution and practice before the court of workers' compensation claims. They are intended to provide for an efficient and expedient resolution of issues within the jurisdiction of the DivisionBureau.

**0800-02-21-.02 DEFINITIONS.**

- (1) Appeals Judge. A judge of the board of workers' compensation appeals.
- (2) Appeals Board. Unless otherwise provided or clearly inapplicable in context, appeals board shall mean the board of workers' compensation appeals.
- (3) Catastrophic Injury. For the purposes of this section only, any of the following injuries shall be catastrophic:
  - (a) Spinal cord injury involving severe paralysis of an arm, a leg, the trunk or any combination of these;
  - (b) Amputation of an arm, a hand, a foot, a leg or any combination of these involving the effective loss of use of that appendage;
  - (c) Severe brain or closed head injury as evidenced by:
    - 1. Severe sensory or motor disturbances;
    - 2. Severe communication disturbances;
    - 3. Severe complex integrated disturbances of cerebral function;
    - 4. Severe disturbances of consciousness; or
    - 5. Severe episodic neurological disorders;
  - (d) Second or third degree burns to twenty-five percent (25%) or more of the body as a whole or third degree burns to five percent (5%) or more of the face or hands;
  - (e) Total or industrial blindness; or

(f) Total loss of hearing.

(4) Chief Judge. The chief judge is the supervisor and coordinator of all activities in the court of workers' compensation claims. The chief judge is responsible for administration of the day-to-day operations of the court and supervision of its judges. The chief judge may also preside over hearings of workers' compensation cases. The chief judge has the authority to issue orders in furtherance of these responsibilities.

(5) Claim. For the purposes of these rules, a claim shall refer to the assertion of the entitlement to a remedy provided by the Workers' Compensation Law as a result of an injury described therein.

(6) Clerk. Unless otherwise provided, clerk shall mean the clerk of the court of workers' compensation claims and any deputy clerk.

(7) Compensation Order. A compensation order is an order by a workers' compensation judge following conclusion of a full evidentiary hearing or a decision on the record and shall include a decision issued by a judge following a hearing related to an open medicals provision in a previously issued order or approved settlement. The parties may, by joint stipulation, request a compensation order resolving the issues in dispute without a hearing.

(8) Court. Unless otherwise provided, court shall mean the court of workers' compensation claims.

(9) ~~Decision on the Record. After a Request for Hearing has been filed, the Division Bureau may select cases where no material fact is in dispute for determination on the record. The parties will be afforded an opportunity to submit written position statements regarding the law that support their respective positions as well as an opportunity to respond to the written position statement of the other party. The case shall be assigned to a judge for a decision on the record. Review of a decision on the record shall proceed as set forth in the Tennessee Workers' Compensation Law and these rules.~~ Decision on the record: For purposes of an expedited hearing or a compensation hearing, upon the motion of either party or the joint motion of both parties, the workers' compensation judge may select a case for determination based on the review of the record. If the judge accepts the case for decision on the record, the parties will be afforded an opportunity to submit written position statements that support their respective positions. Appeal of a decision on the record shall proceed as set forth in the Workers' Compensation Law and these rules.

(10) Dispute Certification Notice. The notice filed by the mediator with the clerk following the completion of alternative dispute resolution proceedings stating that, following mediation, a dispute concerning the issues set forth in the notice still exists. Unless permission is granted by the court in accordance with Tennessee Code Annotated section 50-6-239(b), no issue that is not contained within the dispute certification notice may be submitted to the judge for adjudication.

(11) ~~Division Bureau.~~ Unless otherwise provided, division Bureau shall mean the Division Bureau of Workers' Compensation.

(12) Electronic signature. A pleading, order, or other document that is transmitted by electronic mail or other means of electronic transmission to or from the Division Bureau may be signed or verified electronically in the manner approved by the Division Bureau for such transmissions.

(13) ~~Expedited Hearing. A hearing to determine an issue of appropriateness of temporary disability or medical benefits prior to a hearing that results in a compensation order, conducted pursuant to these rules. A workers' compensation judge may issue an interlocutory order either awarding or denying temporary disability or medical benefits based on a review of the documents submitted and without convening a formal hearing. A workers' compensation judge shall have discretion to convene a hearing of a motion for temporary disability or medical benefits if the judge determines that convening a hearing is necessary to~~

~~determine the issues presented.~~ Expedited Hearing. A hearing conducted pursuant to these rules to determine the provision of temporary disability and/or medical benefits prior to a hearing that results in a compensation order. A workers' compensation judge shall convene a hearing of a request for expedited hearing unless the judge determines that convening a hearing is not necessary to determine the issues presented. If the judge determines that no hearing is necessary, the judge will issue an interlocutory order either awarding or denying temporary disability and/or medical benefits based on a review of the record without convening a formal hearing.

(14) Filed. For purposes of this chapter, a pleading or other document required to be sent to the court shall be considered filed only on the date and time received by the clerk if delivered by hand to the clerk's offices in Nashville or any other office maintained by the DivisionBureau during normal business hours; on the date posted to the clerk if sent by U.S. certified or registered mail, return receipt requested, or other equivalent manner ~~as established by the DivisionBureau~~; or when the material being transmitted reaches the DivisionBureau or its designated agent, if transmitted by first-class mail, facsimile, electronic mail or other means of electronic transmission approved or required by the DivisionBureau.

~~(15) Initial Hearing. With the exception of a hearing of temporary disability or medical benefit issues conducted on an expedited basis, an initial hearing shall be the first hearing before a workers' compensation judge where the judge will consider issues related to the efficient processing of the case.~~ (156) Interlocutory Order. An interlocutory order is an order by a workers' compensation judge that awards or denies temporary disability or medical benefits following a review of the submitted material, or a hearing if one is convened at the discretion of the workers' compensation judge, as a result of a motion for expedited hearing. An interlocutory order may be reviewed by the board of workers' compensation appeals upon timely request of a party. No other review of an interlocutory order is permitted.

(167) Judge or Workers' Compensation Judge. A judge of the court of workers' compensation claims.

~~(18) Motion for Expedited Hearing. A motion for an expedited hearing is a request filed with the clerk for a workers' compensation judge to issue an interlocutory order for temporary disability or medical benefits. An employee may file a motion for expedited hearing with the clerk at any time after a dispute certification notice has been filed and the claim has been placed on the docket for an initial hearing.~~

(179) Petition for Benefit Determination. A petition for benefit determination is a request for the DivisionBureau to provide assistance in the resolution of any disputed issues in a workers' compensation claim. Any party may file a petition for benefit determination, on a form approved by the Division, with the DivisionBureau at any time after a dispute arises in a claim for workers' compensation benefits.

(1820) Request for Hearing. A request to the clerk to schedule a hearing before a workers' compensation judge for the adjudication of a disputed issue that has been certified by a mediator on a dispute certification notice.

~~(19) Request for Expedited Hearing. A request for an expedited hearing is a request filed with the clerk of the court for a workers' compensation judge to conduct an expedited hearing and issue an interlocutory order for temporary disability and/or medical benefits. Either party may file a request for expedited hearing with the clerk at any time after a dispute certification notice has been filed.~~

~~(20) Scheduling Hearing. With the exception of an expedited hearing, a scheduling hearing shall be the first hearing before a workers' compensation judge where the judge will consider issues related to the efficient processing of the case.~~

**Authority:** T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 76, 79, 82, 83, and 106.  
**Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014.

#### 0800-02-21-.03 COMPUTATION OF TIME.

(1) Unless otherwise noted, the time required for completing any actions provided in these rules

shall be calculated in the manner provided by Rule 6.01 of the Tennessee Rules of Civil Procedure.

(2) Except in regard to filing a petition for benefit determination pursuant to T.C.A. § 50-6-203 and a request for hearing pursuant to T.C.A. § 50-6-239(a), when an act is required to be done at or within a specified time, the workers' compensation judge or board of workers' compensation appeals board judge may, at any time:

(a) Order the period enlarged, without notice, if the request is made before the expiration of the period originally prescribed or extended by a previous order; or

(b) Order the period enlarged, thereby permitting the act to be done late, upon motion made after the expiration of the period originally prescribed if the failure to complete the act within the prescribed period was the result of excusable neglect.

(3) Nothing in this section shall be construed to allow any ex parte communications with a workers' compensation judge or workers' compensation appeals board judge concerning any issue in the proceeding that would be prohibited by T.C.A. § 4-5-304.

**Authority:** T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014.

#### 0800-02-21-.04 OMBUDSMAN.

(1) The workers' compensation ombudsman program provides assistance to employees, employers or any other party or participant in a workers' compensation claim ~~that~~<sup>who</sup> is not represented by legal counsel. The ombudsman can provide information on workers' compensation law and rules; inform participants of their rights and obligations under the law; assist participants in completing forms, obtaining medical records and scheduling appointments; and perform any other duties as required by the administrator.

(2) Any party ~~who~~<sup>that</sup> is not represented by counsel may request the services of a workers' compensation ombudsman by contacting the ~~Division~~<sup>Bureau</sup>.

(3) An ombudsman shall have authority including, but not limited to:

(a) Meeting with and providing information to unrepresented parties about their rights and responsibilities under the law;

(b) Investigating claims and attempting to resolve disputes without resort to alternative dispute resolution and court proceedings;

(c) Communicating with all parties and providers in the claim;

(d) Assisting the parties in the completion of forms; and

(e) Facilitating the exchange of medical records.

(4) An ombudsman cannot provide legal advice, unless otherwise provided by law.

(5) An ombudsman cannot be called to testify in any proceeding and no statement or representation made to an ombudsman shall be considered by a workers' compensation judge for any purpose.

(6) Any unrepresented person or entity seeking the services of an ombudsman shall contact the ~~Division~~<sup>Bureau</sup> and the ~~Division~~<sup>Bureau</sup> shall assign an ombudsman to assist the person or entity so long as the ~~Division~~<sup>Bureau</sup> determines that the person or entity is qualified to receive the services of the ombudsman. The ~~Division~~<sup>Bureau</sup> shall retain sole authority to determine the nature of the services to be provided by the ombudsman, pursuant to T.C.A. § 50-6-216(a).

(7) If a person or entity receiving the services of an ombudsman obtains legal counsel in the case or dispute for which the services of an ombudsman were sought, the person or entity shall immediately notify the DivisionBureau of the representation and shall discontinue use of the services provided by an ombudsman.

**Authority:** T.C.A. § 4-3-1409;50-6-216, Public Chapter 289 (2013), Sections 73 and 77. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014. Amendment filed December 22, 2014; effective March 22, 2015.

#### 0800-02-21-.05 REPRESENTATION BY COUNSEL.

(1) At any hearing or mediation proceeding:

(a) Any party may be represented by a Tennessee licensed attorney in good standing. An attorney licensed outside of Tennessee may apply for admission pro hac vice.

(b) Any party that is a natural person may represent himself or herself at any hearing or mediation proceeding.

(c) Any corporation or other artificial person may participate through a duly authorized representative such as an officer, director or appropriate employee, but must be represented by counsel in all proceedings occurring the in court of workers' compensation claims and the board of workers' compensation appeals.

(d) No party may be represented by a non-attorney.

(2) Immediately upon engaging in representation of a party, an attorney shall file a notice with the DivisionBureau indicating their appearance. After a licensed attorney has appeared on behalf of any party, all pleadings, motions, notices and other documents shall be served upon the attorney. In lieu of filing formal notice, an attorney's signing of a petition for benefit determination, request for hearing, proposed ~~initial~~scheduling hearing order, wage statement, pretrial statement or any other document that is filed with the clerk or the DivisionBureau shall satisfy the notice of appearance requirement.

~~(3) Representation shall continue until the case is concluded, including any appeals to the board of workers' compensation appeals, or until withdrawal from representation has been approved by a judge. All withdrawals of an attorney following an appearance shall be upon motion with reasonable notice provided to the represented party. No motion to withdraw shall be granted unless the motion is accompanied by an affidavit from the attorney setting forth the last known address of the client and a statement declaring that the attorney has provided notice to the client of both the effects of the attorney's withdrawal from the case and of any scheduled proceedings. Representation shall continue until the case is concluded, including any appeals to the appeals board, or until withdrawal from representation has been approved by a judge. All withdrawals of an attorney following an appearance shall be upon motion with reasonable notice provided to the represented party. The motion to withdraw must be accompanied by an affidavit from the attorney setting forth the last known address of the client and a statement declaring that the attorney has provided notice to the client of both the effects of the attorney's withdrawal from the case and of any deadlines and scheduled proceedings. The motion shall be heard by the court by convening a hearing, unless the presiding judge determines that a hearing is not necessary.~~

(4) If a party is represented by an attorney, then all pleadings, motions, and other documents filed with the DivisionBureau shall be signed by at least one attorney of record. If a party is not represented by an attorney, then the party must include his or her signature on the filing. Individuals signing a filing must include their address and an attorney signing a filing must also include the attorney's Tennessee board of professional responsibility number. Unless otherwise required by statute or regulation, signatures do not need to be accompanied by affidavit. The signature of an individual signifies that the individual has read the filing, the filing is well grounded in fact and is warranted by existing law or an extension or modification of existing law, and the filing is not made for any improper purpose.

**Authority:** T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73 and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014.

**0800-02-21-.06 FOREIGN ATTORNEYS.**

Unless permission has been granted by the court, only attorneys who have been admitted to practice law by the Tennessee Supreme Court may appear before judges of the court of workers' compensation claims. The DivisionBureau may admit foreign attorneys to appear pro hac vice upon application on a form approved by the DivisionBureau.

**Authority:** T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014.

**0800-02-21-.07 FEES.**

A filing fee of \$150 shall be paid to the clerk by the employer at the time of settlement approval or at the conclusion of a case. The filing fee shall be submitted to the clerk before a scheduled settlement approval hearing or within five (5) business days after the fee has been assessed by the workers' compensation judge. Payment shall be made in a form, and submitted in a manner, approved by the DivisionBureau.

**Authority:** T.C.A. § 4-3-1409; Public Chapter 289 (2013), Section 82. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014.

**0800-02-21-.08 FORMS.**

All documents filed with the DivisionBureau, including those allowed or required to be filed electronically, shall be in the form approved by the DivisionBureau.

**Authority:** T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73 and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014.

**0800-02-21-.09 SERVICE OF DOCUMENTS.**

Copies of a petition for benefit determination, request for hearing, request for appeal and any other documents filed with the DivisionBureau, the court of workers' compensation appeals or the appeals board shall be served upon all parties to the dispute or upon their attorneys, if represented. Service must be accomplished either before filing with the DivisionBureau or within a reasonable time thereafter. Service may be accomplished by hand delivery, mail or common carrier, facsimile, electronic mail in PDF format, or other electronic means approved by the DivisionBureau. Unless otherwise required by the DivisionBureau, proof of service shall be by certification of the sender on the document filed with the DivisionBureau. Such certification shall include the name of the person served, the date, the manner of service and the address where service was made.

**Authority:** T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73 and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014.

**0800-02-21-.10 COMMENCEMENT OF ALTERNATIVE DISPUTE RESOLUTION.**

(1) Resolution of a dispute over a claim for workers' compensation benefits shall commence by the filing of a petition for benefit determination, on a form approved by the DivisionBureau, with the DivisionBureau within the applicable time-frames provided by T.C.A. § 50-6-203. If a petition for benefit determination is not filed within the applicable time-frames provided by T.C.A. § 50-6-203, then the right to compensation under the Workers' Compensation Law relating to the dispute shall be forever barred.

(2) After a petition for benefit determination is filed, each party shall promptly provide the other

parties with copies of any medical records related to the claimed injury in their possession. Further, each party shall provide copies of any medical reports related to the claimed injury received during the course of the proceeding, as they receive them, to all other parties within fourteen (14) calendar days of receipt. The mediator may refer any party that does not comply with the requirements of this rule for the assessment of a civil penalty.

~~(3) Within three (3) business days of the first scheduled alternative dispute resolution proceedings, the employer shall provide a wage statement, on a form approved by the DivisionBureau, detailing the employee's wages over the fifty-two (52) week period preceding the injury. The form must be fully completed and signed by the employer or counsel. If the employee was employed by the employer for less than fifty-two (52) weeks, the employer shall provide a wage statement detailing the employee's wages over the entire period of employment. The statement shall be filed with the DivisionBureau and served upon the employee in the manner provided by these rules. The presiding mediator shall refer any employer who does not file a wage statement with the DivisionBureau within the timeframe provided by this section for assessment of a civil penalty. Within seven (7) business days after the request of the mediating specialist or within fifteen (15) business days after a dispute certification notice is filed with the clerk, whichever is sooner, the employer shall provide a wage statement, on a form approved by the Bureau, detailing the employee's wages over the fifty-two (52) week period preceding the injury. The form must be fully completed and signed by the employer or counsel. If the employee was employed by the employer for fewer than fifty-two (52) weeks, the employer shall provide a wage statement detailing the employee's wages over the entire period of employment. If the mediating specialist requests the wage statement, the employer shall send the wage statement directly to the mediating specialist. If the dispute certification notice has been filed with the clerk, the employer shall file the wage statement with the clerk. Under either circumstance, the employer shall serve a copy of the wage statement upon the employee in the manner provided by these rules. Any employer who does not file a wage statement within the timeframe provided by this paragraph may be assessed a civil penalty.~~

(4) After a petition for benefit determination is filed, the case shall be assigned to a mediator who will schedule alternative dispute resolution proceedings under the procedures provided by these rules.

**Authority:** T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 76, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014.

#### **0800-02-21-.11 ALTERNATIVE DISPUTE RESOLUTION PROCEEDINGS.**

(1) Once a case has been assigned to a mediator, the mediator shall conduct alternative dispute resolution proceedings in any manner that is practical for the effective resolution of the issues in dispute, including allowing for telephonic, electronic, or in-person interactions.

(2) The parties shall cooperate with the mediator and provide any information necessary for the resolution of the dispute. If the mediator determines that a party is not cooperating or is not negotiating in good faith, then the mediator shall refer the party for a penalty as provided by T.C.A. § 50-6-118. When a party is referred by the mediator for the assessment of civil penalty pursuant to this section, the referral shall be assigned to another employee of the ~~DivisionBureau~~ who shall consider the referral and make a decision of whether assessment of a penalty is appropriate.

(3) If the parties are able to reach a resolution of all disputed issues, the mediator shall reduce the terms of the resolution to a settlement agreement, ~~on a form approved by the DivisionBureau,~~ and file the agreement with the clerk. The clerk shall place the case on the docket and assign the case to a workers' compensation judge for a settlement approval hearing.

(4) If the parties are unable to reach a resolution of all disputed issues, the mediator shall issue a dispute certification notice to the parties. The mediator shall note any issues that the parties have agreed upon in the notice as well as the remaining issues that are still in dispute including all defenses to the claim that were raised during the mediation.

(5) If any party disagrees with the contents of the dispute certification notice issued pursuant to paragraph (4), then such party is required to file an objection with the mediator within five (5)

business days of receipt. In the objection, the party shall provide a list of any additional disputed issues that it believes should be included in the dispute certification notice. The mediator shall issue an amended dispute certification notice to the parties and file the dispute certification notice with the clerk.

(6) If the employee fails to appear at any scheduled alternative dispute resolution proceeding, the mediator shall issue a dispute certification notice stating that the employee has failed to appear for a scheduled alternative dispute resolution proceeding. The clerk shall place the case on the dismissal calendar for a show cause hearing and send notice of the show cause hearing to the parties as provided in rule 0800-02-21-.12(1). If the case is dismissed following the show cause hearing, the employee may revive the case by attending alternative dispute resolution proceedings within sixty (60) days of the date of the order as provided in T.C.A. § 50-6-203(f).

**Authority:** T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 33, 73, 79, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014.

#### 0800-02-21-.12 REQUEST FOR HEARING AND DOCKETING OF CASES

(1) Immediately after a dispute certification notice has been filed with the clerk, either party seeking further resolution of any disputed issues shall file a request for hearing with the clerk on a form approved by the DivisionBureau and serve a copy of the request on the opposing party or their counsel, if any. If no request for hearing is filed within sixty (60) calendar days after the date of issuance of the dispute certification notice, the clerk shall docket the case and place the case on a separate dismissal calendar for a show cause hearing. The clerk shall send notice of the hearing to the parties, via regular or electronic mail, indicating the claim number, the time of the hearing and the judge assigned to the case. Either party may appear to show cause as to why the case should not be dismissed.

(2) Except in cases where an employee has suffered a catastrophic injury or for similar reasons as determined by the DivisionBureau, all cases shall be placed on the docket by the clerk in the order that the request for hearing is received. If the dates are available, the clerk will assign a date for the hearing based upon available dates provided by the parties, in coordination with the mediator assigned to the case.

(3) The clerk shall consolidate all requests for hearing related to a single dispute certification notice into a single referral to the docket. If two or more filings that should be consolidated are not consolidated, then the cases shall be combined and assigned to the judge that was given the assignment for the first request that was filed, unless otherwise directed by the chief judge. Consolidation may occur upon the motion of a party or on a judge's own motion.

**Authority:** T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 82, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014.

#### 0800-02-21-.13 INITIAL HEARING.

(1) All parties to any case shall participate in ~~an initial-a~~ scheduling hearing with a workers' compensation judge no more than thirty (30) calendar days after a request for hearing is filed.

(2) After the ~~initial-scheduling~~ hearing has been set, the clerk shall send a docketing notice to all parties, via regular or electronic mail, indicating the case number, the time of the initial hearing and the judge assigned to the case. The clerk shall also send information to the parties detailing the actions required to prepare for and participate in the ~~initialscheduling~~ hearing. Unless the judge determines that an in-person hearing is necessary, all ~~initialscheduling~~ hearings shall be conducted telephonically or through other electronic means as determined by the workers' compensation judge.

(3) At the ~~initial-scheduling~~ hearing, the parties shall discuss and agree upon a discovery plan and a scheduling order designed to ensure timely and efficient resolution of the case. The parties shall jointly submit a proposed ~~initial-hearing-scheduling~~ hearing order, in a format provided by the DivisionBureau, to the judge for consideration. The proposed order shall be submitted via electronic mail, unless another

method of delivery is required by the ~~Division~~Bureau, within three (3) business days of the conclusion of the ~~initial scheduling~~ hearing.

(4) ~~At the conclusion of the initial hearing, the judge shall set dates for post-discovery alternative dispute resolution proceedings and the compensation hearing. Absent extraordinary circumstances as determined by the judge, the date of the compensation hearing shall not be modified. At the conclusion of the scheduling hearing, the judge shall set a date for completion of post-discovery alternative dispute resolution, unless the court determines further mediation unnecessary. The judge shall also set a date for the compensation hearing. The date of the compensation hearing shall not be modified without permission from the presiding judge based on a finding of good cause.~~

**Authority:** T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 82, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014.

#### **0800-02-21-.14 EXPEDITED HEARING.**

- (1) If there is a dispute over temporary disability and/or medical benefits, either party may file a request for expedited hearing.
  - (a) A request for expedited hearing must be accompanied by an affidavit containing a plain and concise statement of the facts upon which the request is based and any other documents demonstrating the party is entitled to the requested relief. The party requesting an expedited hearing shall list any witnesses it intends to introduce at a hearing on the request for expedited hearing form.
  - (b) The party opposing the request for expedited hearing must submit all documents to the clerk, including any affidavits, demonstrating the moving party is not entitled to the requested relief no later ten (10) business days before the date of the expedited hearing. The party opposing the request or motion for expedited hearing must also provide a plain and concise statement detailing why the relief requested should not be granted and shall list any witnesses it intends to introduce at the expedited hearing.
  - (c) Evidence or witnesses not disclosed in accordance with this rule, except for witnesses or evidence intended for impeachment or rebuttal purposes, will not be considered unless good cause is shown as to why the evidence/witness was not disclosed.
  - (d) The court will entertain requests for reasonable extensions of the time periods set forth in this rule. The request should be made by motion to the court and filed with the clerk prior to the expiration of the time period the party seeks to extend. Any response in opposition to the motion for extension of time must be filed with the clerk, and served on all parties or their counsel, within five (5) business days after the filing of the motion for an extension of time. The response must be in writing and state with particularity the grounds for the opposition. The motion shall be decided on the written materials unless the judge determines that argument is needed.
  - (e) Documents filed with the Bureau during alternative dispute resolution proceedings in the claim need not be refiled with the request for expedited hearing or the response thereto.
  - (f) Any party may request that the court issue a decision on the record, in lieu of convening an evidentiary hearing, for any request for expedited hearing. Any party opposing the request for issuance of a decision on the record, shall have ten (10) business days from the date the request for expedited hearing is filed to file an objection with the clerk. The judge shall have discretion to either set the matter for an evidentiary hearing or enter a decision on the record. If the judge determines that issuing a decision on the record is appropriate, the clerk shall send a docketing notice to all parties, via regular or electronic mail, indicating the docket number and the judge assigned to claim. The clerk shall also send information to the parties detailing the actions required to present the case to the judge for a decision on the record.
  - (g) Any party aggrieved by an interlocutory order may appeal the interlocutory order to the appeals board in the manner provided by the Workers' Compensation Law and these rules.

(h) An interlocutory order awarding or denying temporary disability and/or medical benefits shall not be binding on the workers' compensation judge assigned to preside over the compensation hearing.

(2) In consideration of the goal of expeditious resolution of the provision of temporary disability and/or medical benefits, letters or written statements addressing medical causation that have been signed by a doctor shall be admissible evidence at an expedited hearing; there is no requirement of presentation in affidavit form. At a compensation hearing, these letters or statements, even if in affidavit form may be excluded as appropriate through valid objection made pursuant to the Tennessee Rules of Evidence. This rule shall have no effect on the admissibility of form C-32 when properly presented at any proceeding.

(3) If, as a result of the expedited hearing, the claim is denied on the grounds of compensability, the claim shall continue as provided in these rules. The aggrieved party may file an appeal pursuant to Rule 0800-02-22-.01(1)(a). If the denial on the grounds of compensability is affirmed by the appeals board or if no appeal is taken, the employer may file a motion for summary judgment with the assigned workers' compensation judge that meets the requirements of Rule 56 of the Tennessee Rules of Civil Procedure. If a motion for summary judgment pursuant to this paragraph is filed, the employer shall serve a copy on the employee, or the employee's counsel, and the employee shall have thirty (30) calendar days to file a written response. Thereafter, the motion shall be set for a hearing and the judge shall issue an appropriate order.

(4) A workers' compensation judge may, in conducting an expedited hearing, take testimony in any manner that is practical for the fair and effective resolution of the request for temporary disability and/or medical benefits including taking testimony from a witness by telephonic or video conferencing means.

Authority: T.C.A. §§ 4-3-1409, 50-6-233, 50-6-239

#### **0800-02-21-.15 COPIES OF MEDICAL RECORDS.**

(1) A medical care provider attending to an injured employee shall, upon request from an employer or an employee, furnish a copy of required records, at no cost except for a nominal copying charge that shall not exceed the charges allowed by T.C.A. § 50-6-204 for paper records and rule 0800-02-14-.24 for non-paper records. The medical care provider shall make the records available to both the employee and employer within thirty (30) days after admission or treatment as required by T.C.A. § 50-6-204(a)(2)(A). After the records have been made available, the medical care provider shall provide the requested records within ten (10) business days of receipt of a written request for records. The records may be sent by email, facsimile, regular mail or common carrier and may be provided in paper or electronic format.

(2) A medical care provider is entitled to a reasonable fee, not to exceed the maximum allowable charges provided by rule 0800-02-17-.15(4), for preparation of a narrative report written in response to a request from a party.

(3) For the purposes of paragraphs (1) and (2) of this rule, medical provider shall include the authorized treating physician, a hospital, and any other entity or person who has provided medical care to the injured employee for the work-related injury that is the subject of the claim for workers' compensation benefits at issue pursuant to the employer's obligation under T.C.A. § 50-6-204. Acceptance of care from a medical provider for the work-related injury shall be deemed consent for the release of these records and no further consent shall be necessary.

(4) Medical provider shall not include any physician, hospital or other person or entity that has provided treatment to the injured worker for injuries or conditions that was not provided pursuant to the employer's obligation under T.C.A. § 50-6-204 for treatment of the workrelated injury that is the subject of the claim for workers' compensation benefits at issue.

(5) Records from a medical provider as defined in Paragraph (4) of this rule may be provided with the appropriate HIPAA compliant written authorization of the employee which the

employee shall be required to provide if ordered to do so by the presiding workers' compensation judge.

**Authority:** T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 35, 73, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014.

**0800-02-21-.16 DISCOVERY.**

(1) Parties are encouraged, where practicable, to attempt to achieve any necessary discovery informally, in order to avoid undue expense and delay. When such attempts have failed, or where the complexity of the case is such that informal discovery is not practicable, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure unless these rules provide an alternative procedure.

(2) Discovery disputes. All discovery related motions shall be decided on the written materials provided by the parties unless the workers' compensation judge, in the judge's discretion, determines that argument is needed to resolve the dispute. Affidavits may be provided in support of any motion or response; live testimony is prohibited. Any motion to compel discovery, motion to quash, motion for protective order, or other discovery-related motion shall:

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

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

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

(3) Filing of Discovery Materials. Unless the subject of a discovery dispute, discovery materials shall not be filed with the court.

(4) Interrogatories. ~~A party may serve interrogatories on any other party at any time after a case has been docketed by the clerk. A party may serve interrogatories on any other party at any time after a petition for benefit determination has been filed.~~

(a) All interrogatories must be answered under oath and the responding party shall be required to update its answers in a timely manner whenever additional information becomes available or the responses provided in a prior response have changed.

~~(b) Interrogatories shall be answered within the timeframe provided by the discovery plan in the initial hearing order and, unless ordered by a workers' compensation judge, no party shall be required to answer interrogatories before the initial hearing order has been entered. Unless otherwise ordered by the presiding judge, interrogatories shall be answered within thirty (30) days of receipt by the responding party.~~

(c) No party may serve more than twenty (20) interrogatories, including subparts, on any other party, but the presiding workers' compensation judge shall have discretion to increase the number of interrogatories that may be served.

(d) The workers' compensation judge shall have authority to increase or decrease the time allowed for answering interrogatories.

(e) Except as required when filing a discovery-related motion, no interrogatories or answers shall be filed with the court.

(5) Depositions. All depositions shall be taken within the timeframe provided by the discovery plan in the ~~initial scheduling~~ hearing order. Absent extraordinary circumstances to be determined at the

discretion of the workers' compensation judge, no scheduled hearing may be continued to provide a party additional time to secure deposition testimony.

(a) The deposition may be taken on oral examination or upon written questions in the manner provided by the Tennessee Rules of Civil Procedure.

(b) Written notice shall be provided to all parties at least five (5) business days before any scheduled deposition when the deposition is to be taken in the employee's county of residence. When the locale of the deposition is in a county other than the employee's county of residence, written notice of the deposition shall be provided to all parties at least seven (7) business days before the scheduled deposition.

(c) No oral deposition shall continue for more than four (4) hours. Time used for breaks shall be excluded.

(6) Medical Records. All medical records shall be exchanged among the parties in the manner provided by these rules.

~~(a) All medical records designated by the parties to be presented as evidence at a scheduled hearing shall be filed with the Division Bureau no later than (10) business days before the scheduled hearing date. Except for good cause shown, failure to comply may result in the exclusion of any medical record that is not filed timely or the assessment of costs or sanctions against the party or the attorney of the party designating the medical record. Absent good cause as determined by a workers' compensation judge, no other medical records shall be filed with the Division Bureau. All medical records designated by the parties to be presented as evidence at a scheduled hearing shall be filed with the Bureau no later than (10) business days before the scheduled hearing date. Absent good cause as determined by the presiding workers' compensation judge, failure to comply may result in the exclusion of any medical record that is not filed timely or the assessment of costs or sanctions against the party or the attorney of the party designating the medical record. Absent good cause as determined by a workers' compensation judge, no other medical records shall be filed with the Bureau.~~

(b) All medical records signed by a physician, including via electronic signature, or accompanied by a certification that the records are true and accurate which has been signed by the medical provider or custodian of records shall be admissible. The ~~Division Bureau~~ shall provide a certification form for the parties' use. There is no requirement that the certification be accompanied by an affidavit. For the purposes of medical records, an electronic signature shall suffice if, in the opinion of the workers' compensation judge, the electronic signature demonstrates that the medical provider approved the contents of the medical record.

(c) All medical records designated to be presented as evidence at a scheduled hearing that exceed ten (10) pages shall include a chronological table of contents. The medical records designated shall be filed with the ~~Division Bureau~~ and each of the records shall be identified by author and date and numbered as in the table of contents.

1. It shall be the duty of the parties, not the medical providers, to prepare the chronological table of contents required by part (c) of paragraph (6).
2. A party proceeding pro se may, but shall not be required, to provide the chronological table of contents required by part (c) of paragraph (6).

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(7) Subpoenas compelling document production and deposition testimony. ~~A workers' compensation judge at the request of any party. The clerk, at the request of any party,~~ shall issue signed subpoenas in blank in accordance with the Tennessee Rules of Civil Procedure.

(a) Parties shall complete and serve their own subpoenas.

(b) Service of subpoenas for records may be by certified return receipt mail in addition to means of service provided by the Tennessee Rules of Civil Procedure.

(c) Any party or person that fails to timely respond to a subpoena for documents or testimony may be assessed a civil penalty.

**Authority:** T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 82, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014.

#### 0800-02-21-.17 POST-DISCOVERY ALTERNATIVE DISPUTE RESOLUTION.

(1) Unless the presiding judge determines that additional mediation is unnecessary, the parties reach an agreed settlement, or the petition for benefit determination is voluntarily non-suited, all parties shall participate in alternative dispute resolution proceedings with a workers' compensation mediator following the completion of the discovery plan provided in the ~~initial~~scheduling hearing order.

(2) The judge ~~shall~~may include a date for post-discovery alternative dispute resolution proceedings in the ~~scheduling~~initial hearing order.

(3) Alternative dispute resolution proceedings under this section shall be conducted in the manner provided by rule 0800-02-21-.11.

(4) If the parties do not reach settlement of all issues, the mediator shall file a new dispute certification notice setting forth all issues that the parties have agreed upon, all disputed issues and all defenses to the claim proffered by the parties. If any party disagrees with the contents of the dispute certification notice, the party may file objections and an amended notice will be issued under the process provided by rule 0800-02-21-.11(5). Thereafter, the parties shall appear before the court for a compensation hearing at the time provided in the ~~initial~~scheduling hearing order. The parties shall not file a request for hearing.

**Authority:** T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 76, 82, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014.

#### 0800-02-21-.18 COMPENSATION HEARING PROCEDURE.

(1) The compensation hearing shall be conducted at the time and place established in the ~~initial~~scheduling hearing order. Absent extraordinary circumstances, no motion for a continuance shall be considered at the compensation hearing. If the parties reach a settlement of all issues prior to a scheduled compensation hearing, the parties shall immediately give written notice to the court and contact the clerk to schedule a settlement approval hearing.

~~(2) Ten (10) business days before the date of a scheduled compensation hearing or as otherwise directed by the judge, each party shall file, either jointly or separately, a prehearing statement. No more than ten (10) business days before the date of a scheduled compensation hearing or as otherwise directed by the judge, each party shall file, either jointly or separately, a prehearing statement on a form provided by the Division Bureau.~~

(3) Concurrently with the submission of the prehearing statement, each party shall file the following:

(a) A copy of each proposed exhibit except for those intended for impeachment or rebuttal purposes; and

(b) A copy of the transcript of the deposition of any medical expert that the party intends to present at the hearing.

(4) With the exception of witness testimony and exhibits intended for impeachment or rebuttal purposes, no witness whose name and address was not included in the prehearing statement may testify at the hearing and no exhibit that was not included in the list of proposed exhibits in the prehearing statement may be presented at the hearing unless permission to present the testimony or exhibit is granted by the presiding workers' compensation judge. Permission may be granted by the judge only upon finding that:

(a) The party seeking to present the witness or exhibit did not have knowledge of the witness or exhibit prior to submitting the prehearing statement and could not have discovered the witness or exhibit despite reasonable investigation; and

(b) Prohibiting the presentation of the witness or exhibit would result in prejudice.

(5) Absent good cause shown, a party failing to provide a prehearing statement as required by these rules may be sanctioned by the judge, up to and including prohibiting the party from introducing evidence or exhibits, or calling witnesses except for impeachment or rebuttal purposes.

(6) Subpoenas compelling witnesses' attendance at trial. The clerk, at the request of any party~~A-workers' compensation judge at the request of any party~~ shall issue signed subpoenas in blank in accordance with the Tennessee Rules of Civil Procedure.

(a) Parties shall complete and serve their own subpoenas.

(b) Service of subpoenas compelling witness attendance to a trial or a hearing shall be made through the means provided by the Tennessee Rules of Civil Procedure and a signed copy of the original must be filed with the clerk.

(c) All subpoenas compelling witness attendance to a trial or a hearing must be served no later than five (5) days before the scheduled trial or hearing unless the presiding workers' compensation judge has given leave to extend this period.

(d) Any party or person that fails to appear at a scheduled trial or hearing pursuant to a properly served subpoena issued pursuant to paragraph (6) of this rule may be assessed a civil penalty.

(7) Upon the motion of either party or the joint motion of both parties, a case may be decided on the record and a compensation order issued based on a review of the written materials and without the benefit of a hearing. If a party moves the court to issue a decision based upon a review of the record, any party who opposes the motion for a decision based upon a review of the record must file a response with the clerk, and serve the response on all parties or their counsel, within ten (10) business days after the filing of the motion for a decision on the record. The motion shall be decided on the written materials unless the judge determines that argument is needed. If a case is selected for an on-the-record determination, the clerk shall send a docketing notice to all parties, via regular or electronic mail, indicating the docket number and the judge assigned to the request for hearing. The clerk shall also send information to the parties detailing the actions required to present the case to the judge for a decision on the record.

**Authority:** T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 82, and 106. **Administrative History:** Original rule filed April 1, 2014; effective June 30, 2014.

#### **0800-02-21-.19 SETTLEMENT APPROVAL.**

(1) In any case where the parties reach a full and final settlement, the settlement shall not become effective until it has been signed by both parties and approved by a workers' compensation judge.

(2) Unless the settlement is of a disputed claim, as provided by T.C.A. § 50-6-240(e), the settlement agreement must contain language stating that the employee is receiving, substantially, the benefits provided by the Tennessee Workers' Compensation Law.

(3) If the settlement is of a disputed case pursuant to T.C.A. § 50-6-240(e), the settlement agreement must contain language stating that the settlement is in the best interest of the employee.

(4) ~~If there is a settlement of future medicals, a workers' compensation judge shall advise the claimant of the consequences of the settlement, if any, with respect to Medicare and TennCare benefits and liabilities~~

~~and all settlements shall contain a statement that the claimant has been so advised. If there is a settlement of future medicals, the settlement shall contain a statement advising the claimant of the consequences of the settlement, if any, with respect to Medicare and TennCare benefits and liabilities.~~

**Authority:** T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 84, and 106. **Administrative**

**History:** Original rule filed April 1, 2014; effective June 30, 2014.

**0800-02-21-.20 VOLUNTARY DISMISSAL – NON-SUIT.**

(1) ~~On no more than one occasion, a party may voluntarily non-suit a petition for benefit determination at any time after it has been filed unless the employee has been awarded temporary benefits through an interlocutory order. If a party files a notice of voluntary non-suit, either party may file a new claim to recover benefits within ninety (90) days of the order of dismissal.~~

(2) A notice of voluntary non-suit shall not become binding until an order of non-suit has been issued by a workers' compensation judge.

(3) If a claim is voluntarily non-suited, the party that has voluntarily non-suited the claim shall be required to pay a filing fee of \$150. The fee shall be due and payable on the date the order of non-suit is entered.

**Authority:** T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 82, and 106. **Administrative**

**History:** Original rule filed April 1, 2014; effective June 30, 2014.

**0800-02-21-.21 WORKERS' COMPENSATION CLAIMS AGAINST STATE.**

The court of workers' compensation claims is without jurisdiction to consider a claim for workers' compensation benefits filed against the state by a state employee.

\* 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 rulemaking hearing rules, lawfully promulgated and adopted by the ADMINISTRATOR (board/commission/other authority) on 07/22/2016 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I hereby certify the following:

Notice of Rulemaking Hearing filed with the Department of State on 04/18/2016.

Rulemaking Hearing(s) conducted on: 06/16/2016.

Date: July 22, 2016

Signature: Abbie Hudgens

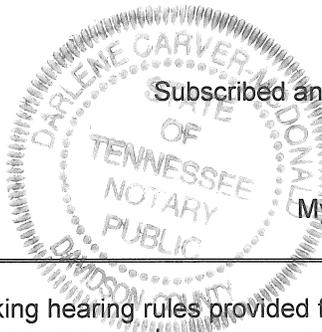
Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Bureau of Workers' Compensation

Subscribed and sworn to before me on: July 22, 2016

Notary Public Signature: Darlene Carver McDaniel

My commission expires on: May 9, 2017



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.

Herbert H. Slatyer  
 Herbert Slatyer  
 Attorney General and Reporter  
8/17/2016  
 Date

**Department of State Use Only**

Filed with the Department of State on: 9/1/16

Effective on: 11/30/16

Tre Hargett

Tre Hargett  
 Secretary of State

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**G.O.C. STAFF RULE ABSTRACT**

DEPARTMENT: Department of Human Services

DIVISION: Family Assistance

SUBJECT: EBT Transactions

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 71-2-126

EFFECTIVE DATES: December 27, 2016 through June 30, 2017

FISCAL IMPACT: The Department intends to fund this directive by reallocating resources within the existing TANF grant monies to account for the implementation costs. The Department has concluded that the costs associated with implementation of these requirements can be handled with existing TANF dollars. Implementation of the legislation will come at no additional cost since existing resources are sufficient to administer it.

The businesses listed in the rules may be impacted if they knowingly allow the use of EBT cards from the TANF program. This can result in civil penalties ranging from \$1000.00 for the first offense to \$5000.00 for the third and subsequent offenses.

STAFF RULE ABSTRACT: These rule amendments are required to comply with Public Chapter No. 392 which amends Tenn. Code Ann. § 71-3-126 restricting use of electronic benefit transfer card (EBT) transactions in tobacco stores by persons receiving cash assistance. This law was passed on April 21, 2015, and signed into law on May 8, 2015. The law takes effect July 1, 2016. The relevant portions of the legislation are as follows:

SECTION 1. Tennessee Code Annotated, Section 71-3-126(b)(1), is amended by adding the following language as a new subdivision:

( ) A retail store licensed to do business in this state that derives its largest category of sales from the sale of loose tobacco, cigars, cigarettes, pipes, and other smoking accessories;

SECTION 2. Tennessee Code Annotated, Section 71-3-126(c)(1), is amended by adding the following language as a new subdivision:

( ) A retail store licensed to do business in this state that derives its largest category of sales from the sale of loose tobacco, cigars, cigarettes, pipes, and other smoking accessories;

SECTION 3. Tennessee Code Annotated, Section 71-3-126(b), is amended by adding the following language as a new subdivision:

(3) The department shall notify all recipients of electronic benefit cards of the prohibitions set forth in subdivision (b)(1) and the penalties under current law for knowingly using an EBT card in any prohibited business location.

The rules restrict use of benefits funds on EBT card on Point of Sale devices from tobacco discount and/or retail stores that derive their largest category of sales from loose tobacco, cigars, cigarettes, pipes, and other smoking accessories.

## **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.

No one from the public attended the public hearings concerning the above rules. There were no comments received on the rules either orally or in writing.

## **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

These rules will implement a state policy to prevent misuse of cash assistance benefits in the Department of Human Services' Families First/TANF program by recipient's using those funds in any licensed retail stores that derive their largest category of sales from loose tobacco, cigars, cigarettes, pipes, and other smoking accessories.

The rules will impact a limited group of businesses that are prohibited by state law from knowingly allowing the use of the EBT cards in the businesses' location. The State law imposes significant civil penalties on certain businesses that do not comply in order to encourage compliance.

### **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)

These rules will have no projected financial impact on local governments.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rule amendments are required to comply with Public Chapter No. 392 which amends Tenn. Code Ann. § 71-3-126 restricting use of electronic benefit transfer card (EBT) transactions in tobacco stores by persons receiving cash assistance. This law was passed on April 21, 2015, and signed into law on May 8, 2015. The law takes effect July 1, 2016. The relevant portions of the legislation are as follows:

SECTION 1. Tennessee Code Annotated, Section 71-3-126(b)(1), is amended by adding the following language as a new subdivision:

( ) A retail store licensed to do business in this state that derives its largest category of sales from the sale of loose tobacco, cigars, cigarettes, pipes, and other smoking accessories;

SECTION 2. Tennessee Code Annotated, Section 71-3-126(c)(1), is amended by adding the following language as a new subdivision:

( ) A retail store licensed to do business in this state that derives its largest category of sales from the sale of loose tobacco, cigars, cigarettes, pipes, and other smoking accessories;

SECTION 3. Tennessee Code Annotated, Section 71-3-126(b), is amended by adding the following language as a new subdivision:

(3) The department shall notify all recipients of electronic benefit cards of the prohibitions set forth in subdivision (b)(1) and the penalties under current law for knowingly using an EBT card in any prohibited business location.

SECTION 4. This act shall take effect July 1, 2016, the public welfare requiring it.

The rules restrict use of benefits funds on EBT card on Point of Sale devices from tobacco discount and/or retail stores that derive their largest category of sales from loose tobacco, cigars, cigarettes, pipes, and other smoking accessories.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These rule amendments are required to comply with Public Chapter No. 392, HB 1339, that amends Tenn. Code Ann. § 71-3-126 relative to EBT card transactions involving persons receiving cash assistance. This law passed on April 21, 2015, and signed into law on May 8, 2015. This law shall take effect July 1, 2016.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These rules will implement a state policy to prevent misuse of cash assistance benefits in the Department of Human Services' Families First/TANF program by recipient's using those funds in any licensed retail stores that derive their largest category of sales from loose tobacco, cigars, cigarettes, pipes, and other smoking accessories.

The rules will impact a limited group of businesses that are prohibited by state law from knowingly allowing the use of the EBT cards in the businesses' location. The State law imposes significant civil penalties on certain businesses that do not comply in order to encourage compliance.

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

There are no Judicial Rulings of Attorney General Opinions that related directly to these rule amendments.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The Department intends to fund this directive by reallocating resources within the existing TANF grant monies to account for the implementation costs. The Department has concluded that the costs associated with implementation of these requirements can be handled with existing TANF dollars. Implementation of the legislation will come at no additional cost since existing resources are sufficient to administer it.

The businesses listed in the rules may be impacted if they knowingly allow the use of EBT cards from the TANF program. This can result in civil penalties ranging from \$1000.00 for the first offense to \$5,000.00 for the third and subsequent offenses.

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

Keisha Malone, Family Assistance Director of Operations

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

Keisha Malone, Family Assistance Director of Operations

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Keisha Malone, Family Assistance Director of Operations  
400 Deaderick Street  
Citizens Plaza Building, 8th Floor  
Nashville, TN 37243  
(615) 313-5292  
Keisha.Malone@tn.gov

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

N/A

**Department of State  
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312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower  
Nashville, TN 37243  
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**For Department of State Use Only**

Sequence Number: 09-35-16  
Rule ID(s): 6316-6317  
File Date: 9/28/16  
Effective Date: 12/27/16

# Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

<b>Agency/Board/Commission:</b>	Tennessee Department of Human Services
<b>Division:</b>	Family Assistance Division
<b>Contact Person:</b>	Catrina Hewlett
<b>Address:</b>	Office of General Counsel Citizens Plaza Building, 15 <sup>th</sup> Floor 400 Deaderick Street Nashville, Tennessee
<b>Zip:</b>	37243-1403
<b>Phone:</b>	615-313-4731
<b>Email:</b>	Catrina.Hewlett@tn.gov

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

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1240-01-47	Non-Financial Eligibility Requirements Families First Program
Rule Number	Rule Title
1240-01-47-.16	Personal Responsibility Plan

Chapter Number	Chapter Title
1240-01-58	Electronic Benefits Transfer Card - Prohibited Uses
Rule Number	Rule Title
1240-01-58-.01	Purpose
1240-01-58-.02	Definitions
1240-01-58-.03	Prohibited Uses
1240-01-58-.04	Monitoring and Penalties
1240-01-58-.05	Appeals

**RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN SERVICES  
FAMILY ASSISTANCE DIVISION**

**CHAPTER 1240-01-47  
NON-FINANCIAL ELIGIBILITY REQUIREMENTS  
FAMILIES FIRST PROGRAM**

**TABLE OF CONTENTS**

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1240-01-47-.12	Verification of Alien Status	1240-01-47-.26	Absence of a Parent
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1240-01-47-.14	Age Requirements		

**1240-01-47-.01 NON-FINANCIAL ELIGIBILITY REQUIREMENTS.** Every applicant and recipient of Families First must meet certain technical eligibility requirements other than financial eligibility.

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Chapter 950 (1996), Section 1115 of the Social Security Act, and 45 CFR 233.10. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-01-47-.02 RESIDENCE.**

- (1) As a condition of eligibility to receive benefits, an AG must reside in Tennessee. The Families First application is to be filed in the county of residence for processing purposes.
- (2) No individual may receive benefits as a member of more than one assistance group or in more than one county or state within the same month. There is no durational residence requirement for Families First.

(a) Definition of a Resident

1. For the purpose of the Families First Program, a resident is defined as one who:
  - (i) Is living in the state (or county) voluntarily with the intention of making his/her home here and not for a temporary purpose. A child is a resident of the state (or county) in which he/she is living other than on a temporary basis. (Persons in the state or county for visits or vacations are not residents.); or
  - (ii) Is living, at the time of application, in the state (or county), not receiving benefits from another locality, and who entered the state (or county) with a job commitment or to seek employment. For this purpose, a child is a resident of the state (or county) where the caretaker is a resident.

(Rule 1240-01-47-.02, continued)

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.40.

**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-01-47-.03 TEMPORARY ABSENCES.** Temporary absences from the state (or county), with subsequent returns to the state or intent to return once the purpose of the absence has been accomplished, do not terminate residence. Residence is retained until abandoned. A decision to continue assistance to a recipient out of state will be based on two factors:

- (1) Whether it can be established that he/she is actually maintaining any identifiable living arrangement in Tennessee and he/she has plans to return to Tennessee; and
- (2) Whether he/she has applied for or is receiving assistance in the state where he/she presently is. If it cannot be established that the recipient is maintaining a home in Tennessee or it is established that he/she has applied for or is receiving assistance in the state where he/she is, it will be assumed that he/she intends to remain out of Tennessee and assistance from this state will be discontinued. If he/she does not return to Tennessee within 3 months, Families First will be discontinued.

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.40.

**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-01-47-.04 TERMINATION OF RESIDENCE.**

- (1) When a Families First recipient notifies the department (or it is learned that he/she is moving out of state, payments must be terminated promptly within current fiscal and notice constraints. If a recipient is moving to another county within the state, the case is to be transferred to the new county.

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.40.

**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-01-47-.05 REPORTING ADDRESSES.** An applicant/recipient may have both a physical address and a mailing address. If the two are different, both addresses will be required. A mailing address only, such as post office box, general delivery, or a rural route, will not be sufficient as it does not indicate that the AG resides in the county. If the address is a rural route, information must be given to identify the exact location of the home.

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.40.

**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-01-47-.06 BASIC ELIGIBILITY REQUIREMENTS.**

- (1) As a condition of eligibility to receive Families First benefits, an individual must be either:
  - (a) A citizen of the United States; or
  - (b) An alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law as described in Section 1240-01-47-.12.
    1. The United States is defined as the 50 states and the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. In addition, nationals from American Samoa or Swain's Island are considered US citizens for eligibility purposes.
    2. An ineligible alien will be excluded from the Families First assistance group, but may receive a grant for children in his/her care if they are eligible.

(Rule 1240-01-47-.06, continued)

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.50.

**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-01-47-.07 VERIFICATION OF US CITIZENSHIP.** An applicant's statement that he/she and members of the AG are US citizens must be affirmed by signature on the Department's Application or Review of Eligibility (HS-0169). Each adult member of the AG is required to sign the form.

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.50.

**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-01-47-.08 METHOD OF VERIFICATION OF US CITIZENSHIP.** Acceptable forms of verification of citizenship include birth certificates, religious records, voter registration cards, certificates of citizenship or naturalization provided by INS, such as Identification Cards for use of Resident Citizens in the US (INS Form 1-179 or INS Form 1-197) or US passports. If the above forms of verification cannot be obtained and the person can provide a reasonable explanation as to why verification is not available, a signed statement will be accepted from someone who is a US citizen which declares, under penalty of perjury, that the member in question is a US citizen. The signed statement shall contain a warning of the penalties for helping someone commit fraud.

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.50.

**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-01-47-.09 PROMPTNESS OF CASE ACTION - QUESTIONABLE CITIZENSHIP.**

- (1) When there is a question as to whether a member of an AG is in fact a US citizen, prompt action is to be taken on the application as follows: the person whose US citizenship cannot be verified within the promptness standard will be excluded from the AG. The income and resources of the excluded individual will not be taken into consideration in determining eligibility or the amount of payment for the remaining members unless the excluded member is a parent, spouse of an AG member or stepparent living in the home. Determination of eligibility and authorization of payment will not be denied or delayed pending determination of citizenship of the individual in question. When it is subsequently verified that the person is a US citizen he/she may be added to the assistance group (no new application required). Payments retroactive to the date of application (but not prior to 10/1/94) may be made if all other eligibility requirements were met at that time.

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.50.

**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-01-47-.10 ELIGIBLE ALIENS.**

- (1) General Requirements. In addition to US Citizens, certain aliens who are otherwise eligible are eligible to receive Families First benefits. The alien status of each individual in the AG listed on the application as an alien is to be determined prior to certification/approval. INS documents presented or secured by the applicant/recipient shall be the primary source of verification of alien status. The Systematic Alien Verification for Entitlements (SAVE) system must be used to validate the alien's documents and status.
- (2) Description Of Eligible Aliens.
  - (a) Citizens and eligible aliens. The Department shall prohibit participation in the program by any person who is not a resident of the United States and one of the following:
    1. A United States citizen; or

(Rule 1240-01-47-.10, continued)

2. An alien that, under federal laws and regulations, is permitted to receive Families First benefits funded by federal TANF dollars. These eligible aliens may include, but are not necessarily limited to, certain individuals lawfully present in the United States as a result of the application of the Immigration and Nationality Act and the Immigration Reform and Control Act of 1986.
- (3) Aliens who apply for Families First for the first time must have the income and resources of their sponsor considered in determining their eligibility for assistance. The income and resources of the sponsor shall be considered for a period of three years after the alien's entry into the United States. A sponsor is a person who signed an affidavit or other statement accepted by INS as an agreement to support an alien as a condition of the alien's admission for permanent residence in the United States. The alien is responsible for obtaining the cooperation of his/her sponsor and for providing the information necessary to determine the alien's eligibility. This will include material provided in support of the alien's immigration application. Failure to obtain the sponsor's cooperation or to supply the information will result in denial/closure of the application/case. Aliens who are exempted from this provision are aliens who were: paroled into the United States as refugee; granted political asylum by the Attorney General; admitted as Cuban or Haitian entrants; admitted under Section 203(a)(7) of the Immigration and Nationality Act prior to April 1, 1980; admitted under Section 207(c) of the Act after March 31, 1980; alien children of sponsors or of sponsor's spouse; or recipients of AFDC prior to October 1, 1981 or a former AFDC or Families First recipient who reapplies in the future. Any alien under the sponsorship of a public or private agency/organization is not eligible to receive Families First within three years of entry into the Country unless it is proven (and documented) that the agency is unable to meet their sponsorship obligations to the alien. (This may mean that the agency is no longer in existence.) The alien is required to submit documentary evidence as is available to facilitate this determination. Exception: An alien granted permanent resident status through the legalization process is ineligible for a five year period beginning with the date on which she/he was granted temporary resident status.
- (a) Establishing Income and Resource Amounts. The following steps are necessary in establishing the amount of income and resources which shall be deemed from the sponsor to the alien, whether or not these are actually available to the alien.
1. Income
    - (i) Determine the gross earned and unearned income of the sponsor and the sponsor's spouse (the latter's income will be considered even if the marriage occurred after the affidavit of support was executed). If the sponsor and/or spouse receive Families First or SSI, no income is to be considered available to the alien.
    - (ii) Deduct from the gross earned income (wages, salaries or net earnings from self employment) 20% of the total of such amounts or \$175.00, whichever is less.
    - (iii) Deduct the standard of need for the number of individuals living with the sponsor who are claimed by the sponsor and/or the sponsor's spouse as dependents for federal personal income tax liability.
    - (iv) Deduct the amount the sponsor and/or his/her spouse pays to individuals outside the home who are claimed as dependents for federal income tax purposes.
    - (v) Deduct any amount paid by the sponsor and/or his/her spouse for child support or alimony to individuals living outside the home.

(Rule 1240-01-47-.10, continued)

- (vi) The remaining income shall be considered as unearned income to the alien and shall be added to the alien's own income in determining eligibility for assistance.
  - (vii) Follow Families First budgeting procedures beginning with the Gross Income Standard test.
2. Resources. The provision of considering the income and resources of the sponsor as available to the alien is not waived even though the sponsor may have revoked his/her sponsorship agreement. In those situations where the sponsor has absconded and his/her whereabouts is unknown, the alien(s) would not be eligible for assistance for the period of time for which the sponsor is liable for support, as need could not be established. Income and resources which are deemed to a sponsored alien shall not be considered available to unsponsored members of the alien's family except to the extent the income and resources are actually available. Unsponsored members are not ineligible simply because a sponsored member fails to provide information regarding his/her sponsor. The following are steps to be taken in determining the amount of resources to be deemed from the sponsor to the alien:
- (i) Determine the amount of countable resources of the sponsor and the sponsor's spouse as though the sponsor was applying for Families First.
  - (ii) Deduct \$1500.00 from the total countable resources.
  - (iii) The balance of the resources shall be considered available to the alien and added to the alien's own countable resources in determining eligibility.
- (b) Multiple Sponsorship. When it is determined that an individual has agreed to sponsor multiple families, the amount to be deemed to the eligible families shall be divided equally among the families who are applying for assistance. If only one family applies for Families First, then the total amount of the sponsor's liability (income and resources) shall be applied to the family so applying.
- (c) Liability for overpayments. Both the sponsor of the alien and the alien shall be jointly and severally liable for any overpayment made to such alien during the three year period following the alien's entry into the United States, if such overpayment was due to the sponsor's failure to provide correct information except where it can be established that the sponsor was without fault or where good cause for failure to provide such information can be established. The same procedure for handling overpayments shall be applicable to aliens as for any other Families First recipient.
- (d) Establishing Good Cause. Good cause for failure of the sponsor to provide correct information to the Department includes the following:
- 1. The Department fails to request information regarding the sponsor's income and resources.
  - 2. The sponsor has had no direct contact with the Department concerning his/her income and resources and he/she is unaware of the information provided by the sponsored alien.
  - 3. Social and/or language barriers preclude the sponsor's understanding and ability to provide the correct information.

(Rule 1240-01-47-.10, continued)

4. Other unusual circumstances exist which indicate the failure to provide correct information is beyond the sponsor's control.

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, 71-3-154, 71-3-158, Public Acts of 1996, Chapter 950, 42 USCA §1315(a), and 45 CFR 233.50 and 233.51. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed December 19, 2003; effective March 3, 2004.

**1240-01-47-.11 NELIGIBLE ALIENS.** All aliens other than those listed in 1240-01-47-.10(2)(a) are ineligible for Families First benefits.

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.50 and 233.51. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-01-47-.12 VERIFICATION OF ALIEN STATUS.** Verification of alien status must be by the applicant prior to approval.

- (1) Required Verification of Alien Status. Aliens identified in 1240-01-47-10(2) have been lawfully admitted to the US and are therefore eligible for benefits on this basis. They must also meet other eligibility requirements. These aliens will be able to present (or obtain) one of the following types of verification of their status:
  - (a) Immigration and Nationality Services (INS) Form I-151 or I-551 - Alien Registration Receipt Card or the Re-Entry Permit, a passport booklet for lawful permanent resident aliens.
  - (b) If an INS Form I-94 is annotated with the letter (A) through (L), this is verification that the alien does not meet citizenship requirements for Families First purposes and is ineligible for benefits. If, however, the alien can present other documentation from INS that he does meet requirements, this will be acceptable. INS Form I-94, Arrival Departure Record, which will be acceptable only if annotated with:
    1. Section 212(d)(5) or 243(h) of the Immigration and Nationality Act, or an (S) indicating Haitian Nationals; or
    2. One of the following terms and a combination of the following terms:
      - (i) Refugee;
      - (ii) Parolee or paroled;
      - (iii) Conditional entry or entrant; or
      - (iv) Asylum.
  - (c) There may be considerable delay (because of methods of issuance) in the receipt of Form I-551 by an alien recently admitted to the US. Passport booklets stamped with the annotation Processed for I-551, Temporary Evidence of Lawful Admission for Permanent Residence will be acceptable verification of eligible alien status.
  - (d) Unless an Iranian has documentation of status as listed in 1240-01-3-.12(2)(a), (regardless of date of entry to the US) he is not eligible for Families First.
  - (e) Temporary Resident Card, Form I-688, means that an amnesty alien has been approved for temporary residence. If the form is coded to show the alien was admitted under Section 245A, the alien is not eligible. If the form is coded to show the alien was

(Rule 1240-01-47-.12, continued)

admitted under Section 210, the alien is eligible until the expiration date stated on the face of the document.

Forms such as I-688A, Employment Authorization Card or Employment Authorization Document (EAD) and I-689 show that an alien has applied for admission. They are not acceptable documents to show that a person has been admitted under an eligible section. In addition, Form I-181-B cannot be used as acceptable verification.

- (f) If the INS Form I-94 does not bear any of the above annotations, the alien may state the reason and submit other conclusive verification, such as a notice, letter or identification card that establishes that the alien has been admitted for permanent residence as a legal alien.
- (2) Need For Documentation. If the INS Form I-94 does not bear any of the above annotations, the alien may state the reason and submit other conclusive verification, such as a notice, letter or identification card that establishes that the alien has been admitted for permanent residence as a legal alien. Other evidence of eligible status includes:
- (a) Verification of the client's classification under Section 101(a)(15), 101(a)(20), 207, 208, 212(d)(5), 243, 249 of the Immigration and Nationality Act; or
- (b) Form G-641 (Application for Verification of Information from Immigration and Naturalization Service Records) when it is properly annotated at the bottom by an INS representative that the alien was admitted lawfully for permanent residence or paroled for humanitarian reasons; or
- (c) A court order stating that deportation has been withheld pursuant to section 243(h) of the Immigration and Nationality Act;
- (d) The client may contact INS or otherwise obtain the necessary verification. If the AG does not wish to contact INS, give the AG the option of withdrawing the application or participating without the ineligible alien. If the client wishes and signs a written consent, the worker will contact INS to obtain clarification of the alien's status.
- (3) Inability to Obtain INS Documentation. If an alien is unable to provide any INS document at all, then the worker has no responsibility to contact INS on the alien's behalf. If the proper INS documentation is not available, the alien may state the reason and submit other conclusive verification. The worker shall accept other forms of documentation or corroboration from INS that the alien is classified pursuant to Sections 101(a)(15), 101(a)(7), 212(d)(5), 243 or 249 of the Immigration and Nationality Act or other conclusive evidence such as a court order stating that deportation has been withheld pursuant to Section 243(h) of the Immigration and Nationality Act.
- (a) Systematic Alien Verification for Entitlements (SAVE) System Procedures. The SAVE System is the process of verifying the alien's immigration status by validating the alien's INS documents through the Immigration and Naturalization Service (INS).
1. Benefits may not be denied or reduced pending verification of an alien's documentary evidence through SAVE.
  2. One of the following SAVE verification procedures must be used to establish an alien's status.
    - (i) Primary Verification. By telephone, using the INS' Alien Systematic Verification Index (ASVI) data base as the primary verification method.

(Rule 1240-01-47-.12, continued)

- (ii) Secondary Verification. Complete INS Form G-845 for each applicant who is not a US citizen and submit to INS.
- (4) Certification/Approval of Remaining AG Members. Aliens who do not meet requirements as specified will be excluded from the Families First budget and grant. Their income and resources will not be taken into consideration in the determination of eligibility/payment for assistance group members unless the alien is a legally responsible relative of the AG member(s). In the case of an ineligible alien parent, income is deemed to the eligible dependent child using the stepparent deeming formula. If the alien subsequently presents acceptable verification of alien status which results in his/her meeting eligibility requirements, he/she will be added to the AG (and his/her income and resources taken into consideration) effective the date verification is received in the county office. (No new application is required). Payment may be made retroactive to the date of application (but not prior to 10/1/94) if all other eligibility requirements were met as of that date.

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, 71-3-154(l), Public Acts of 1996, Chapter 950, and 45 CFR 233.50. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed July 5, 2002; effective September 18, 2002.

#### 1240-01-47-.13 SOCIAL SECURITY ENUMERATION REQUIREMENTS.

- (1) Enumeration is the procedure by which the Social Security Administration (SSA), in cooperation with the Department, assigns and/or verifies social security numbers (SSN) for Families First applicants/recipients.

The SSN will be used by the Department only in the administration of the Family Assistance Program.

- (2) As a condition of eligibility to receive Families First each applicant/recipient must:
- (a) Furnish to the Department a Social Security Account Number (SSN) or numbers if more than one has been issued; or
  - (b) If an individual's account number is unknown or one has not been issued to him, application for an SSN must be filed;
  - (c) The Social Security Administration will not accept an application for a social security number for an unborn child. Such application can be submitted only after the child is born.
- (3) This eligibility requirement applies to the grantee relative, caretaker, second parent, and each child in the Families First AG. A person who does not furnish or apply for a Social Security Number is not eligible to receive Families First. If an otherwise eligible A/R does furnish or apply for an SSN he/she may be approved for Families First benefits.
- (4) Informing Requirement.
- (a) Federal law and regulations require that each applicant or recipient be advised of the regulation requiring that he/she furnish a Social Security Number to this Department and how the number is to be used.
  - (b) If, after an explanation is given, individual(s) who are required to furnish or apply for a Social Security Number refuse to do so, they shall be excluded from the Families First AG.

(Rule 1240-01-47-.13, continued)

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 205.52.

**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

#### 1240-01-47-.14 AGE REQUIREMENTS.

- (1) To be eligible for Families First a child must be under 18 years of age or age 18, but less than 19 if a full-time student in a secondary school or the equivalent level of vocational or technical training and is reasonably expected to complete the program before reaching age 19. Payment may be made for an otherwise eligible child for the month in which he/she attains age 18 years.
- (2) There is no eligibility requirement regarding the age of the caretaker, grantee relative, or second parent.
- (3) Attainment of Specific Age.
  - (a) For Families First eligibility purposes a person is considered to have attained a certain age on the anniversary of his/her birth.
  - (b) The age of a Families First child must be proven to fall within the age limit given in the preceding paragraph prior to approval or continuation of benefits.
  - (c) Adults. There is no requirement that the age of the grantee relative, second parent, caretaker, legal guardian or conservator be proved.

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, 71-3-154(h)(2)(B), Public Acts of 1996, Chapter 950, and 45 CFR 233.39. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed July 5, 2002; effective September 18, 2002.

#### 1240-01-47-.15 SCHOOL ATTENDANCE.

- (1) All school age children are required to attend school, including kindergarten, where available, unless good cause is established for non-attendance.
  - (a) The Department of Human Services will accept the school's determination as to whether the child is in attendance or truant.
  - (b) A home schooling program which is recognized by the county/city Board of Education will be acceptable in meeting the school attendance requirement for a school age child; however, a parent/caretaker relative who is home-schooling his/her children will not be exempt from the Families First Employment and Training participation requirement.
  - (c) Failure to comply with the school attendance requirement will result in a 20 percent reduction in the assistance group's cash payment.
    1. The penalty will be assessed whenever the child is truant unless it is determined that there was good cause for failure of the child to attend school.
    2. Good cause for non-attendance includes a verified illness that prohibits attendance, suspension from school with reentry forbidden and no alternative school available, removal of the child from the school by the courts, and other verified situations which prevent the child from attending.
    3. The school attendance requirement applies to all assistance groups, whether or not the caretaker is included in the AG.

(Rule 1240-01-47-.15, continued)

- (i) This requirement extends to all minors in the AG, including married minors and minor parents.
4. Compliance with the requirement following a period of non-compliance will result in the reinstatement of the 20 percent effective the next calendar month.
  5. The maximum penalty that can be assessed against an AG for failure to comply with the school attendance requirement is 20 percent, even if more than one child is truant.
- (2) An individual who is not the head of household, who has not reached eighteen (18) years of age, who has a child who is at least sixteen (16) weeks of age in such person's care, and who has not successfully completed a high school education or its equivalent, will be removed from the Families First AG unless the individual participates in educational activities directed toward the attainment of a high school diploma or its equivalent.
  - (3) An individual who is the head of his/her household, who has not reached twenty (20) years of age, who has a child who is at least sixteen (16) weeks of age in such person's care, and who has not successfully completed a high school education or its equivalent, will be subject to sanction for his/her entire AG unless the individual participates in:
    - (a) Educational activities directed toward the attainment of a high school diploma or its equivalent; or
    - (b) Thirty (30) hours of countable work activities as described in 1240-01-49-.03.
  - (4) Earned Income Exclusions/Disregards for Student Child Recipients.
    - (a) Exclusion of Earnings for a Full-Time Student. Earnings of a child recipient who is a full-time student are excluded for the gross income standard test and grant computations up to six months each calendar year. An additional exclusion for purposes of the GIS test may be applied to earnings from JTPA employment for up to six months each calendar year.
    - (b) Disregard of Earnings for a Full-Time Student or a Part-Time Student not Employed Full-Time.
      1. If a child's gross earnings are within the gross income standard, the earnings of a child recipient who is a full-time student or a part-time student not employed full-time are disregarded.
      2. For a part-time student employed full-time, or for a child recipient without student status, the applicable earned income disregards (\$150, child/dependent care) are applied.
      3. For purposes of applying these exclusions/disregards, a student is a child recipient attending school, college, university, or a course in vocational or technical training designed to prepare him/her for gainful employment and includes participation in the Job Corps Program under JTPA.
  - (5) The caretaker/parent is required to report any change in a child's school attendance (e.g., a child drops out of school).
  - (6) A student retains student status during official school vacations and breaks if he/she met requirements prior to the vacation/break and intends to return to school after the vacation/break.

(Rule 1240-01-47-.15, continued)

- (7) A child who is receiving elementary/secondary or equivalent level vocational/technical instruction from a homebound teacher meets student requirements. A homebound teacher is a certified teacher employed by the school in which the child is enrolled.
- (8) Participation in correspondence courses, other courses of home study, apprenticeships and rehabilitation programs other than academic or instructional, vocational/technical training, does not qualify a child as a student.
- (9) A child who is age 18 but not yet 19 may be eligible for Families First as a dependent child if she/he is a full-time student in a secondary school or the equivalent level of vocational or technical training and is reasonably expected to complete the program before reaching age 19.

**Authority:** T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-153, 71-3-154, and 71-3-154(h), 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 607(c)(2)(C), 42 U.S.C. § 607 (c), (d) and (e), 42 U.S.C. § 608(a)(4), and 42 U.S.C. § 608(a)(6)(A), 42 USC §1315(a), Public Acts of 1996, Chapter 950, 45 C.F.R. § 261.2 and 45 CFR 233.20, §1115 of the Social Security Act; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed July 5, 2002; effective September 18, 2002. Public necessity rule filed July 2, 2007; expires December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.

#### 1240-01-47-.16 PERSONAL RESPONSIBILITY PLAN.

- (1) Personal Responsibility Plans Required for Eligibility.
  - (a) As a condition of eligibility for the entire AU, the caretaker (both parents in a two (2) parent AU) who applies for or receives Families First/TANF must sign a Personal Responsibility Plan (PRP). Signing the PRP indicates an intent to comply with the requirements of the plan. The PRP is developed by the Department in consultation with the caretaker relative and:
    - (b) Requires that all caretakers (both parents in a two (2) parent AU):
      1. Agree to cooperate with child support enforcement activities;
      2. Assure that the children in the AU receive regular immunizations and health checks;
      3. Agree to participate in thirty (30) hours per week of activities as described in 1240-01-49-.03 if not exempt;
      4. Agree not to falsify work and/or educational activities documentation, such as providing a falsified employer's statement, attendance, etc. to verify thirty (30) hours per week of activities;
      5. Assure that the children in the AU attend school, including kindergarten;
      6. Agree to attend two (2) or more parent-teacher conferences within a school year with the child(ren)'s teacher to review the child(ren)'s status in school if the Department determines that the need is identified relative to the child(ren) in the AU;

(Rule 1240-01-47-.16, continued)

7. Agree to attend a minimum of eight (8) hours of parenting classes if the Department determines that the need is identified relative to the child(ren) in the AU;
8. Agree to participate, in such support services that the child(ren) may require to overcome school, family, or other barriers that may interfere with the AU's ability to become self-sufficient, as determined pursuant to the Department's policy; and
9. ~~Agree to proper use of the electronic benefit transfer card, including agreement not to access public assistance benefits through an electronic benefit transfer card at any point of sale device or automated teller machine located in any liquor store, casino, gambling casino, gaming establishment, or adult cabaret as prohibited under Chapter 1240-01-58.~~

~~[Agree to proper use of the electronic benefit transfer card, including agreement not to access public assistance benefits through an electronic benefit transfer card at:~~

- ~~(i) any point of sale device or automated teller machine located in any liquor store, casino, gambling casino, gaming establishment, or adult cabaret as prohibited under Chapter 1240-01-58; or~~
- ~~(ii) any point of sale device located in any tobacco store as prohibited under Chapter 1240-01-58.]~~

- (2) As a condition of eligibility for him/herself, the minor parent who is a dependent child in an AU must sign a PRP. Signing the PRP indicates the intent to comply with the requirements of the plan listed in subparagraph (b), parts 1-8 above. Subparagraph (b), part 9 above does not apply to a minor parent who is a dependent child in an AU.
- (3) As a condition of eligibility for the entire AG/AU, the minor parent who is a caretaker of his/her own AG/AU must sign a Personal Responsibility Plan. Signing the PRP indicates the intent to comply with the requirements of the plan. The PRP requirements are the same as those listed in 1240-01-47-.16(1)(a) above.
- (4) The Department or its designees will provide benefits such as child care and transportation necessary to assist the individual in complying with the requirements set out in the Personal Responsibility Plan.
- (5) Failure, without good cause, to comply with the provisions of the PRP shall result in the following sanctions:
  - (a) Failure to comply with the work requirement shall result in a mandatory period of case closure pursuant to rule 1240-01-49-.04.
  - (b) Failure to comply with the prohibited uses of the electronic benefit transfer card as described under Chapter 1240-01-58 shall result in reimbursement of the illegally transferred funds to the Department and/or prohibition from receipt of temporary cash assistance benefits by means of direct cash payment or electronic benefit transfer card.
  - (c) The following failures shall each result in a twenty percent (20%) reduction in temporary cash assistance, not to exceed forty percent (40%) for concurrent violations, until compliance is met:
    1. Failure of one or more of the children in the AU to comply with the school attendance requirement.

(Rule 1240-01-47-.16, continued)

2. Failure to meet the immunization and health check requirement for one or more children in the AU.
3. Failure to comply with the requirement to attend two (2) or more parent-teacher conferences if the Department determines that the need is identified for one or more child(ren) in the AU.
4. Failure to attend a minimum of eight (8) hours of parenting classes if the Department determines that the need is identified for one or more child(ren) in the AU.
5. Failure to participate in support services as provided in paragraph (1)(b)(8) if the Department determines that the need is identified for one or more child(ren) in the AU.

**Authority:** T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-103, 71-1-104, 71-1-105, 73-1-126, 71-3-192, 71-3-103, 71-3-104, 71-3-108(d)(2)(D), 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 603, 42 U.S.C. § 604(i); 42 U.S.C. § 607(c), (d) and (e); 42 U.S.C. § 608(a)(2), (3) and (12), 42 U.S.C. § 608(b)(3); 42 U.S.C. § 609(a)(14) and 42 U.S.C. §§ 654 and 657; 45 C.F.R. § 261.2, 45 C.F.R. § 261.12 and 45 C.F.R. § 261.14; and Public Acts of 1996, Chapter 950, §1115 of the Social Security Act; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31.

**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007. Amendments filed April 2, 2014; effective July 1, 2014. Amendment filed April 2, 2015; effective July 1, 2015.

#### 1240-01-47-.17 IMMUNIZATIONS AND HEALTH CHECKS FOR MINOR CHILDREN.

- (1) To be eligible for Families First a caretaker must meet the immunization schedule for all minor children in the AG, as defined by the Department of Health and must have all minor children in the AG screened according to the schedules in the Tennessee Checkups for Children and Teens program. Failure, without good cause, to meet these requirements will result in a 20 percent reduction in the Families First assistance payment until compliance.
- (2) The penalty will be assessed whenever it is determined that the appropriate immunization or screening schedules have not been met for a child in the AG unless it is determined that there was good cause for failure to meet the schedule.
- (3) Good Cause for failure to meet an immunization or health screening schedule includes a verified illness that resulted in inability to make or keep an appointment, or religious beliefs as a part of the caretaker's stated faith that prohibits such immunizations and/or health screenings.
- (4) The immunization and health check requirement applies to all assistance groups, whether or not the caretaker is included in the AG.
- (5) Compliance with the requirement following a period of non-compliance will result in the reinstatement of the 20 percent effective the next calendar month.
- (6) The maximum penalty that can be assessed against an AG for failure to comply with this requirement is 20 percent, even if a scheduled immunization and/or health check for more than one child has been missed.

(Rule 1240-01-47-.17, continued)

- (7) The worker shall advise all Families First applicants and recipients of the availability of standard childhood immunizations through the Health Department.

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, and Public Acts of 1996, Chapter 950, §1115 of the Social Security Act. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

#### 1240-01-47-.18 RELATIONSHIP REQUIREMENTS.

- (1) To be eligible for Families First, a child must live with a relative (or relatives) within the following degrees of relationship:
- (a) Father, mother, brother, sister, uncle, aunt, first cousin, nephew, niece or first cousin once removed. This includes relationships to persons of the preceding generations as denoted by prefixes of grand, great or great-great and those of half-blood;
  - (b) Stepfather, stepmother, stepbrother and stepsister;
  - (c) Legally adoptive parents of the child or of the child's parents, the natural and other legally adopted children of such persons and the blood relatives of such persons as listed in this section at (1) (a) and (b) who is within the 5th degree of relationship to the child for whom Families First is requested. Termination of parental rights does not affect a child's blood relationship to his natural extended family. However, adoption of a child or his/her parent establishes a legal relationship to a new set of relatives-both immediate and extended families. The adopted relatives within specified degrees of relationship and the blood relatives within specified degrees of relationship qualify to receive Families First for an adopted child;
  - (d) Legal spouses of any of the persons named in the three above groups. This applies even though the marriage may have been terminated by death or divorce.
- (2) In determining whether any of these relationships exist, for the purpose of either granting or denying assistance, only the necessary blood relationship must be established.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.90. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

#### 1240-01-47-.19 EVIDENCE REGARDING RELATIONSHIP.

- (1) In order to receive Families First for a child, it must be established that the applicant/grantee relative is within one of the specified degrees of relationship to the child. Documentary evidence of relationship is required except as follows:
- (2) In the absence of any documentary proof of relationship, the relative's statement as to the reason(s) there is no proof, plus his/her detailed statement as to how he/she is related to the child, plus at least one notarized statement from a person in a position to know the facts of the situation in which he/she describes the relationship and how he/she knows it to be true will be acceptable.

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.90. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

#### 1240-01-47-.20 LIVING IN THE RELATIVE'S HOME.

- (1) To be eligible for Families First a child must live in a place of residence maintained by the relative as his or her own home and the home of the child.

(Rule 1240-01-47-.20, continued)

- (2) A home is considered to be a family setting maintained (or in the process of being established) by the relative who requests Families First for a child in his/her care and control. Usually the child continuously shares the same household with the applicant relative. A child is considered to be living in the relative's home as long as the applicant/relative continues to provide care and control of the child even though circumstances may require temporary absence of either the child or the relative from the customary family setting.
- (3) A relative has care and control of a child if he/she is providing day to day care, support, supervision, and has major responsibility for these parental obligations.
- (4) Temporary Absence.
  - (a) Temporary absence of the child or relative is one of short duration with specific intentions of returning on or about a specific date. Any absence of either the child or the grantee relative which will extend beyond a 3 month period will be reviewed to determine whether this relative does, in fact, retain the care, supervision, and control of this child for a major portion of each month.
  - (b) Assistance may be granted to a relative for a child who is temporarily out of the home when, for example, the child:
    1. Goes away for a visit;
    2. Is in a hospital temporarily for treatment;
    3. Attends summer camp;
    4. Attends an accredited or approved school away from home for the purpose of academic education or vocational or technical training because school facilities to meet this child's special needs are not available in his/her own community. It must be documented that the child does have special needs which cannot be met in his/her home community;
    5. Attends college or university or other vocational or technical school on a scholarship or other grant that is not available in his/her own community and his/her parents or other relatives retain responsibility for his/her care and control;
    6. Is in a psychiatric facility and has not been placed there by a court order and is only temporarily out of the home; or
    7. Is in a maternity home.
  - (c) Assistance may continue to be paid to a relative who is temporarily out of the home when, for example, the relative:
    1. Goes away for a visit;
    2. Is providing some care for a spouse or child who is hospitalized;
    3. Is attending a specialized training facility not available in his/her home community (as through the auspices of Services for the Blind or Vocational Rehabilitation);
    4. Is hospitalized for acute illness or injury, is in a maternity home or convalescent care facility for the purpose of obtaining special care not available in the home;

(Rule 1240-01-47-.20, continued)

5. Is temporarily absent for the purpose of setting up a home to which he/she will move his/her children;
  6. Enters a psychiatric facility and has not been placed there by Court Order and is only temporarily absent from the home for a period of time not to exceed three (3) months.
- (d) When it cannot be established that the child lives in the home of the applicant/grantee relative or when the applicant/grantee relative states that the child is temporarily absent, it must be established that the applicant/grantee relative does, in fact, retain full responsibility for the child's care and control. This determination will be based on the following information:
1. The whereabouts of the child and the date of departure and the expected date of return to the home.
  2. The reason for the child's absence and the person responsible for the plan.
  3. The responsibility the applicant/grantee relative has for the child while he/she is away from home; and
  4. Actual arrangements being made for the child's return to the home.

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.90.  
**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-01-47-.21 ELIGIBILITY OF MATERNITY HOME RESIDENTS.**

- (1) Eligibility for a person residing in a maternity home is determined as though the person was currently living in her own home. A period of time spent in a maternity home is defined as a temporary absence from one's usual home and eligibility is established based on the circumstances which exist in that usual home.
- (2) Applications from Maternity Home Residents.
  - (a) Applications from women who are entering (or plan to enter) a maternity home are accepted and processed in the county of usual residence, i.e., the person's "home county."
  - (b) Applications from women who are in a maternity home are accepted and processed in the county where the maternity home is located.
- (3) Eligibility for Applicants in a Maternity Home.
  - (a) A maternity home resident must meet all technical and financial Families First eligibility requirements as any other Families First applicant.
  - (b) A pregnant woman with no other children may request Families First for herself only (as a pregnant woman), or a pregnant woman with children living with her may request assistance for herself and her dependent children in the home.
    1. As a pregnant woman with no other children in the home:
      - (i) She must have reached her 6th month of pregnancy;

(Rule 1240-01-47-.21, continued)

- (ii) She must meet all eligibility requirements as though the unborn child were born and living with her; and
  - (iii) The income of a spouse in the home must be considered and/or the income of a parent of a minor must be deemed to the minor pregnant woman. (See exception for SSI recipients.); and
  - (iv) The applicant must not be receiving Families First as a dependent child with her siblings in the home.
2. As the applicant relative of dependent children in the home:
- (i) Pregnancy does not have to be verified (when an applicant relative has children for whom Families First is requested, her pregnancy is not an issue);
  - (ii) The dependent child(ren) in the home must meet all eligibility requirements and she must meet all requirements as caretaker relative;
  - (iii) The income of a spouse in the home will be considered and the income of a parent of a minor will be deemed to the minor applicant. (See exception for SSI recipients.);
  - (iv) The applicant must not be receiving Families First as a dependent child with her siblings in the home.
- (c) If the home situation is being dissolved, the current home situation of the maternity home resident is considered in determining her eligibility.
- (4) Eligibility for Recipients Residing in or Entering a Maternity Home.
- (a) No change in a Families First grant or filing unit is made when a recipient is residing in or entering a maternity home.
  - (b) An alternate payee will be named to receive the grant if necessary.

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.90.  
**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-01-47-.22 INDIVIDUALS NOT ELIGIBLE TO RECEIVE FAMILIES FIRST.**

- (1) Those persons who are inmates of any institution. An inmate is a person living in an institution who is not free to leave on his/her volition or has been committed by court order.
- (2) Those persons who are in facilities owned and/or operated by the Department of Corrections.
- (3) An A/R cannot receive Families First for a dependent child when the child is residing in a child caring facility (except day care). A child born to a mother who is herself in foster care may receive regular Families First payments if all eligibility requirements are met and the child is actually living in the home with the mother.
- (4) A person for whom foster care board or adoption assistance payments are made from federal, state or local funds is not eligible for Families First, with the following exception: for a child for whom adoption assistance is paid, if the child's exclusion from the AG (along with the exclusion of his/her income) would reduce the amount of Families First benefits the adoptive

(Rule 1240-01-47-.23, continued)

family would receive, then the child is to be included in the AG and his/her income, including the adoption assistance payment must be counted.

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.10.

**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-01-47-.23 DEPRIVATION OF PARENTAL SUPPORT/CARE.** A child who is otherwise eligible for Families First must be found to be in need by Families First standards and to be deprived of parental support and/or care. Deprivation must be due to any one of the following:

- (1) Death of one or both parents;
- (2) Incapacity of a parent;
- (3) Absence/Continued Absence from the home in which the child lives of one or both parents, under the criterion described in 1240-01-47-.26(3)(a) of these rules. (The absent parent may have left only recently or some time previously and deprivation of parental support or care by reason of "Absence/Continued Absence" must be reviewed and substantiated at each determination/redetermination of eligibility as provided in 1240-01-47-.26(5) of these rules); or
- (4) Unemployment of one or both parents.
- (5) Exception: When the custodial parent marries during the period the caretaker is receiving Families First, the caretaker has the option to exclude the new spouse and the new spouse's income from the AG for the three months following the month of marriage.
  - (a) Reserved for future use.
  - (b) Reserved for future use.
  - (c) Reserved for future use.
  - (d) Reserved for future use.
- (6) Exception: When the custodial and non-custodial parents share custody of their child(ren) on a 50/50 basis, whether deprivation of parental support or care by reason of Absence/Continued Absence from the home exists will be determined under criterion as described in 1240-01-47-.26(3)(a) of these rules.
  - (a) When parents state they share custody exactly 50/50, it must be determined what the parents are actually doing with regard to co-parenting. Though a court order may divide the children's living arrangements and parenting responsibilities 50/50, the parents may not, in fact, be following the court order. If the parents do co-parent exactly 50/50 and the parental functions of guidance and physical care are not interrupted, then we must look at the family as an intact family and consider the income of both parents to determine if the family is financially eligible under the Families First guidelines. If the family is under the GIS and CNS standards (reference Gross Income Standard (GIS) and Consolidated Need Standard (CNS) at State Rule 1240-01-50-.20), then the "applicant" parent would be able to receive Families First, if otherwise eligible.
  - (b) The "applicant" in true 50/50 co-parenting situations will be the parent who is the first to apply for Families First. If one parent is already receiving Families First for their children, and the second parent applies, the second parent's application will be denied if the parents are still co-parenting 50/50. If both parents come in together to apply, it will be the parents' responsibility to decide which one of them will receive benefits for the children.

(Rule 1240-01-47-.23, continued)

**Authority:** T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq. and 42 U.S.C. 603; Public Acts of 1996, Chapter 950, and 45 CFR 233.90, 45 C.F.R. § 233.90(c)(1)(iii) and 233.100, §1115 of the Social Security Act; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007. Amendments filed January 20, 2009; effective April 5, 2009.

**1240-01-47-.24 DEATH OF A PARENT.** A child may be found to be deprived of parental support/care by reason of the documented death of one or both parents.

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.90. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-01-47-.25 INCAPACITY OF A PARENT.**

- (1) A child may be considered to be deprived of parental support/care when at least one of two parents living in the home is incapacitated. Incapacity is deemed to exist when one parent has a physical or mental defect, illness or impairment. The defect, illness or impairment must be:
- (a) Supported by competent medical testimony;
  - (b) Of such a debilitating nature as to reduce substantially, or eliminate the parent's ability to support or care for the otherwise eligible child; and
  - (c) Expected to last for a period of at least 30 days.

Note: In making the determination of ability to support the Department of Human Services shall take into account the limited employment opportunities for handicapped individuals.

- (2) Incapacity shall be determined as follows:
- (a) Current receipt by the parent of RSDI or SSI benefits based upon disability or blindness is acceptable proof of incapacity for Families First purposes. However, eligibility for RSDI or SSI benefits is not necessary to prove incapacity. Incapacity for Families First purposes does not require that a defect, illness, or impairment be as severe, or last as long as required for establishing disability or blindness for RSDI or SSI purposes;
  - (b) Obvious incapacity can be approved in the county office for a period of up to 12 months;
  - (c) Receipt by the incapacitated person of VA 100% disability benefits based on his/her disability;
  - (d) Receipt by the incapacitated person of Black Lung benefits based on his/her own condition; or
  - (e) All other claims of incapacity must be forwarded to the Medical Evaluation Unit (MEU).
- (3) Review/Redetermination of Incapacity-Six-month Review/Redetermination. The RSDI/SSI disability status must be reverified at each six month case review. When the parent's RSDI/SSI payment is terminated and the parent claims continued Families First eligibility

(Rule 1240-01-47-.25, continued)

based on incapacity, it will be necessary to establish incapacity through the Medical Evaluation Unit (MEU). Terminated RSDI/SSI individuals may continue eligible as incapacitated while the necessary information is being secured and submitted to the MEU. If the client fails to cooperate without good cause or refuses to cooperate, the case must be closed.

(4) Periods of Incapacity for Families First.

- (a) The period of incapacity established by the Medical Evaluation Unit (MEU) is subsequent to the period of incapacity approved by the county. Verification of continued incapacity must be made at the end of the MEU approval period if continued incapacity is claimed.
- (b) On applications/reapplications denied by the MEU but approved on the local level, the MEU's decision of nonapproval is effective at the end of the approval period made by the county. The case will then be closed by the county office without being resubmitted to the MEU unless additional new medical information is available.
- (c) For an active incapacity case denied by the MEU, the case will be closed as soon as adverse notification procedures permit.
- (d) If there is any indication the client is no longer incapacitated, the complete medical file will be resubmitted to MEU with current medical-social information including the facts which indicate that incapacity no longer exists.

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.90, §1115 of the Social Security Act. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-01-47-.26 ABSENCE OF A PARENT.**

- (1) A child may be determined to be deprived of parental support or care by reason of the "Absence/Continued Absence" of one or both parents from the home in which the child lives under criterion as described in 1240-01-47-.26(3)(a) below.
  - (a) As a condition of eligibility for the entire assistance group for Families First, the remaining parent or other applicant/grantee relative must give required information about the absent parent(s) and cooperate with the IV-D child support agency as necessary.
  - (b) If the facts establish the allegedly absent parent has a separate living arrangement from the child(ren) for whom Families First is requested and is not providing financial maintenance, physical care or guidance sufficient to meet the child's needs, deprivation of parental support or care by reason of "Absence/Continued Absence" from the home under the criterion described in 1240-01-47-.26(3)(a) below may be determined to exist.
- (2) Deprivation of parental support or care by reason of Absence/Continued Absence from the home under criterion as described in 1240-01-47-.26(3)(a) below may exist due to any of the following:
  - (a) Divorce of natural parents and only one or no parent remains in the home with the child(ren);
  - (b) Separation of parents;
  - (c) Desertion of one or both parents;

(Rule 1240-01-47-.26, continued)

- (d) Imprisonment of one or both parents;
  - (e) Institutionalization of one or both parents;
  - (f) At least one parent is serving a court-imposed sentence of unpaid public service while residing at home;
  - (g) Single parent adoptions.
- (3) Deprivation of parental support or care by reason of "Absence/Continued Absence" from the home exists when:
- (a) At least one parent is absent from the home and the nature of the absence:
    1. Interrupts or terminates the parent's functioning as a provider of financial maintenance, physical care or guidance for the child; and
    2. The known or indefinite duration of the absence precludes counting on the parent to perform his/her function of planning for the present support or care of the child. If these conditions exist, the parent may be absent for any reason, and may have left only recently or some time previously. (Reference 1240-01-47-.26(3)(b) and (f) below for "Absence" due to court-imposed unpaid public service and active duty in the uniformed services of the U.S.).
  - (b) "Absence" Due to Court-Imposed Unpaid Public Service.
    1. A child is to be considered deprived of parental support and/or care by reason of continued absence from the home when:
      - (i) A parent has been convicted of an offense and is under sentence of a court; and
      - (ii) The sentence requires, and the parent is performing, unpaid public work or community service during working hours which totally precludes gainful employment; and
      - (iii) The parent is permitted by the court to live at home while serving the sentence.
    2. Real and personal property belonging to the convicted parent is to be treated in accordance with rule 1240-01-50-.07(2).
    3. Any unearned income except SSI belonging to the convicted parent and excess above his/her own needs will be counted as available to the family.
    4. The convicted offender living at home and performing unpaid work:
      - (i) Cannot be included in the aid group;
      - (ii) Cannot be the payee;
      - (iii) Is not a Families First applicant/recipient so is not required to participate in Families First Employment and Training;

(Rule 1240-01-47-.26, continued)

- (iv) Must not be treated as an absent parent in relation to the child support requirements.
- (c) Alleged Parent Defined. The natural father of a child born out of wedlock whose paternity has not been judicially established.
  - 1. The mother or other relative applying for assistance for such a child is required to provide all the facts known to establish the identity of the alleged father and child unless good cause exists for not doing so. The relative is also advised of services available to assist in such identification process.
- (d) In single parent adoptions, absence of one parent exists because there is only one parent. There are no child support requirements in these cases.
- (e) Stepparent Cases. Deprivation on the basis of absence exists even though the parent who remains in the home has remarried and the stepparent is also in the home.
  - 1. To determine whether such a child is in need according to Department standards, the income of the stepparent living in the home will be deemed to be available to the stepchildren. In addition, the income of a stepparent in the military service and outstationed will be deemed to the stepchildren.
    - (i) Exception: When a Families First custodial parent marries during receipt of assistance, exception at 1240-01-47-.23(5) applies.
- (f) Active Duty in Uniformed Service of the US (Army, Navy, Air Force, Marine Corps, Coast Guard, Environmental Sciences Administration, and US Public Health Service). Absence does not exist when the parent is away from the home in which a child is living (for whom Families First is requested/received) solely by reason of the parent's performance of active duty in a uniformed service of the US. Likewise a stepparent in the uniformed service is considered as "in the home" for purposes of deeming income to the stepchildren (see Exception in paragraph (e) above). The A/R will be required to apply to have an allotment sent directly to him/her if a grant is approved.
- (4) Duration of Absence. Where "Absence/Continued Absence" under the criterion described in 1240-01-47-.26(3)(a) above is determined to exist, the absent parent may have left only recently or some time previously. Deprivation of parental support or care by reason of "Absence/Continued Absence" must be reviewed and substantiated at each determination/redetermination of eligibility as provided in 1240-01-47-.26(5) below.
- (5) Verification/Documentation. The fact of continued absence (when absence is the basis for deprivation of support/care) must be considered and substantiated at each determination/redetermination of eligibility.

**Authority:** T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq. and 42 U.S.C. 603; Public Acts of 1996, Chapter 950, and 45 CFR 233.90 and 45 C.F.R. § 233.90(c)(1)(iii), §1115 of the Social Security Act; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007. Amendments filed January 20, 2009; effective April 5, 2009.

**1240-01-47-.27 UNEMPLOYMENT OF A PARENT.**

(Rule 1240-01-47-.27, continued)

- (1) A child may be considered to be deprived of parental support/care based on the unemployment of a parent when the principal wage earner (PWE) parent in the home meets all the conditions set forth in this section.
- (2) The principal wage earner is the parent (in a two parent home) who had the greater amount of earnings in the 24 month period ending with (and including) the month immediately preceding the application month. If both parents have the same amount of income, the family and the agency will designate the principal wage earner. The principal wage earner must meet the following conditions:
  - (a) Is not working and has not been employed for 30 days prior to receipt of assistance; or
  - (b) Is employed less than 100 hours per month; or
  - (c) Is employed 100 hours per month or more; but
    1. The excess is of a temporary nature; and
    2. The 100 hour rule was met in the 2 months prior to the current month and is expected to be met in the month following the current month; and
  - (d) Is not on strike; and
  - (e) Does not refuse to apply for or accept unemployment compensation to which he/she may be entitled; and
  - (f) Has not refused, without good cause, a bona fide offer of employment or training for employment within one (1) month prior to the effective month of eligibility or during the receipt of assistance; and
  - (g) Has a recent connection to the work force, which is established if:
    1. The PWE parent is currently receiving unemployment compensation; or
    2. Received at least one unemployment compensation payment during the 12 months immediately preceding the month of application for Families First; or
    3. The PWE parent earned at least \$50 in each of any 6 quarters within a 13 calendar quarter period ending within one (1) year prior to application for Families First.
- (3) Once eligibility as an unemployed parent has been determined:
  - (a) The PWE must comply with the Families First work requirement on her/his Personal Responsibility Plan; and
  - (b) The second parent in the home must comply with the Families First work requirement on her/his Personal Responsibility Plan.
- (4) Reserved for future use.

**Authority:** T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-153, 71-3-154, and 71-3-154(g); 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 604(i); 42 U.S.C. § 607(c), (d) and (e); 42 U.S.C. § 608(a)(2) and (3), 42 U.S.C. § 608(b)(3); 42 U.S.C. § 609(a)(14), 42 U.S.C. §§ 654 and 657 and 42 USC §1315(a), Public Acts of 1996, Chapter 950, and 45 C.F.R. § 233.90, 45 CFR 233.100, 45 C.F.R. § 261.2, 45 C.F.R. § 261.12 and 45 C.F.R. § 261.14 and §1115 of the Social Security Act; Deficit

(Rule 1240-01-47-.27, continued)

*Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed July 5, 2002; effective September 18, 2002. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.*

**RULES  
OF THE  
TENNESSEE DEPARTMENT OF HUMAN SERVICES  
FAMILY ASSISTANCE DIVISION**

**1240-01-58  
ELECTRONIC BENEFIT TRANSFER CARD - PROHIBITED USES**

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**1240-01-58-.01 PURPOSE.**

~~The purpose of this Chapter is to prevent public assistance benefits, provided pursuant to the Families First/TANF program, from being used in any EBT transaction in any liquor store, casino, gambling casino, gaming establishment, or adult cabaret.~~

[The purpose of this Chapter is to prevent public assistance benefits, provided pursuant to the Families First/TANF program, from being used in any EBT transaction in any liquor store, casino, gambling casino, gaming establishment, adult cabaret, or tobacco store.]

**Authority:** T.C.A. §§ 4-5-201 et seq.; 57-2-101(1); 71-3-126; 42 U.S.C. § 603; 42 U.S.C. § 608(a)(12).

**Administrative History:** Original rule filed April 2, 2014; effective July 1, 2014.

**1240-01-58-.02 DEFINITIONS.** For purposes of this Chapter:

- (1) "Adult cabaret" is an establishment that features, as a principal use of its business, entertainers, waiters, or bartenders who expose to public view of the patrons within such establishment, at any time, the bare female breast below a point immediately above the top of the areola, human genital, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material, including swim suits, lingerie, or latex covering. "Adult cabaret" includes a commercial establishment that features entertainment of an erotic nature, including exotic dancers, strippers, male or female impersonators, or similar entertainers.
- (2) "Assistance Unit (AU)" means the "aid group (AG)" or group of people applying for or receiving Families First/TANF cash assistance benefits.
- (3) "Automated teller machine (ATM)" is an electronic cash dispensing device from which an account holder may withdraw cash, including public assistance benefits, using an electronic benefit transfer card.
- (4) "Casino," "gambling casino," or "gaming establishment," means an establishment with a primary purpose of accommodating the wagering or gambling of money. The term "casino," "gambling casino," or "gaming establishment" does not include either:
  - (a) A grocery store which sells groceries including staple foods and which also offers, or is located within the same building or complex as, casino, gambling, or gaming activities; or
  - (b) Any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.

(Rule 1240-01-58-.02, continued)

- (5) "Department" means the Department of Human Services.
- (6) "Electronic benefit transfer (EBT) card" is a debit card which allows the EBT card holder to access public assistance benefits through an ATM or point of sale device.
- (7) "EBT transaction" means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.
- (8) "Families First" refers to the temporary public assistance program administered by the Department and provided under the federal Temporary Assistance for Needy Families (TANF), pursuant to Title IV-A of the Social Security Act.
- (9) "Gambling" means risking anything of value for a profit whose return is to any degree contingent on games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels and the like.
- (10) "Intoxicating Liquor" means and includes alcohol, spirits, liquors, wines, and every liquid or solid, patented or not, containing alcohol, spirits, liquor or wine, and capable of being consumed by human beings.
- ~~(11) "Knowingly" means that an EBT card user, merchant, or business entity has actual knowledge that the EBT card contains public assistance benefits and the ATM or point of sale device used for the illegal transaction is located in a liquor store, casino, gambling casino, gaming establishment, or adult cabaret. The term "knowingly" may be established by direct or circumstantial evidence of knowledge that the EBT card contains public assistance benefits and the ATM or point of sale device is located in a liquor store, casino, gambling casino, gaming establishment, or adult cabaret.~~
- [(11) "Knowingly" means that an EBT card user, merchant, or business entity has actual knowledge that the EBT card contains public assistance benefits and the ATM or point of sale device used for the illegal transaction is located in a liquor store, casino, gambling casino, gaming establishment, adult cabaret, or tobacco store (however, ATM use is permitted in tobacco stores). The term "knowingly" may be established by direct or circumstantial evidence of knowledge that the EBT card contains public assistance benefits and the ATM or point of sale device is located in a liquor store, casino, gambling casino, gaming establishment, adult cabaret, or tobacco store.]
- (12) "Liquor store" is any retail establishment which sells exclusively or primarily intoxicating liquor. The term "liquor store" does not include a grocery store which sells both intoxicating liquor and groceries including staple foods.
- ~~(13) "Located in". An ATM, POS device, or other online system used for the withdrawal of funds or processing of payments is "located in" a liquor store, casino, gambling casino, gaming establishment, or adult cabaret, when the ATM, POS device, or other online system is located on any part of the merchant's business property, which is either owned or leased by the merchant.~~
- [(13) "Located in". An ATM, POS device, or other online system used for the withdrawal of funds or processing of payments is "located in" a liquor store, casino, gambling casino, gaming establishment, adult cabaret, or tobacco store, when the ATM, POS device, or other online system is located on any part of the merchant's business property, which is either owned or leased by the merchant.]

(Rule 1240-01-58-.02, continued)

- (14) "Point of sale (POS) device" is any terminal at which a customer makes a payment to a merchant in exchange for goods or services, including any manual or electronic terminal where a Families First/TANF recipient may complete a retail transaction using an EBT card.
- (15) "Protective payee" is a person, other than the caretaker or grantee relative who is disqualified from directly receiving public assistance benefits under this Chapter, to whom a Families First/TANF grant is made payable for the benefit of the qualified members of the AU. A protective payee has responsibility for administering the payment for the benefit of the AU.
- (16) "Public assistance benefits" means money, in cash or in other forms of exchange, provided directly or indirectly to a Families First/TANF recipient through the Families First/TANF program.
- [(17) "Tobacco store" means a licensed retail store that derives its largest category of sales from the sale of loose tobacco, cigars, cigarettes, pipes, and other smoking accessories.]

**Authority:** T.C.A. §§ 4-5-201 et seq.; 4-51-102; 7-51-1102; 39-17-501; 57-3-101; 71-3-103; 71-3-126, 42 U.S.C. § 601 et seq.; 42 U.S.C. § 608(a)(12)(B). **Administrative History:** Original rule filed April 2, 2014; effective July 1, 2014.

### 1240-01-58-.03 PROHIBITED USES.

- (1) It is illegal for any Families First/TANF recipient to knowingly use an EBT card to purchase any goods or services through a POS device or any other online system used to process payments or access public assistance benefits through an ATM or other online system used for the withdrawal of funds located in any of the following businesses:
  - (a) liquor store;
  - (b) casino;
  - (c) gambling casino;
  - (d) gaming establishment; or
  - (e) adult cabaret.
- [(2) It is illegal for any Families First/TANF recipient to knowingly use an EBT card to purchase any goods or services through a POS device or any other online system used to process payments located in any of the following businesses:
  - (a) tobacco store.
- (2[3]) It is illegal for any person or business entity, or any agent or employee of the person or business entity, to knowingly accept public assistance benefits from an EBT card for the purchase of any goods or services in the following locations:
  - (a) liquor store;
  - (b) casino;
  - (c) gambling casino;
  - (d) gaming establishment;
  - (e) adult cabaret; or

(Rule 1240-01-58-.03, continued)

[(f) tobacco store.]

**Authority:** T.C.A. §§ 4-5-201 et seq.; 7-51-1102; 39-17-501; 57-3-101; 71-3-126, 42 U.S.C. § 608(a)(12)(B). **Administrative History:** Original rule filed April 2, 2014; effective July 1, 2014.

#### 1240-01-58-.04 MONITORING AND PENALTIES.

- ~~(1) Any Families First/TANF caretaker must submit to the Department a signed Personal Responsibility Plan (PRP) acknowledging his/her understanding that it is illegal to knowingly use an EBT card containing public assistance benefits at any POS device, ATM, or other online system used for the processing of payments or withdrawal of funds located in any liquor store, casino, gambling casino, gaming establishment, or adult cabaret to purchase any goods or services as described in this Chapter.~~
- [(1) Any Families First/TANF recipient or caretaker must submit to the Department a signed Personal Responsibility Plan (PRP) acknowledging his/her understanding that it is illegal to knowingly use an EBT card containing public assistance benefits at any POS device, ATM, or other online system used for the processing of payments or withdrawal of funds located in any liquor store, casino, gambling casino, gaming establishment, adult cabaret, or tobacco store (however, ATM use is permitted in tobacco stores) to purchase any goods or services as described in this Chapter.]
- (2) The Department shall monitor EBT transactions on a quarterly basis to determine whether there is any illegal use of EBT cards under this Chapter.
- (a) Any Families First/TANF recipient or caretaker who knowingly participates or knowingly allows another to use the recipient's EBT card in an EBT transaction at an ATM machine, POS device, or other online system used for processing of payments or withdrawal of funds in any prohibited business location shall be subject to the following penalties:
1. First or Second Violation. The Families First/TANF recipient or caretaker shall be required to reimburse the Department for the amount of the purchase at a POS machine or the amount of the cash withdrawn and used from an ATM.
  2. Third or Subsequent Violation. The Families First/TANF recipient or caretaker shall be required to reimburse the Department for the amount of the purchase at the POS machine or the amount of cash withdrawn and used from an ATM, and:
    - (i) The Families First/TANF recipient or caretaker shall be permanently prohibited from accessing temporary public assistance benefits, to the extent permitted by federal law, by means of direct cash payment or an EBT card.
    - (ii) The Department shall afford the Families First/TANF recipient or caretaker an administrative hearing prior to taking any action to disqualify the individual from direct receipt of public assistance benefits.
    - (iii) The Department shall designate a protective payee to administer the temporary public assistance grant for the benefit of the AU in the event a Families First/TANF recipient or caretaker is prohibited from receipt of public assistance benefits by means of direct cash payment or an EBT card under this Chapter.

(Rule 1240-01-58-.04, continued)

3. Any illegal EBT transaction under this Chapter shall be classified as an overpayment and the Department shall initiate collection proceedings pursuant to Chapter 1240-01-52.
- (b) Any person or business entity, or any agent or employee of the person or business entity, which knowingly accepts EBT card purchases for any goods or services at any prohibited business location, shall be subject to the following penalties:
1. First Violation. The first violation shall result in a civil penalty of one thousand dollars (\$1,000).
  2. Second Violation. The second violation within five (5) years of the first violation shall result in a civil penalty of twenty-five hundred dollars (\$2,500).
  3. Third or Subsequent Violation. The third or subsequent violation within five (5) years shall result in a civil penalty of five thousand dollars (\$5,000).
  4. The Department may refer any person or business entity that violates this Chapter to the district attorney for that district, who may bring an action to suspend the business license and permits of the person or business entity for one (1) year for any violation under this Chapter.
  5. The Department may bring a civil action to enforce any civil penalties assessed to any person or business entity under this Chapter in a complaint filed in the chancery court of the county where the person or business entity is located.
- (3) The Department may, at its discretion and to the extent permitted under federal law, take action to block POS devices, online systems used for the withdrawal of funds or processing of payments, and ATMs located in any prohibited location from accepting an EBT card transaction.

**Authority:** T.C.A. §§ 4-5-201 et seq.; 71-3-126; 42 U.S.C. § 608(a)(12). **Administrative History:** Original rule filed April 2, 2014; effective July 1, 2014.

#### **1240-01-58-.05 APPEALS.**

Any Families First/TANF recipient, merchant, or business entity the Department determines has illegally used an EBT card or unlawfully engaged in an EBT transaction under this Chapter shall have the right to an appeal conducted according to appeal procedures set forth in Chapter 1240-5 and Title 4, Chapter 5, Part 3 of the Uniform Administrative Procedures Act.

**Authority:** T.C.A. §§ 4-5-201 et seq.; 4-5-301 et seq.; 71-3-126. **Administrative History:** Original rule filed April 2, 2014; effective July 1, 2014.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services on 09/15/16, 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: 07/01/16

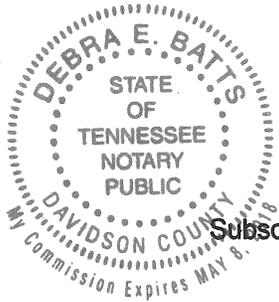
Rulemaking Hearing(s) Conducted on: (add more dates). 08/23/16

Date: 9/15/16

Signature: Catrina Hewlett

Name of Officer: Catrina Hewlett

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: September 15, 2016

Notary Public Signature: Debra E. Batts

My commission expires on: May 8, 2018

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.

Herbert H. Slatery III  
Herbert H. Slatery III  
Attorney General and Reporter  
9/26/2016  
Date

**Department of State Use Only**

Filed with the Department of State on: 9/28/16

Effective on: 12/27/16

Tre Hargett  
Tre Hargett  
Secretary of State

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2016 SEP 28 PM 3:32  
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**G.O.C. STAFF RULE ABSTRACT**

DEPARTMENT: Commerce and Insurance

DIVISION: Regulatory Boards, Real Estate Commission

SUBJECT: Expired License Reinstatement

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 62-13-203 and 62-13-319

EFFECTIVE DATES: September 12, 2016 through March 11, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This emergency rule removes the requirement that those reinstating a license expired for more than sixty days attend a meeting of the Tennessee Real Estate Commission.

### **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 has no projected impact on local governments.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule removes the requirement that those reinstating a license expired for more than 60 days attend a meeting of the Tennessee Real Estate Commission.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

No law or regulation mandates the promulgation of this rule.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Real Estate Brokers whose licenses have been expired for more than 60 days are most directly affected by this rule. It is expected that such persons would urge adoption of the rule, as it lowers the barrier to re-entry.

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

There are no known opinions of the attorney general and reporter nor any judicial rulings that directly relate to the rule or the necessity to promulgate the rule.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

This rule is estimated to cause no probable increase or decrease in state and local government revenues and expenditures.

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

Mallorie Kerby, Assistant General Counsel, Tennessee Real Estate Commission

Malcolm Young, Executive Director, Tennessee Real Estate Commission

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

Mallorie Kerby, Assistant General Counsel, Tennessee Real Estate Commission

Malcolm Young, Executive Director, Tennessee Real Estate Commission

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Mallorie Kerby, Assistant General Counsel, Tennessee Real Estate Commission  
Mallorie.kerby@tn.gov  
500 James Robertson Parkway,  
Nashville, TN 37243  
615-741-3072

Malcolm Young, Executive Director, Tennessee Real Estate Commission  
[Malcolm.young@tn.gov](mailto:Malcolm.young@tn.gov)  
500 James Robertson Parkway,  
Nashville, TN 37243  
615-741-7546

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

None.

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

**For Department of State Use Only**

Sequence Number: 09-13-16  
 Rule ID(s): 6300  
 File Date (effective date): 9/12/16  
 End Effective Date: 3/11/17

# Emergency Rule Filing Form

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

<b>Agency/Board/Commission:</b>	Real Estate Commission
<b>Division:</b>	Tennessee Department of Commerce and Insurance, Regulatory Boards
<b>Contact Person:</b>	Mallorie Kerby
<b>Address:</b>	500 James Robertson Parkway
<b>Zip:</b>	37243
<b>Phone:</b>	615-532-6304
<b>Email:</b>	Mallorie.kerby@tn.gov

**Rule Type:**

Emergency Rule

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

Amendment

New

Repeal

**Statement of Necessity:**

An immediate danger to the public welfare exists and the nature of this danger is such that the use of any other form of rulemaking authorized by Tennessee Code Annotated Title 4, Chapter 5 would not adequately protect the public. The current rules of the Tennessee Real Estate Commission require that any person seeking the reinstatement of their license after it has been expired for more than 60 days but less than one year attend an entire meeting of the Commission. Although the Tennessee Real Estate Commission has voted to move forward with the rulemaking process to adopt a rule to eliminate the meeting attendance requirement for reinstatement, the new rule is not yet effective. An imminent danger to the public welfare also exists from the continued enforcement of the meeting attendance requirement because expired licensees are unable to complete transactions. Members of the public, thus, are put in extreme financial and logistical hardship by the inability to complete these significant transactions that are, for most people, the largest and most consequential transactions they will enter into in their lifetimes.

This finding is further supported by the difficulties that enforcement of the present rule creates for the Commission, the brokers, and the public. The Commission must accommodate and track the average of 46 brokers (based on a four-month average) who are required to attend each meeting to qualify for license reinstatement. Moreover, the present rule requires brokers from outside of Middle Tennessee to incur substantial travel expenses and disruption of their schedules, since most Commission meetings are held in Nashville. Additionally, brokers may have to wait at least a month in order to attend a meeting of the Commission. This could result in a broker who has complied with all other requirements for reinstatement of a license being unable to complete their clients' real estate transactions, which may be very time-sensitive, creating a potential dislocation in the real estate market generally.

**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 make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

<b>Chapter Number</b>	<b>Chapter Title</b>
1260-01	Licensing
<b>Rule Number</b>	<b>Rule Title</b>
.21	Reinstatement of an Expired License of a Broker, Affiliate Broker, Time-Share Salesperson, or Acquisition Agent

**Redline – 2016 Proposed Rules  
Tennessee Real Estate Commission**

Chapter 1260-01  
Licensing Amendments

Rule 1260-01-.21 is amended by deleting part (2)(b)3. in its entirety, deleting from part (2)(b)5. a reference to a requirement set forth in the deleted part (2)(b)3., and renumbering part (2)(b)4. as part (2)(b)3. and part (2)(b)5. as part (2)(b)4., so that, as amended, paragraph (2) shall read:

(2) Expired License due to Failure to Comply with Prerequisite to Licensure:

(a) Renewal of License Within Sixty (60) Days of Expiration: If a licensee fails to comply with any prerequisite or condition to licensure or renewal and/or fails to pay a renewal fee before the expiration of the license but provides proof of compliance with all prerequisites or conditions for licensure, including payment of renewal fee, within sixty (60) days after the expiration date of the license, that licensee shall only be required to pay a penalty fee of fifty dollars (\$50.00) per thirty (30) day period, or portion thereof, from the time the license expired without the requirement of any further obligations.

(b) Reinstatement After Sixty (60) Days of Expiration: If a licensee fails to timely pay a renewal fee or comply with any prerequisite or condition to licensure or renewal and/or fails to pay a renewal fee within sixty (60) days after the expiration date of the license, that licensee must sign a Reinstatement Order agreeing to comply with the following requirements and complete each of the following requirements in order to obtain license reinstatement:

1. Provide proof of compliance with all prerequisites or conditions for licensure, including payment of renewal fee; and

2. Payment of Penalties in Accordance with the Following Schedule:

(i) For a license expired more than sixty (60) days, but within one hundred twenty (120) days, pay a penalty fee of fifty dollars (\$50.00) per thirty (30) day period, or portion thereof, from the time the license expired; or

(ii) For a license expired for more than one hundred twenty (120) days but within one (1) year, pay, in addition to the penalty fee described in subpart (i), a penalty fee of one hundred dollars (\$100.00) per thirty (30) day period, or portion thereof, beginning on the one hundred twenty first (121st) day; and

~~3. Other Condition: Attend one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of the date of executing the Reinstatement Order.~~

~~4. 3. Penalty fees will begin accruing on the first (1st) day following the license expiration date and will be assessed every thirty (30) days, or portion thereof, at the above rates. Penalty fees accrue until a Reinstatement Order is signed, proof of compliance with all prerequisites or conditions for licensure is received, and the renewal fee and all prescribed penalty fees are paid.~~

~~5. 4. A reinstated license will be issued back to the original expiry date upon satisfaction of all requirements, including timely attending one (1) entire regularly scheduled Commission meeting.~~

Authority: T.C.A. §§ 62-13-203 and 62-13-319

Rules of the Tennessee Real Estate Commission

Chapter 1260-01 Licensing

Rule 1260-01-.21 Reinstatement of an Expired License of a Broker, Affiliate Broker, Time-Share Salesperson, or Acquisition Agent

\* 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)
John Griess				x	
Austin McMullen	x				
Marcia Franks	x				
Gary Blume	x				
Diane Hills	x				
Bobby Wood Jr.				x	
Fontaine Taylor	x				
Johnny Horne	x				
Rick Douglass	x				

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

Date: 9/1/16

Signature: Mallorie Kerby

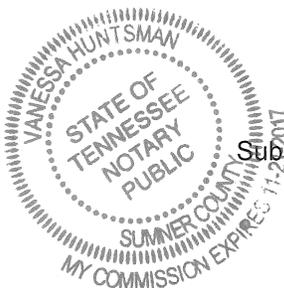
Name of Officer: Mallorie Kerby

Title of Officer: Attorney

Subscribed and sworn to before me on: Sept 1, 2016

Notary Public Signature: Vanessa Huntsman

My commission expires on: Nov 21, 2017



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.

Herbert H. Slatery III  
 Herbert H. Slatery III  
 Attorney General and Reporter  
9/9/2016  
 Date

Department of State Use Only

Filed with the Department of State on: 9/12/16

Effective for: 180 \*days

Effective through: 3/11/17

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



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Tre Hargett  
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Human Services

DIVISION: Family Assistance

SUBJECT: Child Care Development Fund

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 4-5-201 et seq.; 42 U.S. Code § 9858c (c)(2)(N)

EFFECTIVE DATES: September 30, 2016 through March 29, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The Child Care and Development Block Grant Act of 2014 prohibits states from terminating Child Care Development Fund assistance prior to the end of the 12-month eligibility period due to a temporary change in the parent's work, training, and education status. If a parent experiences a non-temporary loss of job, education, or training that affects eligibility, states have the option to terminate assistance prior to re-determination at 12 months. However, prior to terminating the subsidy, the state must provide a period of continued assistance of at least three months to allow parents to engage in job search, resume work, or to attend an education or training program as soon as possible.

## **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)

These rules will have no projected financial impact on local governments.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

**The Child Care and Development Block Grant Act of 2014 prohibits States from terminating Child Care Development Fund assistance prior to the end of the 12-month eligibility period due to a temporary change in the parent's work, training and education status. If a parent experiences a non-temporary loss of job, education or training that affects eligibility, States have the option to terminate assistance prior to re-determination at 12 months. However, prior to terminating the subsidy, the State must provide a period of continued assistance of at least 3 months to allow parents to engage in job search, resume work, or to attend an education or training program as soon as possible.**

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

**The Child Care and Development Block Grant Act of 2014, 42 U.S. Code § 9858(c)(2)(N)(i-iii)**

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

**This rule will impact children and parents in low-income families to have continued access to child care assistance.**

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

**There are no judicial rulings of Attorney General Opinions that related directly to these rule amendments.**

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

**The Department intends to fund this directive by reallocating resources within the existing TANF grant monies to account for the implementation costs. The Department has concluded that the costs associated with implementation of these requirements can be handled with existing TANF dollars. We have determined that implementation of the legislation will come at no additional cost since existing resources are sufficient to administer it.**

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

**Keisha Malone, Director of Operations, Family Assistance and Child Support Division  
Tracy Bell, Chief Officer, Workforce Development and Transformation**

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

**Keisha Malone, Director of Operations, Family Assistance and Child Support Division  
Tracy Bell, Chief Officer, Workforce Development and Transformation**

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

**Keisha Malone, Director of Operations, Family Assistance and Child Support Division**  
**Citizens Plaza Bldg. 8<sup>th</sup> Floor**  
**400 Deaderick Street**  
**Nashville, TN 37243**  
**615-313-5292**  
[Keisha.Malone@tn.gov](mailto:Keisha.Malone@tn.gov)

**Tracy Bell, Chief Officer, Workforce Development and Transformation**  
**Citizens Plaza Bldg. 15th Floor**  
**400 Deaderick Street**  
**Nashville, TN 37243**  
**615-313-6690**  
[Tracy.Bell@tn.gov](mailto:Tracy.Bell@tn.gov)

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

N/A

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

**For Department of State Use Only**

Sequence Number: 09-43-16  
 Rule ID(s): 6326-6327  
 File Date (effective date): 9/30/16  
 End Effective Date: 3/29/17

# Emergency Rule Filing Form

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

<b>Agency/Board/Commission:</b>	Tennessee Department of Human Services
<b>Division:</b>	Family Assistance Division
<b>Contact Person:</b>	Catrina Hewlett
<b>Address:</b>	Office of General Counsel Citizens Plaza Building, 15 <sup>th</sup> Floor 400 Deaderick Street Nashville, Tennessee
<b>Zip:</b>	37243-1403
<b>Phone:</b>	615-313-4731
<b>Email:</b>	Catrina.Hewlett@tn.gov

**Rule Type:**

Emergency Rule

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

Amendment  
 New  
 Repeal

**Statement of Necessity:**

It is essential to promulgate rules to amend the Families First Child Care rules to comply with the Child Care and Development Block Grant (CCDBG) Act of 2014, 42 U.S. Code § 9858 (c)(2)(N)(i-iii), which was reauthorized by Congress and passed in November 2014, which establishes a twelve (12) month eligibility re-determination period for families receiving CCDBG assistance, regardless of changes in income or temporary changes in participation in work, training, or education activities. This federal law is due to go into effect September 30, 2016.

**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
1240-01-49	Families First Work Requirements
Rule Number	Rule Title
1240-01-49-.04	Failure to Comply, Conciliation, Good Cause, and Sanctions
1240-01-49-.09	Diversion Program and Eligibility Requirements

Chapter Number	Chapter Title
1240-01-54	Child Care Families First Program
Rule Number	Rule Title
1240-01-54-.02	Transitional Child Care Coverage

**RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN SERVICES  
FAMILY ASSISTANCE DIVISION**

**CHAPTER 1240-01-49  
FAMILIES FIRST WORK REQUIREMENTS**

**TABLE OF CONTENTS**

1240-01-49-.01	Families First Work Requirements	1240-01-49-.06	Voluntary Quit
1240-01-49-.02	Exemption Determination	1240-01-49-.07	Strikers
1240-01-49-.03	Families First work Requirements Provisions	1240-01-49-.08	Definitions
1240-01-49-.04	Failure to Comply, Conciliation, Good Cause, and Sanctions	1240-01-49-.09	Diversion Program and Eligibility Requirements
1240-01-49-.05	Appeals and Hearings		

**1240-01-49-.01 FAMILIES FIRST WORK REQUIREMENTS.**

- (1) The Department of Human Services administers the Families First Program directly and through contractual arrangements with other entities to provide or arrange for employment, training, education, and support services for Families First recipients. All Families First adult recipients in the AG must participate in the Families First work requirements unless they are exempt from this requirement.

**Authority:** T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 602, 42 U.S.C. § 607(c), (d) and (e), 42 U.S.C. § 608 and 42 U.S.C. § 609; Public Acts of 1996, Chapter 950, and 45 CFR 250., 45 C.F.R. § 260.30, 45 C.F.R. § 260.31, 45 C.F.R. § 261.2, 45 C.F.R. § 261.10, 45 C.F.R. § 261.30, 45 C.F.R. § 261.31, and 45 C.F.R. § 261.32; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Public Necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.

**1240-01-49-.02 EXEMPTION DETERMINATION.**

- (1) The following individuals are exempt, except as otherwise provided in this Chapter, from participation in the Families First/TANF work and/or educational requirements:
- (a) An individual who is disabled. An individual is disabled if the individual:
1. Has been approved for Social Security Disability (Title II) or Supplemental Security Income on the basis of his/her disability;
  2. Receives Veterans benefits on the basis of his/her one hundred percent (100%) disability; or
  3. Receives Black Lung benefits based on his/her disability;
- (b) An individual who is determined to be incapacitated for the purpose of participating in a work and/or educational activities requirement. The incapacity determination shall be made according to paragraph (2);
- (c) An individual for whom an incapacity determination, under paragraph (2), is pending;
- (d) An individual who is age sixty-five (65) or older;

(Rule 1240-01-49-.02, continued)

- (e) An individual who is needed in the home to care for an in-home relative who is disabled as determined by a physician or a licensed or certified psychologist, and no other appropriate member of the household is available to provide the needed care;
  - (f) An individual who is the caretaker, in a single-parent household, of a child under one (1) year of age; provided, however, the Department may reduce the exemption to sixteen (16) weeks for persons who were exempt but chose to volunteer to fulfill the work and/or educational requirements;
  - (g) An individual who is one (1) of two (2) parents in a two-parent household caring for a child under age sixteen (16) weeks; and
  - (h) A non-parental caretaker who chooses not to be included in the assistance group.
- (2) Evaluation of Disabled Individuals and Individuals Alleging Incapacity for Participation in Work and/or Educational Activities.
- (a) The Department shall refer a Families First/TANF applicant/recipient, who alleges incapacity, to the Department's Medical Evaluation Unit (MEU) when:
    - 1. The Families First/TANF recipient alleges incapacity to work that is expected to last for a period of at least (30) days; or
    - 2. An incapacity evaluation is necessary to determine deprivation of parental support. MEU shall determine whether incapacity exists that would deprive a child of parental support.
  - (b) For purposes of the MEU determination, incapacity is deemed to exist when the defect, illness, or impairment is:
    - 1. Supported by competent medical evidence; and
    - 2. Expected to last for a period of at least thirty (30) days.
  - (c) Review of MEU Incapacity Status. For incapacity determinations made by the MEU, incapacity status shall also be reviewed and verified at the end of the MEU approval period if continued incapacity is claimed.
    - 1. Individuals who were recently terminated from Social Security Disability/SSI disability benefits who claim continued incapacity may continue to be exempt as incapacitated while the necessary information is being secured and submitted to the MEU.
    - 2. If the client fails to cooperate with the MEU without good cause or refuses to cooperate, the exemption on the basis of incapacity ends.
  - (d) Period of Incapacity for Families First/TANF recipients exempt from work and/or educational requirements.
    - 1. At any time, if there is any indication the Families First/TANF recipient is no longer incapacitated, the recipient's complete medical file shall be resubmitted to the MEU with current medical-social information, including the facts which indicate that incapacity no longer exists.
    - 2. For an active incapacity exemption denied by the MEU, the exemption will be terminated as soon as the recipient is notified.

(Rule 1240-01-49-.02, continued)

- (e) Effective July 1, 2014, the Department shall refer all Families First recipients/applicants, who are disabled or who are deemed incapacitated for longer than six (6) months, as determined by MEU, to the Division of Rehabilitative Services (DRS) to undergo an evaluation. The DRS shall determine, under Chapter 1240-08-04, whether the Families First/TANF recipient/applicant is eligible for DRS services that would provide the individual an opportunity to voluntarily fulfill the Families First/TANF work and/or educational activities requirement, consistent with his/her capabilities.
  - 1. Any Families First/TANF recipient who voluntarily participates in the DRS program shall have the opportunity to volunteer for the work and/or educational activities requirement for Families First/TANF.
  - 2. There is no requirement for financial participation in the DRS program by the individual for receiving any vocational rehabilitation services if the individual is determined eligible for Families First/TANF cash assistance.
- (3) Voluntary Participation in Families First/TANF Work and/or Educational Activities.
  - (a) Any individual who is exempt from the Families First/TANF work and/or educational requirements under this rule, except SSI recipients and Child Only caretakers, may choose to volunteer to participate in the work and/or educational activities.
  - (b) Any individual who voluntarily chooses to participate in the Families First/TANF work and/or educational requirements may retain exempt status if he/she chooses not to comply, except those individuals who are caretakers, in a single-parent household, of a child at least sixteen (16) weeks of age.

**Authority:** T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-102, 71-3-104, and 71-3-104(h)(3)(A)-(G), 71-3-108(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 602; 42 U.S.C. § 607(c), (d), and (e); 42 U.S.C. § 608; 42 U.S.C. § 608(b); 42 U.S.C. § 609, 42 USC §1315(a); Public Acts of 1996, Chapter 950, 45 CFR 233.90(c)(iv), and 45 CFR 250.30, §1115 of the Social Security Act; 45 C.F.R. § 260.30; 45 C.F.R. § 260.31; 45 C.F.R. 233.90, 45 C.F.R. § 261.2(b) through (m); 45 C.F.R. § 261.2(n); Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Public Acts of 2007, Chapter 31. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed July 5, 2002; effective September 18, 2002. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007. Repeal and new rule filed April 2, 2014; effective July 1, 2014.

#### 1240-01-49-.03 FAMILIES FIRST WORK REQUIREMENT PROVISIONS.

- (1) An individual, unless otherwise exempt, will be required to participate in work or work-related activities for thirty (30) hours per week as set forth in his/her Personal Responsibility Plan (PRP). At least twenty (20) hours must be spent working in core activities; the remaining ten (10) hours must be spent in core or non-core activities.
- (2) Activities that will be included as a part of the Families First work requirements include:
  - (a) Core Activities. Core Activities must be used to meet the first twenty (20) hours of the work requirement and can be used to meet the entire work requirement. The use of core activities to meet the Families First work requirement is subject to allowances or restrictions on these activities, as defined by federal law and regulation. Unless expanded through federal law or regulation, core activities are:
    - 1. Unsubsidized Employment.

(Rule 1240-01-49-.03, continued)

2. Job search and job readiness assistance.
  3. Work Experience.
  4. Community Service.
  5. Vocational Education.
  6. On-the-job training.
  7. Subsidized work. Families First participants can be placed in private or public sector subsidized work positions.
- (b) Non-core Activities. Non-core activities can be used to fulfill up to ten (10) hours of the Families First work requirement as long as the recipient is engaged in twenty (20) hours of core activities. The use of non-core activities to meet the Families First work requirement is subject to allowances or restrictions on these activities, as defined by federal law and regulation. Unless expanded through federal law or regulation, non-core activities are:
1. Job Skills Training Directly Related to Employment.
  2. Education Directly Related to Employment.
  3. Satisfactory attendance at secondary school or in a GED course, for those who do not yet have a high school diploma.
- (c) Reserved for future use.
- (d) Reserved for future use.
- (e) Reserved for future use.
- (f) Reserved for future use.
- (g) Reserved for future use.
- (h) Reserved for future use.
- (i) Reserved for future use.
- (j) Reserved for future use.
- (k) Reserved for future use.
- (3) Reserved for future use
- (4) The Families First work requirement can be met through satisfactory attendance at secondary school, in the case of a minor parent recipient who:
- (a) has not completed secondary school; and
  - (b) is a caretaker who is nineteen (19) years of age or younger.

(Rule 1240-01-49-.03, continued)

- (5) A minor parent who is eligible as a dependent child must attend school. Failure to comply with this requirement will result in the needs of the non-compliant individual being removed from the grant.
- (6) A caretaker who is in the residential program at Renewal House is in compliance with the Families First work requirement if she is in good standing with Renewal House program requirements.
- (7) Participation in Vocational Rehabilitation services will meet the Families First work requirement.

**Authority:** T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 602, 42 U.S.C. § 607(c), (d)(1) through (12) and (e), 42 U.S.C. § 608, 42 U.S.C. § 609; Public Acts of 1996, Chapter 950, and 45 CFR 250.30 through 32; 45 CFR 234.60, §1115 of the Social Security Act; 45 C.F.R. § 260.30, 45 C.F.R. § 260.31, 45 C.F.R. § 261.2(b) through (m), 45 C.F.R. § 261.2(n), 45 C.F.R. § 261.10, 45 C.F.R. § 261.30, 45 C.F.R. § 261.31 and 45 C.F.R. § 261.32; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.

#### 1240-01-49-.04 FAILURE TO COMPLY, CONCILIATION, GOOD CAUSE, AND SANCTIONS.

- (1) The Department shall sanction a Families First/TANF recipient who is required to participate in a work and/or educational activities requirement and who fails without good cause, to participate in the required work and/or educational activities in his/her Personal Responsibility Plan.
  - (a) Failure to participate in required work and/or educational activities includes, but is not limited to, refusal to cooperate in the required activities, failure to make satisfactory progress in the required activities, failure to meet minimum attendance standards for the required activities, refusal to participate in the activities directed towards the recipient's employment goals, falsifying employment documentation, refusal to accept suitable employment, refusal to participate in Family Focused Solutions (FFS) if FFS hours are being used as job search/ job readiness hours, or voluntarily quitting employment without good cause.
    1. Following non-compliance with required work and/or educational activities, a sanction shall make the entire assistance unit (AU) ineligible during the mandatory period of case closure when the Families First/TANF recipient to be sanctioned is the caretaker or either parent in a two (2) parent AU.
    2. Following non-compliance with required work and/or educational activities, a sanction shall be applied to remove a Families First/TANF recipient from the AU when that individual is a minor parent who is also a dependent child in an AU.
  - (b) Failure to make satisfactory progress shall be determined by a Families First/TANF recipient's grades in educational activities, objective performance measurements of the recipient's employer, or other objective criteria for the measurement of a recipient's performance for each specific work and/or educational activity. The recipient is responsible for obtaining such written documentation as the Department determines may be necessary to verify satisfactory progress.
  - (c) Exempted Individuals Volunteering. If a Families First/TANF recipient chooses to volunteer to participate in the work and/or educational activities requirement, the recipient may retain exempt status if he/she choose not to comply, except those

(Rule 1240-01-49-.04, continued)

individuals who are caretakers, in a single-parent household, of a child at least sixteen (16) weeks of age.

- (2) Attendance Standards and Good Cause.
  - (a) All Families First/TANF work and/or educational activities requirements are mandatory, unless otherwise provided in this Chapter. Recipients shall be sanctioned for any unexcused absences from Families First/TANF work and/or educational activities requirements. A recipient's first unexcused absence is considered non-compliance and is grounds for a sanction.
  - (b) Good cause may excuse a Families First/TANF recipient's failure to comply with their work and/or educational activities requirement. Good cause reasons include, but are not limited to, the following:
    1. Recipient is determined through medical evidence to be physically or mentally unable to perform the work and/or educational activities requirement assigned;
    2. Recipient lacks child care;
    3. Recipient has a serious household emergency;
    4. Recipient meets a work and/or educational activities requirement exemption criterion;
    5. Recipient's health or safety is at risk;
    6. Recipient lacks transportation;
    7. Recipient voluntarily quits employment with good cause as set forth in Rule 1240-01-49-.06;
    8. Recipient is under threat of domestic violence; or
    9. Any other factor which exists that is beyond the control of the Families First/TANF recipient.
- (3) The Department shall impose sanctions on all Families First/TANF recipients who are determined non-compliant, without good cause, with the work and/or educational activities requirements included in his/her Personal Responsibility Plan as set forth below.
  - (a) Notification of non-compliant Families First/TANF recipients. The Department shall receive notification from the work and educational service providers for Families First/TANF recipients to determine whether the recipient is non-compliant with required work and/or educational activities.
  - (b) ADA Evaluation. Prior to issuing a notice of adverse action, the Department's eligibility counselor shall review the referred recipient's case to determine whether the recipient may have any disabilities, as defined by the Americans with Disabilities Act, or barriers to employment that prevent the recipient from complying with required work and/or educational activities.
  - (c) Conciliation and Adverse Action.
    1. Notice of Adverse Action. If the Department's eligibility counselor determines that a Families First/TANF recipient is non-compliant with assigned work and/or

(Rule 1240-01-49-.04, continued)

educational activities, the eligibility counselor shall close the recipient's Families First/TANF case and issue the non-compliant recipient a notice of adverse action. The notice of adverse action shall contain:

- (i) Notice to the Families First/TANF recipient that he/she must contact the Department's eligibility counselor within ten (10) calendar days of the date of the notice to provide verification of good cause for non-compliance with work and/or educational activities;
  - (ii) The effective date of closure; and
  - (iii) Notice of the Department's appeal procedures.
2. Conciliation/Adverse Action Period. The Families First/TANF recipient must contact the Department during the ten (10) calendar day conciliation/adverse action period to provide verification of good cause. If the recipient contacts the Department during the ten (10) calendar day conciliation/adverse action period and provides adequate verification of good cause the Department shall reverse the closure of the recipient's Families First/TANF case.
  3. Sanction Period. If the non-compliant recipient fails to provide the Department adequate verification of good cause during the ten (10) calendar day conciliation/adverse action period, the recipient's case closure shall be effective on the date set forth in the notice of adverse action and a sanction shall be applied to the recipient's Families First/TANF case pursuant to paragraph (4) below.
- (4) Length of Sanction. The mandatory sanction shall be imposed for the following time periods:
- (a) First violation. The first violation shall result in the imposition of a one (1) month case closure period of ineligibility for cash assistance.
  - (b) Second violation. The second violation shall result in the imposition of a three (3) month case closure period of ineligibility for cash assistance.
  - (c) Third violation. The third violation shall result in the imposition of a six (6) month case closure period of ineligibility for cash assistance.
  - (d) Fourth or Subsequent Violation. The fourth or subsequent violation shall result in a twelve (12) month case closure period of ineligibility for cash assistance.
  - (e) The sanction shall begin with the next recurring month following the expiration of the adverse action period, unless the participant timely appeals within ten (10) days of the date of the conciliation/adverse action notice.
- ~~(5) Child Care. The Department shall not provide transitional child care to any Families First/TANF recipient whose case is closed due to noncompliance with the work and/or educational activities requirement.~~
- [(5) Child Care. The Department shall provide at least three (3) months of transitional child care to any Families First/TANF recipient whose case is closed due to noncompliance with the work and/or educational activities requirements.]
- (6) Early Re-entry during Case Closure. A Families First/TANF recipient whose case was closed due to noncompliance with the work and/or educational activities requirement may apply for early re-entry if he/she meets the following criteria:

(Rule 1240-01-49-.04, continued)

- (a) The early re-entry criteria during the mandatory sanction periods are:
    - 1. The receipt of cash assistance would prevent removal of a child from the home by the Department of Children's Services;
    - 2. The recipient has become disabled or incapacitated according to the Families First/TANF work activities exemption policy;
    - 3. The recipient is under a threat of domestic violence;
    - 4. The receipt of cash assistance would prevent the recipient's family or AU from becoming homeless; or
    - 5. The recipient has assumed the responsibility of caring for an in-home disabled relative.
  - (b) Fourth or Subsequent Sanction Period. If a non-compliant recipient has been continuously employed for a period of three (3) months for at least thirty (30) hours per week, is still employed, and is able to verify the employment, then that recipient is eligible for early re-entry during a fourth or subsequent sanction period.
- (7) Families First/TANF Eligibility after Sanction.
- (a) Applications filed prior to the expiration of the mandatory sanction period shall be denied due to ineligibility for benefits during the sanction period unless the applicant is able to show early re-entry criteria, as set forth in paragraph (6) above.
  - (b) Participation in Families First/TANF after a sanction due to non-compliance with the work and/or educational activities requirement may resume when:
    - 1. The mandatory sanction period has expired;
    - 2. The former recipient timely files a new Families First/TANF application as required by subparagraph (a) of this paragraph (7) and meets all other eligibility criteria; and
    - 3. The former Families First/TANF recipient complies with required work and/or educational activities for ten (10) consecutive business days after re-application.
  - (c) The Department shall consider a former recipient's Families First/TANF application pending during the mandatory ten (10) consecutive business day compliance period and the recipient shall receive childcare, as needed.
- (8) Appeals. Any individual who receives notification of a case closure as a result of non-compliance with the work and/or educational activities requirement may timely appeal according to the appeal procedures outlined in Chapter 1240-05 and Title 4, Chapter 5, Part 3 of the Uniform Administrative Procedures Act.
- (a) To continue receiving benefits, without the imposition of a sanction, the Families First/TANF recipient must request a hearing during the ten (10) day period following the notice of adverse action. If the recipient appeals during the adverse action period, no sanctions shall be imposed until a final decision is entered.
  - (b) Overpayments. If a final decision upholding the sanction decision is entered, the cash assistance received during the sanction period pending the fair hearing will be

(Rule 1240-01-49-.04, continued)

considered an overpayment and DHS may collect the overpayment in accordance with the procedures set forth in Chapter 1240-01-52.

**Authority:** T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-1-105(12), 71-3-101 through 71-3-115, 71-3-104(a), (d)(1)(B) and (C), (g) and (h), 71-3-107(c)(1) and (f), and 71-3-108(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 602, 42 U.S.C. § 607(c)(2)(C), 42 U.S.C. § 607(c), (d)(1) through (12) and (e), 42 U.S.C. § 608, 42 U.S.C. § 608(a)(4) and 42 U.S.C. § 609; 42 U.S.C.A. § 1315; Federal Waiver of July 26, 1996; Acts of 1996, Chapter 950, and 45 CFR 250.34 through 250.36, §1115 of the Social Security Act, 45 C.F.R. § 260.30, 45 C.F.R. § 260.31, 45 C.F.R. § 261.2(b) through (m), 45 C.F.R. § 261.2(n), 45 C.F.R. § 261.10, 45 C.F.R. § 261.30, 45 C.F.R. § 261.31 and 45 C.F.R. § 261.32; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006) and Public Acts of 2007, Chapter 31; 42 U.S.C. § 9858 (c)(2)(N)(i-iii). **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed December 13, 2002; effective February 26, 2003. Amendment filed December 19, 2003; effective March 3, 2004. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007. Repeal and new rule filed April 2, 2014; effective July 1, 2014;

**1240-01-49-.05 APPEALS AND HEARINGS.** The Department of Human Services is responsible for hearing appeals on any disputed matter relating to Families First eligibility and amount of grant and any Families First work requirement dispute including but not limited to a referral to Families First service providers, effective participation in Families First work requirements, whether good cause for failure to participate exists, and imposition of sanctions. These appeals will be conducted according to appeal procedures set forth in Chapter 1240-5 and Title 4, Chapter 5, Part 3 of the Administrative Procedures Act and which shall not be more narrow than those in existence on August 31, 1996.

**Authority:** T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 4-5-301 et seq., 71-1-105, 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 602, 42 U.S.C. § 607(c)(2)(C), 42 U.S.C. § 607(c), (d)(1) through (12) and (e), 42 U.S.C. § 608, 42 U.S.C. § 608(a)(4) and 42 U.S.C. § 609; Public Acts of 1996, Chapter 950, Title 4, Chapter 5, Part 3, and 45 CFR 205.10 and 250.36, 45 C.F.R. 205.10, 45 C.F.R. § 260.30, 45 C.F.R. § 260.31, 45 C.F.R. § 261.2(b) through (m), 45 C.F.R. § 261.2(n), 45 C.F.R. § 261.10, 45 C.F.R. § 261.30, 45 C.F.R. § 261.31 and 45 C.F.R. § 261.32; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006) and Acts 2007, Chapter 31. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.

**1240-01-49-.06 VOLUNTARY QUIT.**

- (1) Any member of an AU with a work and/or educational activities requirement, including either parent in a two-parent AU, shall not voluntarily quit employment, without good cause, within the two (2) months prior to the month of application, during the month of application, or during the application processing period for Families First/TANF cash assistance.
  - (a) If any member of an AU with a work activities requirement voluntarily quits employment as set forth in this section, the application will be pended.
  - (b) An AU is eligible for Families First/TANF cash assistance after a voluntary quit prior to or during the application processing period when:
    1. The Families First/TANF applicant meets all eligibility criteria; and
    2. The Families First/TANF applicant complies with required work and/or educational activities for ten (10) consecutive business days after application.
- (2) If, during receipt of Families First/TANF cash assistance, any member of an AU with a work activities requirement, including either parent in a two-parent AU, voluntarily quits

(Rule 1240-01-49-.06, continued)

employment without good cause, the individual and/or AU shall receive a sanction as set forth in Rule 1240-01-49-.04.

- (3) Good cause to avoid a voluntary quit sanction includes, but is not limited to:
- (a) Complications of pregnancy which render the mother incapacitated, as certified by a physician;
  - (b) The individual was required to return to work prior to the end of sixteen (16) weeks of leave following the birth of a child;
  - (c) Existing child care became unavailable and substitute child care could not be arranged, for reasons beyond the caretaker's control;
  - (d) Transportation was unavailable and the employee submits evidence that substitute transportation could not be arranged;
  - (e) The employee was needed in the home to care for an ill or disabled family member;
  - (f) The employer refused to allow time off for the employee to attend to a temporary family emergency;
  - (g) The job paid less than minimum wage based on the number of hours actually worked;
  - (h) There was discrimination by the employer based on age, race, sex, color, handicaps, religious beliefs, national origins, or political beliefs;
  - (i) Work demands or conditions rendered continued employment unreasonable;
  - (j) The employee accepted other employment with at least comparable gross wages;
  - (k) The employee left a job in connection with patterns of employment in which workers frequently move from one employer to another;
  - (l) The employer failed to provide reasonable accommodations for the employee pursuant to the Americans with Disabilities Act; or
  - (m) The employer violated any federal, state, or local employment law in the employer's treatment of the employee.

**Authority:** T.C.A. §§ 4-5-201 et seq., 4-5-202, 71-1-105(12), 4-5-209, 71-3-101 through 71-3-115, 71-3-104(a), (d), (g) and (h), 71-1-105, 71-3-107(c)(1) and (f), and 71-3-108(d)(2)(D), 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 602, (c), (d), 42 U.S.C. § 607 and (e), 42 U.S.C. § 608, 42 U.S.C. § 608(b)(3), 42 U.S.C. § 609, 42 U.S.C.A. § 1315; Federal Waiver of July 26, 1996, 42 USC §1315(a), Acts of 1996, Chapter 950, and § 1115 of the Social Security Act, 45 C.F.R. § 261.2, 45 C.F.R. § 261.10, 45 C.F.R. § 261.14, 45 C.F.R. § 261.30, 45 C.F.R. § 261.31, and 45 C.F.R. § 261.32; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Public Acts of 2007, Chapter 31, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed July 5, 2002; effective September 18, 2002. Amendment filed December 13, 2002; effective February 26, 2003. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007. Repeal and new rule filed April 2, 2014; effective July 1, 2014.

#### 1240-01-49-.07 STRIKERS.

(Rule 1240-01-49-.07, continued)

- (1) Definitions.
  - (a) The term "strike" includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted shutdown or other concerted interruption of operation by employees.
  - (b) The term "participating in a strike" means an actual refusal in concert with others to provide services to one's employers.
- (2) Eligibility Factors.
  - (a) If a parent with whom the children live is participating in a strike, the entire assistance group is ineligible for as long as the parent is on strike. The parent does not have to be a member of the assistance group to cause ineligibility.
  - (b) If an assistance group member other than a parent is participating in a strike, that individual is ineligible for assistance as long as she/he is on strike.
  - (c) If a payment of Families First benefits has already been made for any month(s) in which a parent or other assistance group member participated in a strike as of the last day of the month, the payment (or the individual's share) for the entire month constitutes an overpayment subject to recovery.

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.106.

**Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

#### 1240-01-49-.08 DEFINITIONS.

For purposes of this Chapter:

- (1) "Adverse Action Notice" is a computer generated notice sent to a Families First/TANF recipient when a negative action is taken on a Families First/TANF case.
- (2) "Assistance Unit (AU)" means the "aid group (AG)" or group of people applying for or receiving Families First/TANF cash assistance benefits.
- (3) "Caretaker" is a relative within a specified degree of relationship to the child who:
  - (a) provides a home for the child; and
  - (b) exercises primary responsibility for care and control of child.
- (4) "Child Care" means the provision of supervision and protection, and at a minimum, meeting the basic needs of a child or children for less than twenty-four (24) hours a day. Child care is provided when necessary for the participant to take part in work or training activities while the AU is receiving Families First/TANF cash assistance.
- (5) "Child Only caretaker" is a caretaker who is either a non-parental relative who is not included in the AU or a caretaker receiving SSI benefits.
- (6) "Conciliation" means a ten (10) calendar day period of time given to a Families First/TANF recipient to establish good cause for failure to comply with their work activities requirements following the issuance of a notice of adverse action, unless the tenth (10th) day falls on a weekend or holiday.

(Rule 1240-01-49-.08, continued)

- (7) "Department" means the Department of Human Services.
- (8) "Employee" means the Families First/TANF recipient and/or caretaker, who works in the service of another person, private entity, or governmental entity.
- (9) "Employment" means the relationship between an employee and his/her employer consisting of the employee's work responsibilities for the employer.
- (10) "Families First" refers to the temporary public assistance program provided under Temporary Assistance for Needy Families ("TANF"), administered by the Department pursuant to Title IV-A of the Social Security Act and title 71, chapter 5, part 3 of the Tennessee Code Annotated.
- (11) "Family Focused Solutions ("FFS")" refers to a Families First/TANF support service whose purpose is to provide supportive assistance to Families First/TANF recipients who may have barriers to employment.
- (12) "Incapacity" is deemed to exist when one parent has a physical or mental defect, illness, or impairment. The incapacity shall be supported by competent medical testimony and must be of such a debilitating nature as to reduce substantially, or eliminate the parent's ability to support or care for the otherwise eligible child and be expected to last for a period of at least thirty (30) days. Incapacity may be a reason for deprivation or may be a reason for a temporary exemption from a work activities requirement.
- (13) "Sanction" means the period of time during which a Families First/TANF case is closed due to lack of adequate participation in required work and/or educational activities.
- (14) "Support Services" means the transportation, optical, dental, and other services which are provided by the Families First/TANF work activity contractor when necessary for participation in work and/or educational activities.
- (15) "Work activities" means the work and/or educational activities performed in return for cash assistance benefits that provide a Families First/TANF recipient with an opportunity to acquire the general skills, training, knowledge, and work habits necessary to obtain employment.

**Authority:** T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-1-105(12), 71-3-101 through 71-3-115, 71-3-104(a), (d)(1)(B) and (C), (g) and (h), 71-3-107(c)(1) and (f), and 71-3-108(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 602, 42 U.S.C. § 607(c)(2)(C), 42 U.S.C. § 607(c), (d)(1) through (12) and (e), 42 U.S.C. § 608, 42 U.S.C. § 608(a)(4) and 42 U.S.C. § 609; 42 U.S.C.A. § 1315; Federal Waiver of July 26, 1996; Acts of 1996, Chapter 950, and 45 CFR 250.34 through 250.36, §1115 of the Social Security Act, 45 C.F.R. § 260.30, 45 C.F.R. § 260.31, 45 C.F.R. § 261.2(b) through (m), 45 C.F.R. § 261.2(n), 45 C.F.R. § 261.10, 45 C.F.R. § 261.30, 45 C.F.R. § 261.31 and 45 C.F.R. § 261.32; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006) and Public Acts of 2007, Chapter 31. **Administrative History:** Original rule filed December 13, 2002; effective February 26, 2003. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007. Repeal and new rule filed April 2, 2014; effective July 1, 2014.

#### **1240-01-49-.09 DIVERSION PROGRAM AND ELIGIBILITY REQUIREMENTS.**

- (1) General. The Families First Diversion Program is an alternative to the receipt of ongoing cash assistance under the Families First/Temporary Assistance for Needy Families (TANF). The purpose of the Diversion program is to provide an applicant with sufficient financial support to cover an immediate and compelling financial need that would divert the applicant's need to receive ongoing Families First/TANF cash assistance.

(Rule 1240-01-49-.09, continued)

- (2) Eligibility for diversion grant. The Department shall evaluate applications for cash assistance to determine whether a diversion grant may be appropriate to meet an applicant's immediate and compelling financial need.
  - (a) To receive a diversion grant, the Department must determine that the applicant is eligible to receive Families First/TANF.
    1. A "child only" applicant, an applicant who is either a non-parental relative who is not included in the Assistance Unit or a caretaker receiving SSI benefits, shall not be eligible for a diversion grant.
    2. If eligible for Families First/TANF, the applicant shall have the option to receive a diversion grant to cover an immediate and compelling financial need instead of receiving ongoing monthly cash assistance.
  - (b) The diversion grant shall:
    1. Meet an applicant's immediate and compelling needs, as determined by the Department, so that an applicant or recipient can avoid temporary cash assistance; and
    2. Not cover the same type of immediate need met by a previous diversion grant, unless the Department determines that the applicant has a new and verified emergency.
  - (c) Each applicant shall be required to submit appropriate documentation to verify immediate and compelling financial needs.
- (3) Calculation of the diversion grant.
  - (a) The Department shall calculate the amount of a diversion grant, on a case-by-case basis, based upon the aggregate amount of monthly temporary cash assistance an applicant is eligible to receive, not to exceed twelve (12) months.
  - (b) The applicant's temporary cash assistance lifelong eligibility period shall be reduced by the number of months equal to the total cash amount of the diversion grant that the applicant receives.
- (4) A diversion grant is an alternative to ongoing Families First/TANF benefits. A recipient of a diversion grant is ineligible to receive temporary cash assistance for the number of months of temporary cash assistance equal to the total cash amount of the diversion grant.
- ~~(5) A recipient of a diversion grant may be eligible to receive up to three (3) months of subsidized child care, if the recipient is employed at least thirty (30) hours per week.~~
- [(5) A recipient of a diversion grant may be eligible to receive at least twelve (12) months of subsidized child care, if the recipient is employed at least thirty (30) hours per week.]

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, 71-3-102, 71-3-103 and 71-3-104; 42 U.S.C. §§ 601 et seq., 45 C.F.R. § 233.90; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454-01 (June 29, 2006); 42 U.S.C. § 9858 (c)(2)(N)(i-iii). **Administrative History:** Original public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007. Repeal and new rule filed April 2, 2015; effective July 1, 2015;

(Rule 1240-01-49-.09, continued)

**RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN SERVICES  
FAMILY ASSISTANCE DIVISION**

**CHAPTER 1240-01-54  
CHILD CARE  
FAMILIES FIRST PROGRAM**

**TABLE OF CONTENTS**

1240-01-54-.01 Families First Child Care

1240-01-54-.02 Transitional Child Care Coverage

**1240-01-54-.01 FAMILIES FIRST CHILD CARE.** If child care is required to enable a Families First recipient to accept or hold employment or to engage in employment-related activities, the Department can provide for the cost of child care in either of two ways. The recipient may choose the manner in which child care will be provided, as described in (1) and (2) below, whichever is most advantageous to the AG.

- (1) Deduct the cost of child care from earnings in accordance with 1240-1-50-.16(1)(c)5.(ii); or
- (2) Direct payment to a child care provider for the cost of care (up to established maxima).
- (3) When Families First eligibility is dependent on the deduction of child care from earnings, this will be the method used to provide child care for that individual.
- (4) Families First child care cannot be used for persons not included in the AG (e.g., a grandmother who is the caretaker of children in the AG, but is not herself included in the AG.)

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, 45 CFR 255.2 and 255.3, and §1115 of the Social Security Act. **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997.

**1240-01-54-.02 TRANSITIONAL CHILD CARE COVERAGE.**

- (1) Transitional Child Care (TCC) shall be provided following the effective date of the Families First/TANF case closure for a minimum of a twelve (12) month period of time, beginning with the month following the effective date of the Families First/TANF closure for any reason except for closures resulting from circumstances described in paragraphs (3) or (4). If the recipient does not request TCC at case closure and then later requests TCC, then TCC will only be provided for the remaining months in the twelve (12) month period of time that followed case closure.
- (2) TCC for a minimum of twelve (12) months shall be provided when:
  - (a) The caretaker has a minimum of thirty (30) hours per week in allowable activities, as defined by policy;
  - (b) The individual's gross wages equal the current federal minimum wage when averaged over the number of hours worked per week; and
  - (c) Total family income is below the income level established in State Transitional Child Care policies. This income level will be set at sixty percent (60%) of the state median income or higher.
- ~~(3) An Assistance Unit (AU) is ineligible for TCC beginning with the month after the Families First/TANF AU becomes ineligible when the case is closed due to:~~

(Rule 1240-01-54-.02, continued)

- ~~(a) Non-cooperation with child support establishment and enforcement requirements; or~~
  - ~~(b) Non-compliance with work activity requirements.~~
- [(3) An Assistance Unit (AU) is eligible for TCC for at least three (3) months, beginning with the month after the Families First/TANF AU becomes ineligible when the case is closed due to noncompliance with the work and/or educational activities requirements.]
- ~~(4) Eligibility for Transitional Child Care (TCC) ends and does not begin again until re-application for Families First, when:~~
- ~~(a) The AU moves out of state;~~
  - ~~(b) The caretaker fails to pay required parent co-pay fees or to make acceptable payment arrangements;~~
  - ~~(c) There is no eligible adult;~~
  - ~~(d) The only child in the assistance unit leaves the home;~~
  - ~~(e) The case has no minor parent (Eligible Child) in the AU who has signed a Personal Responsibility Plan;~~
  - ~~(f) The case that was approved for interim benefits is later found to have been ineligible for Families First;~~
  - ~~(g) The caretaker fails to cooperate with child support establishment and enforcement requirements as determined by the Department;~~
  - ~~(h) The case is closed due to non-compliance with work activity requirements; or~~
  - ~~(i) The established period of TCC eligibility ends.~~
- [(4) Eligibility for Transitional Child Care (TCC) ends and does not begin again until re-application for Families First, when:
- (a) The AU moves out of state;
  - (b) There is no eligible adult;
  - (c) The only child in the assistance unit leaves the home;
  - (d) The case has no minor parent (Eligible Child) in the AU who has signed a Personal Responsibility Plan;
  - (e) The case that was approved for interim benefits is later found to have been ineligible for Families First;
  - (f) The caretaker fails to cooperate with child support establishment and enforcement requirements as determined by the Department; or
  - (g) The established period of TCC eligibility ends.]

(Rule 1240-01-54-.02, continued)

**Authority:** T.C.A. §§ 4-5-201 et seq., 71-1-105; 71-3-104(b)(1); 71-3-107; 71-3-108; and 42 USCA § 1315(a); 42 U.S.C. § 9858 (c)(2)(N)(i-iii). **Administrative History:** Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed July 5, 2002; effective September 18, 2002. Amendment filed November 24, 2003; effective February 7, 2004. Repeal and new rule filed April 2, 2014; effective July 1, 2014.

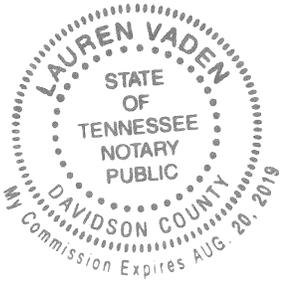
I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 7/12/16

Signature: CM Hewlett

Name of Officer: Catrina Hewlett

Title of Officer: Assistant General Counsel  
Tennessee Department of Human Services



Subscribed and sworn to before me on: July 12, 2016

Notary Public Signature: [Signature]

My commission expires on: August 20, 2019

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.

Herbert H. Slatyer III  
Herbert H. Slatyer III  
Attorney General and Reporter  
8/17/2016 Date

**Department of State Use Only**

Filed with the Department of State on: 9/30/16

Effective for: 180 \*days

Effective through: 3/29/17

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

Tre Hargett  
Tre Hargett  
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Individualized Education Accounts

STATUTORY AUTHORITY: Tennessee Public Chapter Numbers 431, 620, and 793 of 2015.

EFFECTIVE DATES: December 1, 2016 through June 30, 2017

FISCAL IMPACT: State Board of Education Response: Please see the Fiscal Note for SB 00027 - HB 00138, attached to this form as Exhibit 1, which states an estimate of the probable increase or decrease in state and local government revenues and expenditures resulting from the promulgation of this rule and the assumptions and reasoning upon which the estimate is based.

STAFF RULE ABSTRACT: These rulemaking hearing rules effectuate the Individualized Education Act as required by Public Chapter 431 of 2015. The act provides options for account holders to choose the educational opportunities that best meet the individual needs of the eligible child by giving the child direct access to state and local public education funds.

## **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.

Please see attached document.

## **Response to Public Comments Received on Proposed Rules of the State Board of Education for the Individualized Education Account (IEA) Program**

The Board held a public rulemaking hearing on November 12, 2015, and five members of the public presented oral feedback on the proposed rules. There was an open public comment period for the proposed rules and 18 individuals submitted comments to the Board on the proposed rules. All comments were reviewed by the Board staff and the Department. The public comment period closed on November 19, 2015.

The rules approved by the Board on final read were revised based on the feedback from the public comments and the IEA External Advisory Group. The revisions made include:

- Refer to students as 'students enrolled in the IEA Program' or 'students receiving IEAs' instead of 'IEA students.'
- Revised the definition of 'educational therapies.'
- Changed the percentage of IEA funds that must be spent each year from 90 percent to 50 percent.

Public comments received on the rules are summarized as follows:

1. **Comments related to state law (including the IEA Program law) and federal law.** The Board does not have the authority to make changes to state and federal laws.
2. **Comments related to additional information about the IEA Program and/or clarification of the language in the rules.** Some of these comments were addressed through revisions to the rules (see examples listed above) and others were addressed in the IEA Procedures approved by the Department and/or the additional documentation developed by the Department (e.g., IEA Parent Handbook, forms, etc.).
3. **Comments to decrease the percentage of IEA funds that account holders must spend each year.** These comments were addressed in the revisions to the rules approved by the Board on final read.
4. **Comments creating additional responsibilities for local education agencies (LEAs)** that were beyond the authority of the Board or Department to require and thus could not be added to the rules.

5. **Comments related to additional support of parents/students enrolled in the IEA Program outside of the Department's statutory responsibility to administer the program.** The rules cannot be changed to increase the Department's responsibilities to administer the IEA Program because this could have a fiscal impact on the Department by increasing costs to administer the program that were not considered in the fiscal note on the legislation which created the IEA Program and not included in funds allocated to the Department in the state budget.
6. **Recommendations for the Department's administration of the IEA Program** – these comments were reviewed by the Department to help inform the development and administration of the IEA Program, but were not applicable to revisions to the rules.
7. **General comments** that did not provide specific feedback on how the rules should be revised.
8. **Questions about the IEA Program.** The public comment period was to receive comments on the proposed rules. Questions about the IEA Program should have been submitted to the Department separately from the comments on the proposed rules. The Department addressed the questions received through the procedures, resources, and additional information posted on the department's IEA webpage. Members of the public can also contact the Department directly through phone or email to receive answers to questions not addressed in the resources.

The Board and the Department are committed to an ongoing review of the proposed rules based on feedback from stakeholders and members of the public.

**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)

Not applicable.

### **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 will have no impact on local governments.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules effectuate the Individualized Education Act as required by Public Chapter 431 (2015). The Act provides options for account holders to choose the educational opportunities that best meet the individual needs of the eligible child by giving him or her direct access to state and local public education funds.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tennessee Public Chapters Nos. 431, 620, and 793

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The Board held a public rulemaking hearing on November 12, 2015, and five (5) members of the public presented oral feedback on the proposed rules. There was an open public comment period for the proposed rules and eighteen (18) individuals submitted comments to the Board on the proposed rules. The Board staff and the Department reviewed and considered all comments. The rules being presented for promulgation have been revised based on the feedback from the public comments and the IEA External Advisory Group.

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

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

Please see the Fiscal Note for SB 00027 - HB 00138, attached to this form as exhibit 1, which states an estimate of the probable increase or decrease in state and local government revenues and expenditures resulting from the promulgation of this rule and the assumptions and reasoning upon which the estimate is based.

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

Elizabeth Taylor  
[Elizabeth.Taylor@tn.gov](mailto:Elizabeth.Taylor@tn.gov)  
  
Nathan James  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)

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

Elizabeth Taylor  
[Elizabeth.Taylor@tn.gov](mailto:Elizabeth.Taylor@tn.gov)  
  
Nathan James  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Elizabeth Taylor  
[Elizabeth.Taylor@tn.gov](mailto:Elizabeth.Taylor@tn.gov)  
1st Floor, Andrew Johnson Tower  
710 James Robertson Parkway  
Nashville, TN 37243  
(615)-253-5707

Nathan James  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)  
1st Floor, Andrew Johnson Tower  
710 James Robertson Parkway  
Nashville, TN 37243  
(615)-532-3528

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

N/A

**Department of State  
Division of Publications**

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Nashville, TN 37243  
Phone: 615-741-2650  
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**For Department of State Use Only**

Sequence Number: 09-03-16  
Rule ID(s): 6297  
File Date: 9/2/16  
Effective Date: 12/1/16

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	State Board of Education
<b>Division:</b>	
<b>Contact Person:</b>	Elizabeth Taylor
<b>Address:</b>	1st Floor, Andrew Johnson Tower
<b>Zip:</b>	710 James Robertson Parkway
<b>Phone:</b>	Nashville, TN
<b>Email:</b>	37243

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

- Amendment  
 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
0520-01-11	Individualized Education Accounts
Rule Number	Rule Title
0520-01-11-.01	Purpose
0520-01-11-.02	Definitions
0520-01-11-.03	Application
0520-01-11-.04	Term of the IEA
0520-01-11-.05	Contract and Funds Transfer
0520-01-11-.06	Use of Funds
0520-01-11-.07	Monitoring and Compliance
0520-01-11-.08	Participating Schools and Providers
0520-01-11-.09	Return to Local Education Agency
0520-01-11-.10	Appeal Procedures
0520-01-11-.11	Conflict of Interest
0520-01-11-.12	Reserved

**RULES**  
**OF**  
**STATE BOARD OF EDUCATION**  
**CHAPTER 0520-01-11**  
**INDIVIDUALIZED EDUCATION ACCOUNTS**

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<u>0520-01-11-.01</u>	<u>Purpose</u>	<u>0520-01-11-.07</u>	<u>Monitoring and Compliance</u>
<u>0520-01-11-.02</u>	<u>Definitions</u>	<u>0520-01-11-.08</u>	<u>Participating Schools and Providers</u>
<u>0520-01-11-.03</u>	<u>Application</u>	<u>0520-01-11-.09</u>	<u>Return to Local Education Agency</u>
<u>0520-01-11-.04</u>	<u>Term of the IEA</u>	<u>0520-01-11-.10</u>	<u>Appeal Procedures</u>
<u>0520-01-11-.05</u>	<u>Contract and Funds Transfer</u>	<u>0520-01-11-.11</u>	<u>Conflict of Interest</u>
<u>0520-01-11-.06</u>	<u>Use of Funds</u>	<u>0520-01-11-.12</u>	<u>Reserved</u>

**0520-01-11-.01 PURPOSE.**

The purpose of these rules is to effectuate the Individualized Education Act as required by Public Chapter 431 (2015).

**Authority:** *T.C.A. § 49-1-302.*

**0520-01-11-.02 DEFINITIONS.**

- (1) “Account holder” means a parent as defined in subsection (18) of this section or a student who has attained the age of majority who signs the IEA contract, is the account holder for the IEA funds, and is responsible for complying with all the requirements of the IEA Program.
- (2) “Act” means the Individualized Education Act.
- (3) “Agreement” means a document signed by a parent of a participating student or a participating student who has attained the age of majority and the Department.
- (4) “Application” means a document whereby parents and participating eligible students may seek to establish an Individualized Education Account (IEA).
- (5) “Computer hardware” means technological devices approved by the Department or a licensed treating physician that is used for the student’s educational needs. Computer hardware must meet one of the following criteria:
  - (a) Is a required device for communication or for physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA, or
  - (b) Allows a student to access instruction or instructional content.
- (6) “Criminal background check” at a minimum shall include, but not be limited to, a check of the following: Tennessee’s Sex Offender Registry and the Abuse Registry of the Tennessee Department of Health. All providers as defined in subsection (23) of this section and employers of providers must maintain documentation that any persons providing services to participating students has undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation for processing pursuant to the National Child Protection Act. All participating schools must maintain documentation that all persons working on school grounds when students are present and/or providing services to students have undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation (TBI) and

forwarded by the TBI to the Federal Bureau of Investigation for processing pursuant to the National Child Protection Act.

- (7) “Department” means the Tennessee Department of Education.
- (8) “Educational purposes” means the curriculum of a participating school and educational therapies.
- (9) “Educational therapies” means individualized services designed to develop or improve academic performance through instructional and therapeutic techniques.
- (10) “Eligible postsecondary institution” means a community college, college of applied technology, or university of the University of Tennessee system or the Tennessee Board of Regents system, a Tennessee public postsecondary institution, or a private postsecondary institution accredited by one (1) of the following: any accreditation division of AdvancED (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE).
- (11) “Eligible student” means:
- (a) A resident of this state with any of the following disabilities as documented in their individualized education program (IEP) at the time of their application and defined in the rules of the State Board of Education 0520-01-09-.02:
1. Autism;
  2. Deaf-blindness;
  3. Hearing impairments;
  4. Intellectual disability;
  5. Orthopedic impairments;
  6. Traumatic brain injury; or
  7. Visual impairments.
- (b) Has an IEP in effect at the time the Department receives the request for participation in the program;  
and
- (c) Meets at least one (1) of the following requirements:
1. Was previously enrolled in a Tennessee public school during the two (2) semesters immediately preceding the semester in which the student receives an IEA; For the purposes of these rules, prior two (2) full semesters in enrollment means that the student was counted in the enrollment figures for the Local Education Agency (LEA) in months two (2), three (3), six (6) and seven (7) for purposes of calculating the basic education program (BEP) funding.
  2. Has not previously attended a K-12 school in Tennessee, but is currently eligible to enroll in a kindergarten program in a public school in this state;

3. Has not previously attended a school in Tennessee during the two (2) semesters immediately preceding the semester in which the student receives an IEA, and is eligible to enroll in a public school in this state. When a student has an active IEP in another state and moves to Tennessee, the student shall register with the LEA in which he/she resides in order to be eligible to participate in the IEA program. The LEA shall then request a copy of the student's IEP from the student's previous out-of-state school;
4. Received an IEA in the previous school year; or
5. If a student has an IEP prior to enrolling in kindergarten, the student will be eligible to receive an IEA without having to attend a Tennessee public school; however, the student would have to register with the LEA in which they reside for purposes of calculating the amount of IEA funding the student would be eligible to receive.
- (12) "Fee for service transportation provider" means a commercial transportation provider including a taxi or bus service. It does not include private transportation by a parent or participating student in accordance with the conflict of interest provision in these rules.
- (13) "Financial institution" or "private financial management firm" means an institution selected by the Department to administer the individualized education accounts.
- (14) "IEA" means a Tennessee individualized education account.
- (15) "IEP" means an individualized education program developed by a public school pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §1400, et seq.
- (16) "Local education agency (LEA)," "school system," "public school system," "local school system," "school district," or "local school district" means any county school system, city school system, special school district, unified school system, metropolitan school system or any other local public school system or school district created or authorized by the general assembly.
- (17) "Nonpublic online learning program or course" means online courses designated and approved by the Department.
- (18) "Parent" means the parent, legal guardian, person who has custody of the child pursuant to an order of a court of competent jurisdiction, or person with caregiving authority pursuant to a power of attorney for care of a minor child pursuant to T.C.A. § Title 34, Chapter 6, Part 3.
- (19) "Participating school" means a nonpublic school that meets the requirements established in the Act, and meets related rules, regulations, policies and procedures of the state board of education and the Department. Participating schools must be a Category I, II, or III nonpublic school pursuant to the rules of the State Board of Education Chapter 0520-07-02.
- (20) "Participating student" means an eligible student whose parent is participating in the IEA program or an eligible student who has attained the age of majority and is participating in the IEA program.
- (21) "Physician" means a person licensed under T.C.A. § Title 63, Chapter 6 or T.C.A. § Title 63, Chapter 9.
- (22) "Program" means the individualized education account (IEA) program.
- (23) "Provider" means an individual or business that meets the requirements for accreditation or licensure established by the Tennessee Department of Health pursuant to T.C.A. Title § 63 or T.C.A. § Title 68 or Tennessee Department of Education and pursuant to the application and approval process created by the Departments of education and health for participating providers.

(24) "Technological device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability in the curriculum of a participating school or the program of a participating provider.

(25) "Tutoring services" means services provided by a tutor accredited by a state, regional, or national accrediting organization.

**Authority: T.C.A. §§ 49-1-302 and 49-10-1401 et seq.**

#### **0520-01-11-.03 APPLICATION.**

(1) To receive an IEA the parent of an eligible student, or a student who has attained the age of majority, must first request an IEA by filing a notice of intent with the Department and fully completing an application available through the Department's website by the deadline set by the Department.

(a) A school district, a nonpublic school, or the Department may assist a parent or student who has attained the age of majority in filing the application.

(b) An application must include all information requested by the Department and must be approved by the Department.

(2) The Department shall make a determination of eligibility and notify the parent or student who has reached the age of majority.

**Authority: T.C.A. § 49-1-302.**

#### **0520-01-11-.04 TERM OF THE IEA**

(1) For purposes of continuity of educational attainment, a student who enrolls in the program shall remain eligible until the participating student meets one of the following, whichever occurs first:

(a) Enrolls full-time in a public school in the LEA in which the parent or student who has attained the age of majority resides;

(b) Graduates from high school. The student may continue in the program until such time as he or she receives a high school diploma, or receives a passing score on all subtests of the GED or HiSET. Certificates of attendance do not constitute graduation from high school for the purpose of this program; or

(c) Reaches twenty-two (22) years of age. The student may complete the school year in which he or she reaches the age of twenty-two (22), provided a student shall not be enrolled in the program past August 15 of the next school year after they have reached twenty-two (22) years of age.

(2) The account holder may remove the participating student from the nonpublic school and place the student in a public school. The account holder shall notify the Department of the student's withdrawal from the IEA program and return to the LEA by the date set by the Department.

(3) Upon reasonable notice to the Department, the student's parent (or a student who has attained the age of majority) may move the student from one participating nonpublic school to another participating nonpublic school.

- (4) In order for students to continue in the program, the parent or participating student who has attained the age of majority shall annually renew the IEA by following the procedures posted on the Department's website.
- (5) After graduating from high school or reaching twenty-two (22) years of age, unused funds in an IEA from prior years can be used in subsequent years, up to four (4) years after a student has aged out of the program. Account holders are not required to spend the entire sum each year; however, a portion of the funds must be used each year on approved expenses for the benefit of the student enrolled in the IEA program and overall spending must equal fifty (50) percent of the annual award at the close of each contract year (twelve [12] months).
  - (a) If overall spending does not equal fifty (50) percent at the close of the contract year and if the IEA is renewed for the following year, the Department will subtract the difference from the payments in the next contract year. If a student withdraws from the IEA program or if the IEA is not renewed, the IEA shall be closed and any remaining funds shall be returned to the state treasurer to be placed in the basic education program (BEP) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

**Authority: T.C.A. § 49-1-302.**

**0520-01-11-.05 AGREEMENT AND FUNDS TRANSFER.**

- (1) Upon notification by the Department that an IEA may be established, a parent or student who has attained the age of majority shall sign an agreement to:
  - (a) Provide an education for the participating student in at least the subjects of reading, grammar, mathematics, social studies, and science;
  - (b) Not to enroll the participating student in a public school during the time the student is enrolled in the IEA program; and
  - (c) Release the LEA in which the student resides and the school which the student is zoned to attend from all obligations to educate the student during the time the student is enrolled in the IEA program.
- (2) The Agreement template shall be available on the Department's website. Parents or students that have attained the age of majority shall complete the Agreement and submit it along with all information requested by the Department by the date set by the Department before the first IEA payment is disbursed.
- (3) Participation in the Program shall have the same effect as a parental refusal to consent to the receipt of specially designed instruction and related services pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §1414.
- (4) The Agreement shall be signed by the parent of an eligible student or by the student who has attained the age of majority and a designee of the Department. The Agreement shall specify the anticipated participating school or participating provider(s), acceptable uses of IEA funds, the responsibilities of the parent or student that has attained the age of majority, the duties of the Department, and shall specify the financial institution to which the IEA funds shall be electronically transferred.
- (5) Upon receipt of the signed agreement, the Department shall remit the first payment to the IEA via electronic funds transfer. IEA funds shall be remitted to the IEA thereafter until termination of the Agreement.
- (6) The Department shall establish procedures to effectuate the funds transfer process and dates on which each IEA payment shall be disbursed.

- (7) After the initial payment to the IEA, the account holder shall submit receipts for all IEA funds expended by the date set by the Department before the next IEA payment is disbursed.
- (8) In accordance with the procedures of the Department, the Department may remove any account holder from eligibility for an IEA if the account holder fails to comply with the terms of the IEA agreement or applicable laws, rules or procedures, or misuses monies. The account holder may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.
- (9) If the Department determines that IEA funds have been misspent, the Department shall notify the account holder, and the account holder shall repay the misspent amount in the manner and within the timeframe set by the Department. The Department is authorized to freeze and/or withdraw funding directly from the student's IEA for reasons including, but not limited to, fraud, misuse of funds, account holder failure to comply with the terms of the state laws, rules, procedures or the Agreement, if the student returns to the LEA, or if funds were deposited into the account in error. An account holder may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.

**Authority: T.C.A. § 49-1-302.**

**0520-01-11-.06 USE OF FUNDS.**

- (1) Account holders shall agree to use the funds deposited in the IEA for any, or any combination of, the following expenses:
  - (a) Tuition or fees at a participating school;
  - (b) Textbooks required by a participating school;
  - (c) Tutoring services provided by an individual tutor that meets the requirements set by the Department or a tutoring organization accredited by one (1) of the following: any accreditation division of AdvancED (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE);
  - (d) Payment for purchase of curriculum, defined as a complete course of study for a particular content-area or grade level, including any supplemental materials required by the curriculum;
  - (e) Fees for transportation paid to a fee-for-service transportation provider. Transportation fees can only be used for transportation to participating schools and providers (including approved tutors and therapists);
  - (f) Tuition or fees for a nonpublic online learning program or course provided by a Category III nonpublic school pursuant to the rules of the State Board of Education Chapter 0520-07-02;
  - (g) Fees for nationally standardized norm-referenced achievement tests, Advanced Placement examinations, or any examinations related to college or university admission;
  - (h) Contributions to a Coverdell education savings account established under 26 U.S.C. § 530 for the benefit of the participating student;
  - (i) Educational therapies or services for participating students from a licensed or accredited practitioner or provider;

- (j) Services provided under a contract with a public school, including individual classes and extracurricular programs;
  - (k) Tuition or fees at an eligible postsecondary institution. Eligible postsecondary institutions include community colleges, colleges of applied technology, or universities of the University of Tennessee system or the Tennessee Board of Regents system, Tennessee public postsecondary institutions, or private postsecondary institutions accredited by one (1) of the following: any accreditation division of AdvancED (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE).
  - (l) Textbooks required for courses at an eligible postsecondary institution;
  - (m) Fees for the management of the IEA by private financial management firms;
  - (n) Computer hardware approved by the Department or a licensed, treating physician, if the computer hardware is used for the student's educational needs and is a required device for communication or physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA or allows a student to access instruction or instructional content. Account holders must receive prior approval from the Department or a licensed, treating physician before purchasing computer hardware using IEA funds.
  - (o) Contributions to an Achieving a Better Life Experience (ABLE) account, for the benefit of a participating student; provided, that the funds are used only for the student's education expenses subject to the rules established by the ABLE Program and that the student meets the qualifications to participate in the ABLE Program pursuant to the ABLE Act, and § 529A of the Internal Revenue Code of 1986 (26 U.S.C. § 529A), as amended, and all rules, regulations, notices, and interpretations released by the United States department of treasury, including the internal revenue service.
- (2) Account holders shall obtain pre-approval for educational therapies and/or tutoring services. If pre-approval is not obtained, the expense will be deemed an unapproved expenditure.

**Authority: T.C.A. § 49-1-302.**

**0520-01-11-.07 MONITORING AND COMPLIANCE.**

- (1) The Department shall conduct fiscal and program compliance reviews of all IEAs pursuant to procedures developed by the Department for this purpose. The Department shall conduct random reviews as determined appropriate pursuant to procedures established by the Department for this purpose.
- (2) The Department shall conduct an annual review of all IEAs.
- (3) The Department shall establish or contract for the establishment of an online anonymous fraud reporting service and an anonymous telephone hotline for reporting fraud. Individuals may notify the Department of any alleged violation by an account holder, nonpublic school, school district, participating school(s), or participating provider(s) of state laws relating to program participation. The Department shall conduct an inquiry of any written report of fraud, or make a referral to the appropriate agency for an investigation.
- (4) The Department may terminate a participating school, provider, participating student, or parent from participation in the program upon finding that a participating school, provider, participating student, or

parent has failed to comply with the provisions of the Act, rules, or procedures. A participating school, provider, participating student, or parent may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.

(5) Notice of termination shall be provided electronically and via first-class USPS mail.

Authority: T.C.A. § 49-1-302.

**0520-01-11-08 PARTICIPATING SCHOOLS AND PROVIDERS.**

(1) For the purposes of the IEA program, a participating nonpublic school is considered to have an inclusive educational setting if the following two (2) criteria are met:

(a) Students with disabilities are educated with non-disabled children; and

(b) No more than fifty (50) percent (%) of the students in an individual classroom or setting are students with disabilities.

(2) Nonpublic schools interested in enrolling students receiving IEAs shall submit an application to the Department by the deadline set by the Department.

(a) The Department shall determine the application process for nonpublic schools to participate in the program. The Department shall create a standard application which shall include, at a minimum, the eligibility requirements set forth in the Act and these rules, and may also include additional eligibility requirements set by the Department.

(b) The Department shall review the application and notify the school as to whether the school meets the requirements to enroll students receiving IEAs.

(c) If the Department determines that a school is eligible to enroll students receiving IEAs, the Department shall list the school on the Department's website.

(3) Participating schools shall include in their initial application to participate in the IEA program and in their annual renewal application the maximum number of students receiving IEAs the school has the capacity to enroll.

(a) Participating schools must demonstrate financial viability to repay any funds that may be owed to the state by filing with the Department, prior to the start of each school year, financial information verifying the school has the ability to pay an aggregate amount equal to the amount of the scholarships expected to be paid during the school year. The school may comply with this requirement by filing a surety bond payable to the state from a surety, and in an amount determined by the Department.

(b) Participating schools shall provide to the Department all documentation required for a student's participation, including the nonpublic school's and student's fee schedules.

(4) Participating schools and participating providers shall:

(a) Be academically accountable to the account holder for meeting the educational needs of the student by:

1. At a minimum, annually providing to the account holder a written explanation of the student's progress; and

2. Cooperating with the parent of a student enrolled in the IEA program, or a student enrolled in the IEA program who has attained the age of majority, who chooses the student to participate in the statewide assessments.
  - (b) Comply with all health and safety laws or codes that apply to nonpublic schools and the profession of the participating provider;
  - (c) Certify that they shall not discriminate against students or applicants on the basis of race, color, or national origin;
  - (d) Conduct criminal background checks on employees;
  - (e) Exclude from employment any person not permitted by state law to work in a nonpublic school or as a participating provider; and
  - (f) Exclude from employment any person who might reasonably pose a threat to the safety of students.
- (5) The funds in an IEA may be used only for educational purposes. Participating schools, postsecondary institutions, and education providers that enroll participating students shall provide account holders with a receipt for all qualifying expenses.
- (6) Participating schools shall verify each student's continued enrollment and attendance by following the procedures posted on the Department's website. The Department may suspend or remove a school from participating in the IEA program if the school fails to verify a student's continued enrollment and attendance. A participating school or participating provider may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.
- (7) Annually, participating schools shall submit a notice to the Department if they intend to continue participating in the program by following the procedures developed by the Department.
- (8) The Department may require participating schools to submit to the Department a financial audit of the school conducted by a certified public accountant. Such audit shall include a statement that the report is free of material misstatements and fairly represents the participating school's maximum total tuition and fees. Any funds determined by the Department to be expended in a manner inconsistent with this part shall be returned to the state.
- (9) The Department may suspend or terminate a participating school or participating provider from participating in the program if the Department determines the school or provider has failed to comply with the requirements of the Act, these rules, and/or the procedures set by the Department.
  - (a) If the Department suspends or terminates a school's or provider's participation, the Department shall notify affected participating students and/or their parent of the decision. If a participating school or provider is suspended or if a participating school or provider withdraws from the program, affected participating students remain eligible to participate in the program.
  - (b) A participating school or participating provider may appeal the Department's decision pursuant to the appeals procedures in the Rules of the State Board of Education.
- (10) If a student withdraws from a participating school and transfers to another participating school or returns to the LEA, the participating school shall refund the tuition and fees on a prorated basis based on the number of days the student was enrolled in the school. If the student transfers to another participating school, the funds shall be returned to the student's IEA. If the student returns to the LEA, the funds from the IEA shall

be returned to the state treasurer to be placed in the basic education program (BEP) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

- (11) Third parties are prohibited from sending IEAs to collections in order to settle unpaid debts. All contracts entered into are the responsibility of the private parties involved.

Authority: T.C.A. §§ 49-1-302 and 49-10-1405.

#### **0520-01-11-.09 RETURN TO LOCAL EDUCATION AGENCY.**

- (1) A participating student may return to the LEA in which the student resides and the school which the student is zoned to attend upon termination of the student's participation in the program.
- (2) If the student transfers from a nonpublic school and enrolls in the LEA for which the student is zoned to attend, the parent or student shall notify the Department by following the procedures and timeline set by the Department.
- (3) Upon a student's return to the LEA, the Department shall close the participating student's IEA. Upon a student's withdrawal from the school, participating schools and providers shall send all educational records of the participating student to the LEA or other school identified by the parent.
- (4) The LEA shall enroll the student and provide instruction in the general education curriculum.
- (5) If the parent or student who has attained the age of majority requests, in writing, an evaluation for eligibility pursuant to the Individuals with Disabilities Education Act, the LEA shall treat the request as a request for an initial evaluation under 34 C.F.R. § 300.301.

Authority: T.C.A. §§ 49-1-302 and 49-10-1403.

#### **0520-01-11-.10 APPEAL PROCEDURES.**

- (1) Participating schools and providers may appeal the denial, suspension, or termination of the entity's participation in the IEA program, and a parent or student who has attained the age of majority may appeal a denial of determination of eligibility, preauthorization request, a denial of an expense paid for using IEA funds, or removal of the student from the IEA program pursuant to the following two (2) step appeal process:
- (a) Step one (1): The appeal should be on the form provided by the Department and should be submitted to the commissioner of education within ten (10) business days of receipt of the notice of denial, suspension, termination, and/or removal. Notice of denial, suspension, termination, and/or removal shall be provided electronically and via first-class USPS mail and be deemed received three (3) business days after the date of postmark. The commissioner of education, or the commissioner's designee shall review the appeal within thirty (30) calendar days. The commissioner's decision shall be rendered within ten (10) business days of the date of the review.
- (b) Step two (2): The account holder shall be notified of the commissioner's decision for the step one (1) appeal electronically and via first-class USPS. Such notice shall be deemed received three (3) business days after the date of postmark. An appeal of the commissioner's decision in step one (1) shall be filed with the commissioner by the account holder within thirty (30) days and shall conform to the Uniform Administrative Procedures Act (T.C.A. Title 4, Chapter 5).

Authority: T.C.A. § 49-1-302.

**0520-01-11-.11 CONFLICT OF INTEREST.**

- (1) Use of IEA funds must be for the sole benefit of the participating student for which the IEA is established. Any services, resources, and/or equipment purchased using IEA funds shall only be used by the participating student whose IEA paid for said services, resources, and/or equipment.
- (a) It is a conflict of interest and is considered a misuse of IEA funds against IEA program rules and procedures for a family member of a participating student, including step parent, or member of an eligible student's household to derive any financial benefit from the IEA program.
- (b) It is also a conflict of interest and against IEA program rules and procedures for a family member of a participating student, including a step parent, or a member of a participating student's household to provide a professional recommendation or approval for a service or the use of computer hardware or other technological device for the participating student.

**Authority: T.C.A. § 49-1-302.**

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chancey	X				
Edwards	X				
Hartgrove	X				
Johnson	X				
Pearre	X				
Roberts				X	
Rolston	X				
Tucker	X				
Troutt				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee State Board of Education (board/commission/ other authority) on 01/29/2016 (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: 09/18/2015

Rulemaking Hearing(s) Conducted on: (add more dates). 11/12/2015

Date: 8/5/16

Signature: [Handwritten Signature]

Name of Officer: Dr. Sara Heyburn

Title of Officer: Executive Director



MY COMMISSION EXPIRES:  
October 18, 2016

Subscribed and sworn to before me on: 8/5/16

Notary Public Signature: [Handwritten Signature]

My commission expires on: 10-18-16

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.

[Handwritten Signature]

Herbert H. Slatery III  
Attorney General and Reporter

8/18/2016

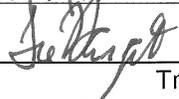
Date

Department of State Use Only

Filed with the Department of State on: 9/2/16

Effective on:

12/1/14



Tre Hargett  
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Tennessee Auctioneer Commission

DIVISION: Regulatory Boards

SUBJECT: Auctioneer Duties, Licenses, and Auctions; Civil Penalties and Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 4-3-1304

EFFECTIVE DATES: December 5, 2016 through June 30, 2017

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

**Amendment to Rule 0160-01-.01 Duties of an Auctioneer:** This amendment will number the existing paragraph within the rule as paragraph (1) and add a new paragraph (2) which will state that a licensed auctioneer shall not accept offers for hire to call bids at any auction held by an auction house, auction barn, or auction gallery that is not the holder of valid auction gallery license.

**Amendment to Rule 0160-01-.05 Publication of Name:** This amendment will change the reference to "sponsoring auctioneer" and "auctioneer" within the existing rule to instead reference the "principal auctioneer."

**Amendment to Rule 0160-01-.11 Civil Penalties:** This amendment will add a civil penalty range of 0-\$1,000 to violations of T.C.A. § 62-19-125(a) and (b) as well as any Commission rule or order. The amendment also adds a provision stating that each day of a continued violation may constitute a separate violation.

**Amendment to Rule 0160-01-.14 Fees:** This amendment will delete a paragraph which provided for a penalty fee of one hundred dollars (\$100.00) for any notification of change of information which is made to the Commission more than sixty days after the effective date of the new information.

**Amendment to Rule 0160-01-.16 Non-Auctioneer Firm License Application:** This amendment will specify that any non-auctioneer owned firm must register one licensed auctioneer who will serve as the firm's principal auctioneer and must attend and accept responsibility for all auctions. The amendment further states that the Commission must be notified within ten days of the absence of the non-auctioneer owned firm's principal auctioneer, and a new principal auctioneer must be in place (and the Commission notified) on or before thirty days have passed. The amendment specifies that no auctions shall be conducted by the nonauctioneer owned firm until a new principal auctioneer is placed.

**Amendment to Rule 0160-01-.24 Notification of Change of Information:** This amendment adds a new paragraph (2) which states that the Commission must be notified within ten days of the absence of a firm's principal auctioneer, and a new principal auctioneer must be in place (and the Commission notified) on or before thirty days have passed.

**New Rule 0160-01-.26 Escrow Account Requirement:** This proposed new rule states that all auction firms and galleries must have an escrow or trustee account for all funds which are held which belong to others as a result of an auction sale.

**New Rule 0160-01-.27 Livestock Auction Sales:** This proposed new rule states that the licensing exemption found within T.C.A. § 62-19-103 does not apply to any livestock auction which is not registered and regulated by the packers and stockyards administration. Further, this proposed new rule states that if a registered livestock auction facility also sells additional items at a regulated auction and the proceeds are deposited into a packers and stockyards account, then no firm or gallery license is necessary, but the person conducting the auction must hold an auctioneer's license. Finally, this proposed new rule states that if a regulated livestock auction conducts merchandise, equipment, or personal property auctions which are not held during a livestock auction, then the facility must have a firm or gallery license, and the person conducting said auction must have an auctioneer's license.

**New Rule 0160-01-.28 Online Auctions:** This proposed new rule states that if the time for a fixed time online only auction is extended beyond the stated ending time, then the auction and the person conducting the auction are no longer included in the licensing exemption found at T.C.A. § 62-19-103.

**New Rule 0160-01-.29 Military Applicants:** This proposed new rule provides for the expedited processing of applications for certain military personnel and their spouses, the recognition of education earned through military service, and the allowance of license renewal for six months from the release from active duty without penalty when certain specified circumstances are met.

## 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.

### Comment 1

Rule 0160-01-.26 (Escrow Account Requirement)

There was a comment asking if the Commission would consider authorizing a waiver of the proposed escrow account requirement for licensees who do not handle funds that belong to others if such licensees filled out a form proscribed by the Board swearing or affirming that they do not handle client funds.

**Agency Response to Comment 1:** The agency stated that, although it appreciated the comment and might not be opposed in principle to such a waiver, it does not believe it has the legal authority to grant such a waiver. Therefore, the agency declined to amend the proposed rule language for Rule 0160-01-.26 as set forth in the Notice of Rulemaking Hearing in any way.

### Comment 2

Rule 0160-01-.01 (Duties of Auctioneer)

There was a comment stating that, in Rule 0160-01-.01(1), that the pronoun "his" that appears in the rule is not appropriately gender neutral because the rule uses "his" instead of "his or her". The commenter asked if the Commission would consider amending its rules to use gender neutral pronouns where appropriate.

**Agency Response to Comment 2:** The agency agreed with the commenter and voted to change the language in Rule 0160-01-.01(1) from "his" to "his or her". The agency further stated that, in the future, if it is made aware of other instances of pronouns in its rules which are not appropriately gender neutral, it will address any such instances as necessary at that time.

### Comment 3

Rule 0160-01-.24 (Notification of Change of Information)

There was a comment stating that the current Rule 0160-01-.24 allows for 60 days for a licensee to notify the Commission in writing of any information previously submitted to the Commission by the licensee. The commenter noted that proposed Rule 0160-01-.24(2) would only allow an auctioneer firm thirty (30) days to replace a principal auctioneer and to notify the Board in writing regarding that replacement. The commenter stated that he believes that 30 days is too short a time to recruit and hire a new principal auctioneer, and he asked if the Commission would consider leaving the current rule allowing 60 days to replace a principal auctioneer in place and not adopting the new 30 day replacement and notification period.

**Agency Response to Comment 3:** The agency stated that, although it appreciated the commenter's perspective, it believes that a principal auctioneer can be replaced in 30 days and that the Tennessee Real Estate Commission has a similar replacement and notification time frame in place that seems to work well. Accordingly, the agency declined to amend the proposed rule language for Rule 0160-01-.24(2) as set forth in the Notice of Rulemaking Hearing in any way.

### Comment 4

Rule 0160-01-.28 (Online Auctions)

There was a comment asserting that the legislative intent behind T.C.A. § 62-19-103(9) regarding the exemption of online auctions with a fixed time ending was to take a "hands off" approach to online auctions, and as such, that even online auctions which allow for extensions of the bidding time should qualify for the exemption for online auctions set forth in T.C.A. § 62-19-103(9). Based on that assertion, the commenter requested that the Board not adopt proposed Rule 0160-01-.28, or in the alternative, that the Commission work with the legislature to codify any language regarding the exemption of online auctions directly into the Auctioneer statute.

**Agency Response to Comment 4:** The agency stated that, although it appreciated the commenter's opinion, it believes that the Auctioneer statute only authorizes an exemption for online auctions which have a fixed time ending. The Commission also made reference to Attorney General's Opinion 06-053 (issued March 27, 2006), which appears to hold that online auctions are exempt from the requirements of the Auctioneer statute, in part, because such auctions have a fixed time ending. Accordingly, the agency declined to amend the proposed rule language for Rule 0160-01-28 as set forth in the Notice of Rulemaking Hearing in accordance with the commenter's suggestions.

**Comment 5**

Rule 0160-01-.26 (Escrow Account Requirement)

There was a comment requesting that the Commission consider amending certain language of proposed Rule 0160-01-.26, which, as set forth in the Notice of Rulemaking Hearing, reads as follows: "All licensed auction firms and galleries shall maintain an escrow or trustee account for all funds that belong to others but which are held by the firm or gallery as a result of an auction sale." Specifically, the commenter requested that the Commission change the word "all" to "any", that the Commission change the word "sale" to "contract or sale", and that the Commission change the words "but which are held by" to "coming into the possession of the firm or gallery".

**Agency Response to Comment 5:** The agency stated that it believes that the words "all" and "sale" are clear, appropriate, and accurately reflect the agency's regulatory authority as granted by the Auctioneer statute. As such, the Commission declined to make those two changes as requested by the commenter. However, the Commission agrees with the commenter that the words "coming into the possession of the firm or gallery" are clearer and more accurate than the words "but which are held by". Therefore, the Commission voted to amend proposed Rule 0160-01-.26 to read as follows: "All licensed auction firms and galleries shall maintain an escrow or trustee account for all funds that belong to others coming into the possession of the firm or gallery as a result of an auction sale."

**Comment 6**

Rule 0160-01-.27 (Livestock Auction Sales)

There was a comment requesting that the Commission consider striking (3) of proposed Rule 0160-01-.27 as set forth in the Notice of Rulemaking Hearing, which reads as follows: "If the operator of a livestock auction sale that is registered with and regulated by the Packers & Stockyards Administration sells any items other than livestock at a regulated livestock auction and the proceeds are deposited into the shipper's proceeds account, then neither a Tennessee auction firm nor a Tennessee auction gallery is required. Any such auction must still be conducted by a Tennessee licensed auctioneer." The commenter expressed concern that this language would allow livestock auctioneers to auction personal property without being appropriately licensed by the Commission, thereby creating a risk of harm to the public if livestock auctioneers were allowed to auction personal property without being properly licensed.

**Agency Response to Comment 6:** The agency stated that it agrees with the commenter's concerns. Accordingly, the Commission voted to strike paragraph (3) from proposed Rule 0160-01-.27 and to renumber paragraphs (4) and (5) as paragraphs (3) and (4).

**Comment 7**

Rule 0160-01-.28 (Online Auctions)

There was a comment requesting that, for the sake of grammatical correctness, the Commission consider amending the language of proposed Rule 0160-01-.28 as set forth in the Notice of Rulemaking Hearing, which reads as follows: "If the time for an online only auction with a fixed bidding time is extended beyond the online auction's fixed ending time, then the auction and the person conducting the auction are not included within the exemption specified at T.C.A. § 62-19-103, and the statutes and rules of the Tennessee Auctioneer Commission shall govern the online auction." The commenter requested that proposed Rule 0160-01-.28 be amended to read as follows: "If the time for an online-only auction with a fixed-bidding time is extended beyond the fixed-ending time of the online-only auction, then the auction and the person conducting the auction are not included within the exemption specified at T.C.A. § 62-19-103(9), and the statutes and rules of the Tennessee Auctioneer Commission shall govern the online auction."

**Agency Response to Comment 7:** The agency stated that it agrees with the commenter, and voted to amend

the language of proposed Rule 0160-01-.28 as requested by the commenter.

**Comment 8**

Rule 0160-01-.01 (Duties of Auctioneer)

There was a comment requesting that the Commission speak to the necessity and scope of proposed Rule 0160-01-.01(2) as set forth in the Notice of Rulemaking Hearing, which reads as follows: "No licensed auctioneer shall accept offers for hire to call bids at any auction held by an auction house, auction barn, or auction gallery that is not either: (a) owned and operated by a licensed auctioneer holding a valid firm license; or (b) licensed as a gallery pursuant to the provisions of T.C.A. § 62-19-125."

**Agency Response to Comment 8:** The agency stated that the authority for this proposed rule is T.C.A. § 62-19-125, which states that a licensed auctioneer may only call bids at a licensed auction firm or a licensed gallery. The commenter stated that she now understands the language of this proposed rule more clearly, and that she does not have any suggested changes to the proposed rule.

**Comment 9**

Rule 0160-01-.26 (Escrow Account Requirement)

There was a comment requesting that the Commission consider amending the language of proposed Rule 0160-01-.26 as set forth in the Notice of Rulemaking Hearing, which reads as follows: "All licensed auction firms and galleries shall maintain an escrow or trustee account for all funds that belong to others but which are held by the firm or gallery as a result of an auction sale." The commenter requested that the Commission add language from T.C.A. § 62-19-112(b)(4) such that proposed Rule 0160-01-.26 reads as follows: "All licensed auction firms and galleries shall maintain an escrow or trustee account for all funds that belong to others but which are held by the firm or gallery as a result of an auction sale, provided, however, that nothing in this section shall be construed to require an auto auction as defined in § 55-17-102(2)(A) to maintain or use an escrow account when the auction does not accept and deposit funds of others."

**Agency Response to Comment 9:** The agency stated that T.C.A. § 62-19-112(b)(4) is sufficiently clear to provide notice to the public and to auctioneer licensees that "an auto auction as defined in § 55-17-102(2)(A) to maintain or use an escrow account when the auction does not accept and deposit funds of others" is not required to maintain or use an escrow account. Therefore, the Commission declined to adopt the amendatory language to proposed Rule 0160-01-.26 as suggested by this commenter.

**Comment 10**

Rule 0160-01-.28 (Online Auctions)

There was a comment thanking the Commission for proposing and approving proposed Rule 0160-01-.28 regarding online auctions.

**Agency Response to Comment 10:** The agency thanked the commenter for her comments and asked if she required any further response to her comment. The commenter stated that she required no further response to her comment and simply wished to express her thanks to the Commission for their efforts to regulate online auctions.

**Comment 11**

Rule 0160-01-.28 (Online Auctions)

There was a comment asserting that proposed Rule 0160-01-.28 would require the commenter, who has been selling titled vehicles to the public online under his auctioneer license and his auctioneer firm license, to obtain a public motor vehicle auctioneer's license (which the commenter does not believe he needs under the current law and rules). The commenter stated that his business is more profitable when he doesn't have to have a fixed closing time for his online auto auctions. Accordingly, while the commenter said he would obtain any additional licenses to continue operating his business as necessary, he said he simply wished to bring his situation to the Commission's attention prior to approval of this proposed rule.

**Agency Response to Comment 11:** The agency stated that, although it appreciated the commenter's opinion, it believes that proposed Rule 0160-01-.28 accurately reflects the Commission's interpretation of the online auction

exemption as set forth in T.C.A. § 62-19-103(9). Accordingly, the agency voted to move forward with the language for proposed Rule 0160-01-.28 as set forth in Comment 7 (see above).

### **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.

1. The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules:

There will be no known overlap, duplication, or conflict with other federal, state, or local governmental rules.

2. Clarity, conciseness, and lack of ambiguity in the rule:

The rules are clear, concise, and unambiguous. Further, the rules are not open to different interpretations.

3. The establishment of flexible compliance and reporting requirements for small businesses:

These rules provide uniform and reasonable requirements, both for licensees of the Tennessee Auctioneer Commission, as well as those individuals who wish to be licensed with the Tennessee Auctioneer Commission. These rules assist with ensuring the welfare and safety of the citizens of Tennessee.

4. The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses:

These rules do not establish additional schedules or deadlines compliance or reporting requirements for licensees. These rules allow military personnel who are engaged in small business flexible reporting requirements with regard to their licenses.

5. The consolidation or simplification of compliance or reporting requirements for small businesses:

These rules, some of which amend current rules and some of which are new rules, are intended to provide clarification and do not complicate compliance or reporting requirements for small businesses.

6. The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule:

The performance standards in these rules aid in protecting the public's health, safety and welfare. These rules do not establish design or operational standards.

7. The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

These rules do not result in the unnecessary creation of entry barriers or other effects that will stifle entrepreneurial activity, curb innovation, or increase costs.

### **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 proposed rule changes are not projected to have any impact on local governments.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

**Amendment to Rule 0160-01-.01 Duties of an Auctioneer:** This amendment will number the existing paragraph within the rule as paragraph (1) and add a new paragraph (2) which will state that a licensed auctioneer shall not accept offers for hire to call bids at any auction held by an auction house, auction barn, or auction gallery that is not the holder of valid auction gallery license.

**Amendment to Rule 0160-01-.05 Publication of Name:** This amendment will change the reference to "sponsoring auctioneer" and "auctioneer" within the existing rule to instead reference the "principal auctioneer."

**Amendment to Rule 0160-01-.11 Civil Penalties:** This amendment will add a civil penalty range of 0-\$1,000 to violations of T.C.A. § 62-19-125(a) and (b) as well as any Commission rule or order. The amendment also adds a provision stating that each day of a continued violation may constitute a separate violation.

**Amendment to Rule 0160-01-.14 Fees:** This amendment will delete a paragraph which provided for a penalty fee of one hundred dollars (\$100.00) for any notification of change of information which is made to the Commission more than sixty (60) days after the effective date of the new information.

**Amendment to Rule 0160-01-.16 Non-Auctioneer Firm License Application:** This amendment will specify that any non-auctioneer owned firm must register one (1) licensed auctioneer who will serve as the firm's principal auctioneer and must attend and accept responsibility for all auctions. The amendment further states that the Commission must be notified within ten (10) days of the absence of the non-auctioneer owned firm's principal auctioneer, and a new principal auctioneer must be in place (and the Commission notified) on or before thirty (30) days have passed. The amendment specifies that no auctions shall be conducted by the non-auctioneer owned firm until a new principal auctioneer is placed.

**Amendment to Rule 0160-01-.24 Notification of Change of Information:** This amendment adds a new paragraph (2) which states that the Commission must be notified within ten (10) days of the absence of a firm's principal auctioneer, and a new principal auctioneer must be in place (and the Commission notified) on or before thirty (30) days have passed.

**New Rule 0160-01-.26 Escrow Account Requirement:** This proposed new rule states that all auction firms and galleries must have an escrow or trustee account for all funds which are held which belong to others as a result of an auction sale.

**New Rule 0160-01-.27 Livestock Auction Sales:** This proposed new rule states that the licensing exemption found within T.C.A. § 62-19-103 does not apply to any livestock auction which is not registered and regulated by the packers and stockyards administration. Further, this proposed new rule states that if a registered livestock auction facility also sells additional items at a regulated auction and the proceeds are deposited into a packers and stockyards account, then no firm or gallery license is necessary, but the person conducting the auction must hold an auctioneer's license. Finally, this proposed new rule states that if a regulated livestock auction conducts merchandise, equipment, or personal property auctions which are not held during a livestock auction, then the facility must have a firm or gallery license, and the person conducting said auction must have an auctioneer's license.

**New Rule 0160-01-.28 Online Auctions:** This proposed new rule states that if the time for a fixed time online only auction is extended beyond the stated ending time, then the auction and the person conducting the auction are no longer included in the licensing exemption found at T.C.A. § 62-19-103.

**New Rule 0160-01-.29 Military Applicants:** This proposed new rule provides for the expedited processing of applications for certain military personnel and their spouses, the recognition of education earned through military service, and the allowance of license renewal for six (6) months from the release from active duty without penalty when certain specified circumstances are met.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 4-3-1304 requires each program attached to the division of regulatory boards (which includes the Tennessee Auctioneer Commission) to promulgate rules and regulations to effectuate the purposes of this act. The primary purpose of T.C.A. § 4-3-1304 is for each program attached to the division of regulatory boards to promulgate rules establishing an expedited license application and/or renewal process for certain members of the military. The proposed amendment to Rule 0160-01-.29 is promulgated in response to T.C.A. § 4-3-1304.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The proposed amendments to the Tennessee Auctioneer Commission rules will affect auctioneers and auction firms licensed by the Commission. Although there were several public comments received as part of this rulemaking hearing process, it does not appear that substantial opposition to these proposed rule changes exists among the individuals and businesses most directly affected by the proposed rule changes.

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

Although it does not appear to be directly on point, Attorney General Opinion 06-053 (issued March 27, 2006) does contain some language regarding potential interpretation of the Auctioneer statute regarding online auctions.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The anticipated fiscal impact to state and local government revenues and expenditures of these proposed rule changes is anticipated to be minimal.

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

Sarah M. Mathews, Assistant General Counsel for the Tennessee Auctioneer Commission

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

Sarah M. Mathews, Assistant General Counsel for the Tennessee Auctioneer Commission

- (H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

500 James Robertson Parkway, Nashville, TN 37243; Phone: (615) 532-6303; E-Mail: Sarah.Mathews@tn.gov

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

N/A

**Department of State  
Division of Publications**

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Sequence Number: 09-04-16  
Rule ID(s): 6298  
File Date: 9/6/16  
Effective Date: 12/5/16

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

Agency/Board/Commission:	Tennessee Auctioneer Commission
Division:	Regulatory Boards
Contact Person:	Sarah M. Mathews
Address:	500 James Robertson Parkway, Nashville, Tennessee 37243
Phone:	(615) 741-3072
Email:	<a href="mailto:Sarah.Mathews@tn.gov">Sarah.Mathews@tn.gov</a>
Agency/Board/Commission:	Tennessee Auctioneer Commission

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

- Amendment  
 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
0160-01	Regulations of Auctioneers
Rule Number	Rule Title
0160-01-01	Duties of Auctioneer
0160-01-05	Publication of Name
0160-01-11	Civil Penalties
0160-01-14	Fees
0160-01-16	Non-Auctioneer Firm License Application
0160-01-24	Notification of Change of Information
0160-01-26	Escrow Account Requirement
0160-01-27	Livestock Auction Sales
0160-01-28	Online Auctions
0160-01-29	Military Applicants

Chapter 0160-01  
Regulations of Auctioneers

Amendments

Rule 0160-01-.01 Duties of Auctioneer is amended by amending and numbering the existing paragraph as paragraph (1) and adding a new paragraph (2), which shall read as follows:

- (1) The Auctioneer shall be responsible for the advertising and management of the sale and account for all proceeds therefrom and shall, over his or her signature, issue a closing statement to the seller or sellers.
- (2) No licensed auctioneer shall accept offers for hire to call bids at any auction held by an auction house, auction barn, or auction gallery that is not either:
  - (a) owned and operated by a licensed auctioneer holding a valid firm license; or
  - (b) licensed as a gallery pursuant to the provisions of T.C.A. § 62-19-125.

Authority: T.C.A. §§ 62-19-106 and 62-19-125.

Rule 0160-01-.05 Publication of Name is amended by deleting the phrase "name of its sponsoring auctioneer, and the auctioneer" in paragraph (2) and replacing it with the phrase "name of its principal auctioneer, and the principal auctioneer" so that, as amended, the paragraph shall read:

- (2) All advertising of an auction sale by an auction firm not owned by a licensed auctioneer shall include the name of its ~~sponsoring~~ principal auctioneer, and the principal auctioneer shall attend all auction sales.

Authority: T.C.A. §§ 62-19-106 and 62-19-111.

Rule 0160-01-.11 Civil Penalties is amended by deleting the text of the rule in its entirety and substituting, instead, the following language so that, as amended, the rule shall read:

- (1) With respect to any person required to be licensed by the Commission, the Commission may assess a civil penalty against such person in accordance with the following schedule:

Violation	Penalty
T.C.A. § 62-19-102(a)(1)	0 - \$1,000
T.C.A. § 62-19-102(a)(2)	0 - \$1,000
T.C.A. § 62-19-102(a)(3)	0 - \$1,000
T.C.A. § 62-19-102(b)	0 - \$1,000
T.C.A. § 62-19-112(b)(1)	0 - \$1,000
T.C.A. § 62-19-112(b)(2)	0 - \$1,000
T.C.A. § 62-19-112(b)(3)	0 - \$1,000
T.C.A. § 62-19-112(b)(4)	0 - \$1,000
T.C.A. § 62-19-112(b)(5)	0 - \$1,000
T.C.A. § 62-19-112(b)(6)	0 - \$1,000
T.C.A. § 62-19-112(b)(7)	0 - \$1,000
T.C.A. § 62-19-112(b)(8)	0 - \$1,000
T.C.A. § 62-19-112(b)(9)	0 - \$1,000
T.C.A. § 62-19-112(b)(10)	0 - \$1,000
T.C.A. § 62-19-112(b)(11)	0 - \$1,000
T.C.A. § 62-19-112(b)(12)	0 - \$1,000

T.C.A. § 62-19-112(b)(13)	0 - \$1,000
T.C.A. § 62-19-125(a)	0 - \$1,000
<u>T.C.A. § 62-19-125(b)</u>	<u>0 - \$1,000</u>
T.C.A. § 62-19-128(b)	0 - \$1,000
T.C.A. § 62-19-128(c)	0 - \$1,000
T.C.A. § 62-19-128(d)	0 - \$1,000
T.C.A. § 62-19-128(e)	0 - \$1,000
T.C.A. § 62-19-128(f)	0 - \$1,000
<u>Any Commission Rule or Order</u>	<u>0 - \$1,000</u>

(2) Each day of a continued violation under paragraph (1) constitutes a separate violation.

(3) (2) The Commission's administrative director and investigator, acting on behalf of the Commission, may issue citations to unlicensed individuals or entities in accordance with T.C.A. § 62-19-126 and the following schedule:

Violation	Penalty
T.C.A. § 62-19-102 (a) (1)	\$50-\$2,500
T.C.A. § 62-19-102 (a) (2)	\$50-\$2,500
T.C.A. § 62-19-102 (b)	\$50-\$2,500
T.C.A. § 62-19-125 (a)	\$50-\$2,500

(4) (3) In determining the amount of any penalty to be assessed pursuant to this rule, the Commission may consider such factors as the following:

- (a) Whether the amount imposed will be a substantial economic deterrent to the violator;
- (b) The circumstances leading to the violation;
- (c) The severity of the violation and the risk of harm to the public;
- (d) The economic benefits gained by the violator as a result of non-compliance; and
- (e) The interest of the public.

Authority: T.C.A. §§ 56-1-308, 62-19-106, 62-19-116 and 62-19-126.

Rule 0160-01-.14 Fees is amended by deleting paragraph (6) in its entirety:

(6) ~~Any notification of change of information pursuant to rule 0160-01-.24 made to the Commission more than sixty (60) days after the effective date of the new information shall result in a penalty of one hundred dollars (\$100.00).~~

Authority: T.C.A. §§ 62-19-106(b).

Rule 0160-01-.16 Non-Auctioneer Firm License Application is amended by deleting the name and text of the rule in its entirety and substituting, instead, the following language so that, as amended, the name and rule shall read:

0160-01-.16 Non-Auctioneer Owned Firms LICENSE APPLICATION.

(1) A non-auctioneer owned firm is an auction firm which is not owned in any part by a person who holds a Tennessee auctioneer's license.

- ~~(2) (1) Upon application to the Commission for an auction firm license or renewal thereof by any business entity, including a limited liability company, corporation or partnership not engaged in the auction business as the entity's principal business, the applicant shall designate a natural person who is an employee, owner, shareholder, partner, or member of the entity, who meets the applicable requirements of T.C.A. § 62-19-111 and who will be responsible for such license. Every application by a business entity, including a limited liability company, corporation or partnership not principally engaged in the auction business, for an auction firm license or license renewal shall designate as the applicant a natural person who is an employee, owner, shareholder, partner, or member of the entity and meets the applicable requirements of T.C.A. § 62-19-111. The designated applicant shall be the individual responsible for the firm's license.~~
- ~~(3) (2) An Auction firm as described in paragraph (1), must have at least one (1) licensed auctioneer to conduct and call auctions for the firm at each location involved in auction sales. A non-auctioneer owned firm must also designate in its auction firm license application one (1) licensed auctioneer who shall serve as the firm's principal auctioneer. The principal auctioneer shall attend and, along with the firm, shall accept responsibility for all auctions conducted by the firm.~~
- ~~(4) Any non-auctioneer owned firm must notify the Commission within ten (10) days of the death, resignation, termination or other extended absence of the firm's principal auctioneer. The firm shall have no longer than thirty (30) days from the death, resignation, termination or other extended absence within which to replace the principal auctioneer and must immediately notify the Commission in writing of the auctioneer's replacement. The firm shall not conduct any auctions until the Commission has received its designation of a new principal auctioneer.~~

Authority: T.C.A. §§ 62-19-102, 62-19-106, and 62-19-111.

Rule 0160-01-.24 Notification of Change of Information is amended by adding the following language as a new paragraph (2):

- (2) Any firm must notify the Commission within ten (10) days of the death, resignation, termination or other extended absence of the firm's principal auctioneer. The firm shall have no longer than thirty (30) days from the death, resignation, termination or other extended absence within which to replace the principal auctioneer and must immediately notify the Commission in writing of the auctioneer's replacement.

Authority: T.C.A. §§ 62-19-106 and 62-19-111.

Chapter 0160-01  
Regulations of Auctioneers

New Rules

0160-01-.26 Escrow Account Requirement.

All licensed auction firms and galleries shall maintain an escrow or trustee account for all funds that belong to others coming into the possession of the firm or gallery as a result of an auction sale.

Authority: T.C.A. §§ 62-19-106 and 62-19-112(b)(4).

0160-01-.27 Livestock Auction Sales.

- (1) Pursuant to T.C.A. § 62-19-103(8), the provisions of title 62, chapter 19 do not apply to any livestock auction sale regulated by the United States Department of Agriculture Packers & Stockyards Administration, if the sale uses:

- (a) The shipper's proceeds account required by federal regulations; and
  - (b) A Tennessee licensed auctioneer.
- (2) Any operator of a livestock auction sale that is not registered with and regulated by the Packers & Stockyards Administration shall not qualify for the firm or gallery license exemption under T.C.A. § 62-19-103(8) and must be appropriately licensed.
  - (3) Any person acting as an auction firm or gallery outside of a livestock auction regulated by the Packers & Stockyards Administration shall hold a Tennessee auction firm or gallery license and is subject to all statutes and rules of the Tennessee Auctioneer Commission notwithstanding such person's registration with the Packers & Stockyards Administration.
  - (4) Nothing in this rule shall be construed as exempting any person acting as or advertising or representing to be an auctioneer or apprentice auctioneer from the licensure requirements of T.C.A. § 62-19-102.

Authority: T.C.A. §§ 62-19-102, 62-19-103, and 62-19-106.

0160-01-.28 Online Auctions.

Pursuant to the exemption in T.C.A. § 62-19-103(9), "timed listings" do not include listings that are extended or those in which a bidder has the opportunity to increase a bid beyond the original deadline.

Authority: T.C.A. §§ 62-19-102, 62-19-103, and 62-19-106.

0160-01-.29 Military Applicants

- (1) An applicant for licensure meeting the requirements of T.C.A. § 4-3-1304(d)(1) may:
  - (a) Be issued a license upon application and payment of all fees required for the issuance of a regular license of the same type if, in the opinion of the Commission, the requirements for licensure of such other state are substantially equivalent to that required in Tennessee; or
  - (b) Be issued a temporary permit as described herein if the Commission determines that the applicant's license does not meet the requirements for substantial equivalency, but that the applicant could perform additional acts, including – but not limited to – education, training, or experience, in order to meet the requirements for the license to be substantially equivalent. In that case, the Commission may issue a temporary permit upon application and payment of all fees required for issuance of a regular license of the same type which shall allow such person to perform services as if fully licensed for a set period of time that is determined to be sufficient by the Commission for the applicant to complete such requirements.
    - 1. After completing those additional requirements and providing the Commission with sufficient proof thereof as may be required, a full license shall be issued to the applicant with an issuance date of the date of the original issuance of the temporary permit and an expiration date as if the full license had been issued at that time.
    - 2. A temporary permit shall be issued for a period of less than the length of a renewal cycle for a full license.

3. A temporary permit shall expire upon the date set by the Commission and shall not be subject to renewal except through the timely completion of the requirements for substantial equivalency as required by the Commission or by an extension of time granted for good cause by the Commission.
  4. Should an extension to a temporary permit cause the permit to be in effect longer than the renewal cycle of a full license, then the holder of the temporary permit shall file a renewal application with such documentation and fees, including completion of continuing education, as are required by the Commission for all other renewals of a full license of the same type.
- (2) Military education, training, or experience completed by a person described at T.C.A. § 4-3-1304(d)(1)(B)(ii)(a)-(c) shall be accepted toward the qualifications, in whole or in part, to receive any license issued by the Commission under the Division of Regulatory Boards if such military education, training or experience is determined by the Commission to be substantially equivalent to the education, training, or experience required for the issuance of such license.
- (3) Renewal:
- (a) Any licensee who is a member of the national guard or a reserve component of the armed forces of the United States called to active duty whose license expires during the period of activation shall be eligible to be renewed upon the licensee being released from active duty without:
    1. Payment of late fees or other penalties;
    2. Obtaining continuing education credits when:
      - (i) Circumstances associated with the person's military duty prevented the obtaining of continuing education credits and a waiver request has been submitted to the Commission; or
      - (ii) The person performs the licensed occupation as part of such person's military duties and provides documentation sufficient to demonstrate such to the Commission.
    3. Performing any other similar act typically required for the renewal of a license.
  - (b) The license shall be eligible for renewal pursuant to this paragraph for six (6) months from the person's release from active duty.
  - (c) Any person renewing under this paragraph shall provide the Commission such supporting documentation evidencing activation as may be required by the Commission prior to renewal of any license pursuant to this paragraph.

Authority: T.C.A. §§ 4-3-1304 and 62-19-106.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Howard Phillips	X				
Jeff Morris	X				
Bobby Colson	X				
Brian Colyer	X				
Adam Lewis	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Auctioneer Commission on 10/06/2014, 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: 06/24/14

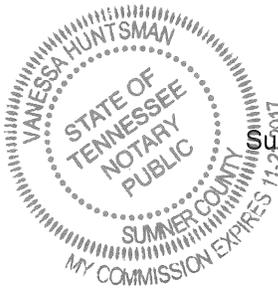
Rulemaking Hearing(s) Conducted on: (add more dates). 10/06/14

Date: August 11, 2014

Signature: Sarah M. Mathews

Name of Officer: SARAH M. MATHIEWS

Title of Officer: ASSISTANT GENERAL COUNSEL



Subscribed and sworn to before me on: August 11, 2014

Notary Public Signature: Vanessa Huntsman

My commission expires on: November 21, 2017

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.

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Herbert H. Slaty III  
 Herbert H. Slaty III  
 Attorney General and Reporter

8/29/2016  
 Date

Department of State Use Only

Filed with the Department of State on: 9/6/16

Effective on: 12/5/14

Tre Hargett  
 Tre Hargett  
 Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Health

DIVISION: Children's Special Services

SUBJECT: Special Services for Disabled Children

STATUTORY AUTHORITY: 42 U.S.C. § 701 et seq.

EFFECTIVE DATES: December 5, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: This rulemaking hearing rule describes the conditions for the department's provision of special services for disabled children. The rule eliminates a provision whereby certain patients could obtain services under this program after the age of twenty-one. The rule also expands the types of special services that are available, and limits the program to available funding while permitting program flexibility to make the best use of available funding.

## 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.

Children's Special Services Rulemaking Hearing  
May 1, 2015

### Public Comments

The agency received no oral comments at the public hearing, but did receive some written comments suggesting ways to improve the rule and further control costs, all of which have been incorporated into the final document:

- a) By defining more specifically those hospitalizations which were eligible for CSS reimbursement, those resources which qualify as third party payors and those resources for which a CSS applicant must apply prior to applying for CSS;
- b) By giving the program the flexibility to increase the income eligibility limit to include more Tennessee children where funds are available, and to include a greater range of medically necessary procedures which have been shown to be efficient and effective childhood interventions;
- c) By clarifying the program's status as payor of last resort, and by providing more specificity about the reimbursement structure for drugs, therapies, medical supplies and equipment;
- d) By limiting submission of claims to a twelve-month window, and limiting the rate for out of state treatment to the lower of the other state's CSHCN or Medicaid rate; and
- e) By granting the program flexibility to respond quickly in medically emergent situations.

The agency also received one comment from an individual objecting to the discontinuation of CSS funding for adults over age 21 with Cystic Fibrosis. While the agency did not incorporate that comment into the final version, it did provide the commenter with assistance in locating other state and private resources for those individuals.

### **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.

- (1) **The extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

These rules do not overlap, duplicate, or conflict with other federal, state, or local governmental rules.

- (2) **Clarity, conciseness, and lack of ambiguity in the rule or rules.**

These rules exhibit clarity, conciseness, and lack of ambiguity.

- (3) **The establishment of flexible compliance and/or reporting requirements for small businesses.**

These rules do not create flexible compliance and/or reporting requirements for small businesses.

- (4) **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.**

These rules do not involve schedules or deadlines for compliance or reporting requirements for small businesses.

- (5) **The consolidation or simplification of compliance or reporting requirements for small businesses.**

These rules do not consolidate or simplify compliance reporting requirements for small businesses.

- (6) **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**

These rules do not establish performance, design, or operational standards.

- (7) **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.**

These rules do not create unnecessary barriers or stifle entrepreneurial activity or innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Children's Special Services

Rulemaking hearing date: 05/01/2015

1. **Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

This rule affects service recipients. It does not affect small business.

2. **Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

This rule should not involve administrative costs to the service recipients.

3. **Statement of the probable impact small businesses and consumers:**

This rule does not impact small businesses or consumers.

4. **Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:**

Not applicable.

5. **Comparison of the proposed rule with any federal or state counterparts:**

Federal: This program is administered at the state level; it has no federal counterpart.

State: Indiana's program is similar, however the income ceiling is 250% of the poverty rate rather than 200% of the poverty rate, and it provides for cystic fibrosis patients above the age of twenty-one;

Michigan's program is similar, however it charges an application fee to families seeking services, and it provides for cystic fibrosis and hemophilia patients above the age of twenty-one.

North Dakota's program is similar, however the income ceiling is 185% of the poverty rate rather than 200% of the poverty rate. Like Tennessee, it provides no services above the age of twenty-one.

6. **Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.**

Not applicable.

### **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 proposed rule amendments should not have a financial impact on local governments.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Describes the conditions for the Department's provision of Special Services for disabled children. Eliminates provision whereby certain patients could obtain services under this program after the age of twenty-one; Expands the type of services available; Limits program to available funding but permits program flexibility to make best use of available funding.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

This program is operated pursuant to the Department's Maternal and Child Health block grant from the U.S. Department of Health and Human Services, created under 42 U.S.C. § 701et.seq.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The program is intended to assure that children in this population are identified early and receive high quality coordinated care and that their families receive support. The program serves those children who meet the T.C.A 68-12-102 definition of "a child with a physical disability." Program resources provide for diagnostically related necessary health care services for enrolled children when other payors are unable to provide payment.

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

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These rules should not result in any increase or decrease in state and local government revenues and expenditures.

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

Mary Kennedy, Deputy General Counsel, Department of Health

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

Mary Kennedy, Deputy General Counsel, Department of Health

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

710 James Robertson Parkway, 5th Floor – Andrew Johnson Building, Nashville, Tennessee 37243, (615) 532-7161, Mary.Kennedy@tn.gov.

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

None.

**Department of State  
Division of Publications**

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Nashville, TN 37243  
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**For Department of State Use Only**

Sequence Number: 09-05-16  
Rule ID(s): 6299  
File Date: 9/6/16  
Effective Date: 12/5/16

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

**Agency/Board/Commission:** Department of Health  
**Division:** Children's Special Services  
**Contact Person:** Mary Kennedy  
**Address:** 710 James Robertson Parkway, 5th Floor, Nashville, TN  
**Zip:** 37243  
**Phone:** (615) 253-4878  
**Email:** [Mary.Kennedy@tn.gov](mailto:Mary.Kennedy@tn.gov)

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

- Amendment  
 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
1200-11-03	Children's Special Services
Rule Number	Rule Title
1200-11-03-.01	Statement of Purpose
1200-11-03-.02	Definitions
1200-11-03-.03	Eligibility Requirements
1200-11-03-.04	Covered Services
1200-11-03-.05	Authorizations and Reimbursements
1200-11-03-.06	Standards of Care
1200-11-03-.07	Out-of-State Treatment
1200-11-03-.08	Appeals and Closure of Cases

**RULES  
OF  
TENNESSEE DEPARTMENT OF HEALTH  
BUREAU OF HEALTH SERVICES**

**CHAPTER 1200-11-3  
CHILDREN'S SPECIAL SERVICES**

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~~1200-11-3-.01 STATEMENT OF PURPOSE.~~

~~(1) In an effort to provide more comprehensive services to children with special health care needs in Tennessee, the Department of Health merged the Crippled Children's Services and the Speech and Hearing Services into one unit and implemented care coordination services to children enrolled in the program in 1992. The program was then identified as the Children's Special Services (CSS) program. The implementation of the TennCare managed care system with the resulting enrollment of previously non-Medicare eligible CSS population requires the Department to redefine the CSS program's medical and financial eligibility, provider network, covered services, and reimbursement methods. Children with special health care needs, especially those who are uninsured now have access to insurance through TennCare. The program recognizes the need to serve a broader group of children with special health care needs who meet the T.C.A. 68-12-102 definition of "physically handicapped". Program resources will provide for diagnostically related necessary services for enrolled children when other payors will not provide coverage.~~

~~Authority: T.C.A. §§ 4-5-202, 68-1-103, and 68-12-101 et seq. Administrative History: Original rule filed April 12, 1979; effective May 28, 1979. Repeal and new rule filed December 30, 1983; effective January 29, 1984. Amendment filed May 29, 1990; effective July 13, 1990. Repeal and new rule filed March 21, 2000; effective July 28, 2000. Repeal and new rule filed October 9, 2002; effective December 23, 2002.~~

~~1200-11-3-.02 DEFINITIONS. Unless otherwise specifically indicated by the context, for the purpose of these rules and regulations, the terms used herein are defined as follows:~~

- ~~(1) Assistive Technology/Augmentative Communication Devices—Any device or equipment that may promote independence and communication skills for children unable to utilize typical methods for independence.~~
- ~~(2) Care Coordination/Case Management—Services to promote the effective and efficient organization and utilization of resources to assure access to necessary comprehensive services for children with special health care needs and their families.~~

## (Rule 1200-11-3-.02, continued)

- (3) ~~Commissioner—The Commissioner of the Tennessee Department of Health or the Commissioner's designee.~~
- (4) ~~Department—The Tennessee Department of Health.~~
- (5) ~~Diagnostic Condition—Diagnoses specifically designated by the program as conditions qualifying a child for program eligibility.~~
- (6) ~~Diagnostic Evaluation—Physical examinations, medical procedures, laboratory tests, or other procedures deemed necessary for diagnosis.~~
- (7) ~~Durable Medical Equipment—Durable Medical Equipment means equipment that can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, and is appropriate for use in the home. Orthotics, Prosthetics, and Communication Aid Devices are also included in the definition of "Durable Medical Equipment".~~
- (8) ~~Elective Hospital Admission—Any hospital admission for conditions or treatments not immediately necessary to save the patient's life or prevent impending harm.~~
- (9) ~~Family—For the purpose of the CSS program, a family is defined as follows:~~
- (a) ~~Two or more persons related by birth, marriage, or adoption, which reside together. (If a household includes more than one family, the guidelines are applied separately to each family.)~~
  - (b) ~~A person eighteen (18) years of age or older who is not living with any relative;~~
  - (c) ~~A child under eighteen (18) years of age and his/her non-parent custodians when financial responsibility has been assigned to them by the court; or~~
  - (d) ~~Parents of a child under eighteen (18) years of age when the child has been voluntarily placed outside the parent's home.~~
  - (e) ~~If a child under the age of eighteen (18) is living with someone other than the parent or legal guardian, the parent or legal guardian's income will be considered when determining eligibility.~~
- (10) ~~Hospitalization—Any overnight stay in a hospital capable of providing the type of service(s) needed by the child and licensed pursuant to applicable regulations and/or statutes.~~
- (11) ~~Inpatient Hospital Services—Medical and surgical services (including screening, diagnostic, therapeutic, corrective, preventive, and palliative services) and facility usage charges (including room and board) provided during hospitalization in a licensed hospital.~~
- (12) ~~Medical Services—Medical, surgical, and rehabilitative treatment for conditions related to an approved diagnostic condition.~~
- (13) ~~Medically Related Services—Services deemed necessary to follow the treatment plan for an approved medical condition.~~
- (14) ~~Orthodontic/Dental Intervention—Medical, surgical, and rehabilitative treatment for conditions related to an approved cranial-facial diagnostic condition.~~
- (15) ~~Outpatient Hospital Services—Medical and surgical services (including screening, diagnostic, therapeutic, corrective, preventive, and palliative services) and facility usage charges (including temporary room and board) provided as an outpatient service by a licensed hospital or hospital-based Ambulatory Surgical Treatment Center.~~

## (Rule 1200-11-3-.02, continued)

- (16) ~~Outpatient/Clinic Services—Diagnostic evaluation or treatment services delivered in a public or private setting outside of the hospital.~~
- (17) ~~Pharmaceuticals and Supplies—Medications and supplies necessary for treatment related to a diagnostic condition covered by the program.~~
- (18) ~~Physically handicapped or crippled child—A child under the age of twenty-one (21) who shall be deemed “chronically handicapped” by any reason of physical infirmity, whether congenital or acquired, as a result of accident or disease, which requires medical, surgical, dental, or rehabilitation treatment, and who is or may be, totally or partially incapacitated for the receipt of a normal education or for self support. This definition shall not include those children whose sole diagnosis is blindness or deafness; nor shall this definition include children who are diagnosed as psychotic. This definition does not prohibit CSS from accepting for treatment children with acute conditions such as, but not necessarily limited to, fractures, burns and osteomyelitis.~~
- (19) ~~Provider—A person, persons, or facility giving direct service to the child as outlined in the child's plan of treatment.~~
- (20) ~~Rehabilitation—Services required to assist the individual to achieve or maintain independence. Rehabilitative services may include physical, speech/language, nutritional/feeding, and occupational therapies.~~
- (21) ~~Resident of Tennessee—A person who has established a bona fide residence in Tennessee. The test for such residence is (1) an intention to stay indefinitely in a place, joined with (2) some objective indication consistent with that intent, e. g., enrollment of a child in school.~~
- (22) ~~Support Services—Activities that may be necessary to assist the individual or family to access medically necessary and/or recommended care to participate in the activities of daily living.~~
- (23) ~~TennCare—The State of Tennessee Medicaid Waiver program that replaced the State's Medicaid program. The TennCare Bureau contracts with managed care organizations (MCOs) to provide a network of providers to serve TennCare enrolled children.~~
- (24) ~~Third Party Payor—The payment for health care by a party other than the beneficiary.~~
- (25) ~~Title V Children with Special Health Care Needs (CSHCN)—The Federal Title V CSHCN section of the Title V Maternal and Child Health CSHCN Block Grant that supports the program.~~

*Authority:* T.C.A. §§ 4-5-202, 68-1-103, and 68-12-101 et seq. *Administrative History:* Original rule filed April 12, 1979; effective May 28, 1979. Repeal and new rule filed December 30, 1983; effective January 29, 1984. Amendment filed May 29, 1990; effective July 13, 1990. Amendment filed December 7, 1998; effective April 30, 1999. Repeal and new rule filed March 21, 2000; effective July 28, 2000. Repeal and new rule filed October 9, 2002; effective December 23, 2002. Amendment filed May 27, 2005; effective September 28, 2005.

**1200-11-3-.03—ELIGIBILITY REQUIREMENTS.**

- (1) ~~Any child from birth to twenty-one years of age who is a resident of Tennessee will be deemed eligible for medical services, medically related services, and care coordination through the CSS program provided the child meets the diagnostic and financial guidelines as established by the program.~~
- (2) ~~Any child from birth to twenty-one years of age who is a resident of Tennessee and enrolled in TennCare will be deemed eligible for care coordination (case management) services, provided the~~

(Rule 1200-11-3-.03, continued)

~~child meets the diagnostic guidelines as established by the program and staff are available to provide these services.~~

- ~~(3) Any child with a diagnosis of cystic fibrosis can remain on the program past the age of 21 years until their demise.~~
- ~~(4) Financial eligibility will be determined based on an amount equal to, or a percentage rate above, the Federal Poverty Guidelines as published annually in the Federal Register. Children will be eligible if the family income is at or below 200% of poverty, for the number in the family. When a family has more than one (1) child with an eligible condition, one person may be added to the total number of family members when determining eligibility. Family is defined in Rule 1200-11-3-.02.~~
- ~~(a) Income shall include:~~
- ~~1. wages, salaries, and/or commissions;~~
  - ~~2. income from rental property or equipment;~~
  - ~~3. profits from self-employment enterprises, including farms;~~
  - ~~4. alimony and/or child support;~~
  - ~~5. inheritances;~~
  - ~~6. pensions and benefits; and~~
  - ~~7. public assistance grants.~~
- ~~(b) After the gross monthly income of the family is determined, it may be adjusted for the following:~~
- ~~1. verification of medical payments including medical or health insurance premiums made by the family for any family member during the previous twelve (12) months. The amount of such payments shall be prorated over twelve (12) months and deducted from the gross monthly income.~~
  - ~~2. verification of child support or alimony paid to another household which shall be deducted from the gross monthly income.~~
- ~~(5) The family's adjusted gross monthly income must be at or below 200% Federal Poverty Level, (FPL) in effect at the time of application for program enrollment. Enrolled children will be re-certified annually.~~
- ~~(a) Children without insurance coverage who meet financial and diagnostic guidelines will be enrolled in the program and assisted with applying to TennCare. Proof of applying to TennCare must be provided within ninety (90) days in order for clients to remain in the program.~~
- ~~(b) Children who have access to other health insurance must apply for coverage under TennCare. Proof of applying for TennCare must be provided within ninety (90) days in order for clients to remain in the program. When a child enrolled in the program becomes covered by TennCare, resources from all other insurance payors will be exhausted before CSS considers payment for services. The program will coordinate services paid by other payors.~~
- ~~(6) The child's medical diagnosis may determine the level of financial or supportive services provided by the program.~~

## (Rule 1200-11-3-.03, continued)

- (7) ~~As a condition of eligibility, children who have access to other health insurance whose family has income below 200% FPL must apply for coverage under TennCare. In the event that a child is then covered and also enrolled in the program, the CSS program will be the payor of last resort and coordinate benefits.~~

~~Authority: T.C.A. §§ 4-5-202, 68-1-103, 68-12-101 et seq., 68-12-103, and 68-12-112. Administrative History: Original rule filed April 12, 1979; effective May 28, 1979. Repeal and new rule filed December 30, 1983; effective January 29, 1984. Amendment filed May 29, 1990; effective July 13, 1990. Repeal and new rule filed March 21, 2000; effective July 28, 2000. Repeal and new rule filed October 9, 2002; effective December 23, 2002. Amendments filed May 27, 2005; effective September 28, 2005.~~

**1200-11-3-.04 COVERED SERVICES.**

- (1) ~~Covered services are those described in Rule 1200-11-3-.02 that are not covered by other payors and are limited to those that directly relate to the diagnostic condition which made the child eligible for the program. Covered services may include:~~
- (a) ~~inpatient hospitalization; outpatient hospitalization or clinic services; care coordination services; orthodontic/dental intervention; pharmaceuticals and supplies such as medication, nutritional supplements, other supplies; durable medical equipment; standard rehabilitative therapies; assistive technology/augmentative communication devices; co-pay and deductibles; or other support services as determined by the Commissioner and the program;~~
  - (b) ~~subsequent hospitalizations, clinic visits, routine care, medications (excluding immunosuppressive therapy), and supplies after transplant surgery, but not services for the surgery itself;~~
  - (c) ~~subsequent hospitalizations, clinic visits, routine care, medications, and supplies after cochlear implant surgery, but not services for the surgery itself;~~
  - (d) ~~rental or purchase of durable medical equipment; maintenance, repair, or replacement of durable medical equipment; and, where appropriate, training of the enrollee or the enrollee's family in the use of the equipment.~~
- (2) ~~For children with other insurance payors, those resources will be exhausted before the program considers payment.~~
- (3) ~~If requested service is determined urgent, and is medically necessary, authorization may be granted by CSS, and reimbursements by insurers coordinated.~~
- (4) ~~Any payment for services will conform to policies and procedures of the CSS program.~~
- (5) ~~Services not covered.~~
- (a) ~~Transplant surgeries and cochlear implants surgeries will not be covered. Medications and supplies used in transplant surgeries and cochlear implant surgeries also will not be covered.~~
  - (b) ~~Drug treatments will not be reimbursed unless the drug is FDA approved for the purpose intended.~~
  - (c) ~~Dental and Orthodontic treatment will not be covered except in craniofacial malformations, cleft palate conditions, and designated cardiac conditions as outlined in program policy.~~

## (Rule 1200-11-3-.04, continued)

- ~~(d) Psychiatric treatment and psychological services will not be covered.~~
- ~~(e) Alcohol and drug treatment will not be covered.~~
- ~~(f) Ambulance fees and transportation will not be covered except for emergency transportation from one hospital to another, as related to the child's eligible CSS diagnosis.~~
- ~~(g) Children admitted to a nursing home for continuous or episodic care will not be covered for CSS medical services until discharged.~~
- ~~(6) The type and amount of covered services will be determined by the availability of funds. When budgetary constraints are indicated, the department may:
 
  - ~~(a) create a waiting list of patients requesting elective hospital admissions. (The waiting list will be evaluated on a monthly basis and elective admissions will be approved according to availability of funds.);~~
  - ~~(b) eliminate inpatient hospitalization services as defined in 1200-11-3-.02, except for life-threatening conditions and conditions that would cause a permanent disability, if not treated immediately;~~
  - ~~(c) eliminate services for less severe diagnostic categories as designated by the program; or~~
  - ~~(d) reduce the type and amount of support services, durable medical equipment, care coordination, or other covered services.~~~~

*Authority:* T.C.A. §§ 4-5-202, 68-1-103, and 68-12-101 et seq. *Administrative History:* Original rule filed April 12, 1979; effective May 28, 1979. Repeal and new rule filed December 30, 1983; effective January 29, 1984. Amendment filed May 29, 1990; effective July 13, 1990. Repeal and new rule filed March 21, 2000; effective July 28, 2000. Repeal and new rule filed October 9, 2002; effective December 23, 2002. Amendments filed May 27, 2005; effective September 28, 2005.

**1200-11-3-.05 AUTHORIZATION AND REIMBURSEMENTS.**

- ~~(1) Except for applicable deductibles, co-insurance, and/or co-payment, no reimbursement shall be made for covered services rendered under these rules, unless available third-party payors, such as TennCare or private insurance, have been exhausted.~~
- ~~(2) After all third party payors have been exhausted, or in the event no third party payors are available, reimbursement for covered services shall be in accordance with these rules.~~
- ~~(3) Services must be authorized by the CSS program for reimbursement and must relate to the diagnosis for which the child is eligible for the program.~~
- ~~(4) Additional and concurrent charges over and above the amount covered by third party payors, as provided in these rules, shall not be submitted to the family. This does not preclude a family or other party from making a contribution toward the care of the child when they are willing and able but such contributions shall not be solicited or accepted from the family of a child on TennCare for services covered in whole or in part by TennCare.~~
- ~~(5) Reimbursement.
 
  - ~~(a) Reimbursement for inpatient hospitalization and rehabilitation services shall be based on a per diem rate as negotiated between the Department and the facility.~~~~

(Rule 1200-11-3-.05, continued)

(b) ~~Reimbursement for covered medical services shall be based on:~~

1. ~~Average wholesale price for pharmacy plus a \$4.00 shipping and handling fee.~~
2. ~~For medical services, on an annual basis the required minimum reimbursement rate shall be updated to the equivalent of the prior year Medicare fee schedule for Tennessee multiplied by 75% and inflated with expected trend values as reported by Medicare. The updated National Conversion Factor is referenced in the Federal Register on or about October 31 each year.~~
3. ~~Reimbursement for therapies, medical supplies, durable medical equipment, prosthetics, orthotics, and orthodontic/dental intervention services shall be based on the American Medical Association Physicians' Current Procedural Terminology (CPT) codes relative value units and the Direct Purchase Authority for the CSS program.~~
4. ~~Reimbursement for nutritional supplements, hearing aids, and hearing aid supplies shall be based on the competitive bid system as designated in the State of Tennessee purchasing procedures and the Direct Purchasing Authority for the CSS Program.~~
5. ~~Non-hospital services for which there is no Medicare price shall be paid at 75% of the billed charges.~~

(c) ~~No reimbursement will be paid for any covered service over 24 months old.~~

- (6) ~~Authorization of providers and vendors for reimbursement shall be determined in accordance with the standards as designated in these rules and determined by the program.~~
- (7) ~~Billing procedures for hospitals, institutions, facilities, agencies, providers, vendors, or distinct parts thereof rendering care or medical services shall be determined by the Department.~~
- (8) ~~No CSS provider shall charge CSS clients more than is charged for private clients for equivalent accommodations and services.~~
- (9) ~~The CSS program is not responsible for paying for services that could have or would have been paid by private insurance or TennCare except for failure to follow their requirements.~~

*Authority:* T.C.A. §§ 4-5-202, 68-1-103, and 68-12-101 et seq. *Administrative History:* Original rule filed April 12, 1979; effective May 28, 1979. Repeal and new rule filed December 30, 1983; effective January 29, 1984. Amendment filed May 29, 1990; effective July 13, 1990. Repeal and new rule filed March 21, 2000; effective July 28, 2000. Repeal and new rule filed October 9, 2002; effective December 23, 2002.

**1200-11-3-.06 STANDARDS OF CARE.**

- (1) ~~Participating physicians shall be licensed to practice medicine in Tennessee (or in the state where the service is delivered) and be certified and/or board eligible in their respective specialties. The Board of Dentistry must certify all dentists in their respective specialty. All other providers must be appropriately certified and/or licensed in their respective specialty.~~
- (2) ~~Physicians and dentists participating in a TennCare Managed Care Organization (MCO) network shall be recognized by the program as providers and must complete an application to the CSS program for reimbursement purposes. Physicians and dentists not participating in a TennCare MCO network must complete an application and be approved to serve as a CSS provider.~~

- (3) All physicians and dentists must sign an agreement whereby they agree to abide by these rules and regulations and CSS program policy.
- (4) Hospitals, facilities, physicians, dentists, and therapists, as well as other providers and vendors receiving payment from the CSS program for a patient, may not submit to the family of that patient, concurrent charges over and above the amount covered by TennCare, private insurance, or as provided in these rules and regulations.

*Authority:* T.C.A. §§4-5-202, 68-1-103, and 68-12-101 et seq. *Administrative History:* Original rule filed December 30, 1983; effective January 29, 1984. Amendment filed May 29, 1990; effective July 13, 1990. Repeal and new rule filed March 21, 2000; effective July 28, 2000. Repeal and new rule filed October 9, 2002; effective December 23, 2002.

#### **1200-11-3-.07 OUT OF STATE TREATMENT.**

- (1) Services may be provided in out of state facilities, with prior written approval from the CSS program director, when the following conditions are met.
  - (a) Evidence is provided by the referring physician that services requested are not available within Tennessee or explicit medical justification is given to prove such out of state treatment to be in the best interest of the child.
  - (b) Reimbursement for services shall be based on a negotiated rate paid by the CSS program in that state or that state's Medicaid rate, whichever is less.
  - (c) The out of state length of stay and estimated hospital charge shall be within the limits established by the program.
  - (d) The out of state estimated cost of out patient follow up and/or discharge services shall be equal or comparable to the Title V CSHCN rate in that state or that state's Medicaid rate, whichever is less.
  - (e) Tennessee's Children's Special Services Rules and Regulations 1200-11-3-.05 Authorization and Reimbursement for Services shall apply.
- (2) In order to maintain continuity of care, children receiving services under these rules and regulations who move out of state shall be referred to the appropriate Title V CSHCN program within the state of new residence upon written permission of the legal guardian.

*Authority:* T.C.A. §§4-5-202, 68-1-103, and 68-12-101 et seq. *Administrative History:* Original rule filed March 21, 2000; effective July 28, 2000. Repeal and new rule filed October 9, 2002; effective December 23, 2002.

#### **1200-11-3-.08 APPEALS AND CLOSURE OF CASES.**

- (1) Appeals
  - (a) Applicants who are denied participation in the Children's Special Services program, or participants who are discontinued from the program in accordance with these rules and regulations, may appeal the decision in writing to the program director within thirty (30) calendar days of receipt of the program's written notice of denial or closure. If the denial is upheld, the individual may appeal the decision in writing to the Commissioner within ten (10) calendar days of receipt of the written notice that the initial appeal has been denied. The decision of the Commissioner shall be final.

## (Rule 1200-11-3-.08, continued)

~~(2) Closure of Cases~~~~(a) Cases may be closed or participants may be denied services for the following reasons:~~

- ~~1. participant has received maximum treatment for the eligible diagnosis;~~
- ~~2. participant has attained the age of twenty-one (21). Those with a diagnosis of Cystic fibrosis may remain on the program past the age of 21 years, pursuant to rule 1200-11-3-.03(3);~~
- ~~3. participant moved out of state;~~
- ~~4. participant expired;~~
- ~~5. participant not diagnostically eligible;~~
- ~~6. participant not financially eligible;~~
- ~~7. participant's family not interested; or~~
- ~~8. participant can not be located by the Department.~~

~~Authority: T.C.A. §§ 4-5-202, 68-1-103, and 68-12-101 et seq. Administrative History: Original rule filed March 21, 2000; effective July 28, 2000. Repeal and new rule filed October 9, 2002; effective December 23, 2002.~~

## 1200-11-3-.01 Statement of Purpose

In an effort to provide comprehensive services and eliminate health barriers and disparities for children with special health care needs in Tennessee, the Tennessee Legislature created the Children's Special Services (CSS) Program. The program is intended to assure that children in this population are identified early and receive high quality coordinated care and that their families receive support. The program serves those children who meet the T.C.A. 68-12-102 definition of "a child with a physical disability." To the extent that funding is available, program resources provide for diagnostically related services for enrolled children when other payors are unable to provide payment.

Authority: T.C.A. §§ 4-5-202, 68-1-103, 68-12-101 et seq., 68-12-104, and 42 U.S.C. § 701(a)

## 1200-11-3-.02 Definitions. Unless otherwise specifically indicated by the context, for the purpose of these rules and regulations, the terms used herein are defined as follows.

- (1) "Assistive technology/augmentative communication device" means any device or equipment that may promote independence and communication skills for children unable to utilize typical methods for independence.
- (2) "Care Coordination" means case management services promoting the effective and efficient organization and utilization of resources to assure access to necessary comprehensive services for children with special healthcare needs and their families. Care coordinators assist families with services such as third party payor billing, filing appeals when third party payors deny payment, and seeking prior approval from third party payors for covered services.
- (3) "Child" or "children" means a person or persons under the age of twenty-one (21) years.

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(Rule 1200-11-3-.08, continued)

- (4) "Child with a physical disability" means a child under the age of twenty-one (21) who shall be deemed to have a physical disability by any reason, whether congenital or acquired as a result of accident or disease, which requires medical, surgical, dental or rehabilitation treatment, who is or may be totally or partially incapacitated for the receipt of a normal education or for self-support. This definition shall not include those children whose sole diagnosis is blindness or deafness; nor shall this definition include children who are diagnosed as psychotic. This definition does not prohibit CSS from accepting for treatment children with acute conditions such as, but not necessarily limited to, fractures, burns, and osteomyelitis.
- (5) "Commissioner" means the Commissioner of the Tennessee Department of Health or the Commissioner's designee.
- (6) "Covered Services" means medical, surgical, and rehabilitative treatment for eligible diagnoses, including the services necessary in order for a child to follow a prescribed treatment plan for an eligible diagnosis.
- (7) "Department" means the Tennessee Department of Health.
- (8) "Diagnostic evaluation" means physical examinations, medical procedures, laboratory tests, or other procedures deemed necessary for diagnosis.
- (9) "Drugs, devices and supplies" means medications, devices and supplies necessary for treatment related to an eligible diagnosis.
- (10) "Durable medical equipment" means equipment that can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, and is appropriate for use in the home, including orthotics, prosthetics, and communication aid devices.
- (11) "Elective Hospital Admission" means any hospital admission for diagnoses or treatments not immediately necessary to save the patient's life or prevent impending harm.
- (12) "Eligible Diagnosis" means a health-related impairment, described in T.C.A. § 68-12-102 and diagnosed by a provider, which may hinder achievement of normal growth and development.
- (13) "Hospitalization" means any overnight stay in a hospital which is:
- (a) capable of providing the type of service(s) needed by the child; and
  - (b) licensed pursuant to applicable regulations and/or statutes.
- (14) "Inpatient hospitalization services" means medical and surgical services (including screening, diagnostic evaluation, therapeutic, corrective, preventive, and palliative services) and facility usage charges (including room and board) provided during hospitalization in a licensed hospital.
- (15) "Orthodontic/dental treatment" means medical, surgical, and rehabilitative treatment for eligible cranio-facial (including cleft lip and cleft palate) and cranial diagnoses.
- (16) "Outpatient hospitalization services" means medical and surgical services (including screening, diagnostic evaluation, therapeutic, corrective, preventive, and palliative services) and facility usage charges (including temporary room and board) provided as an outpatient service by a licensed hospital or hospital-based Ambulatory Surgical Treatment Center.

## (Rule 1200-11-3-.08, continued)

- (17) "Outpatient clinic services" means diagnoses or treatment services delivered by a licensed health care provider in a facility other than a hospital setting.
- (18) "Provider" means a healthcare provider which is a person, persons, or facility licensed pursuant to T.C.A. Titles 63 or 68 to provide healthcare services in Tennessee, or if the services are being provided in another state, licensed pursuant to the licensing laws of that state.
- (19) "Rehabilitation" means services required to assist the individual to achieve or maintain independence. Rehabilitative services may include physical, speech/language, nutritional/feeding, and occupational therapies.
- (20) "Resident of Tennessee" means a person who has established a bona fide residence in Tennessee. The test for such residence is (1) an intention to stay indefinitely in a place, joined with (2) some objective indication consistent with that intent, e. g., enrollment of a child in school.
- (21) "Support services" means activities that may be necessary to assist the individual or family to access medically necessary and/or recommended care to participate in the activities of daily living.
- (22) "Third party payor" means a party, other than the recipient of healthcare, who pays for healthcare. Third party payors include private insurance and the following resources:
- (a) The Patient Protection and Affordable Care Act, which is the health-related portion of the Health Care and Education Reconciliation Act of 2010.
  - (b) Children's Health Insurance Program (CHIP), which is a health insurance program mandated by Title XXI of the Social Security Act that is jointly financed by Federal and State governments and administered by the States. CHIP was previously known as the State Children's Health Insurance Program (SCHIP). Tennessee's CHIP includes the CoverKids program.
  - (c) CoverRX, which is a program that offers affordable prescription drugs to persons ages nineteen (19) years and older who lack pharmacy coverage.
  - (d) TennCare, which is the State of Tennessee Medicaid Waiver program that replaced the State's Medicaid program. The TennCare Bureau contracts with managed care organizations (MCOs) to provide a network of providers to serve TennCare enrolled individuals.
- (23) "Title V Children with Special Health Care Needs (CSHCN)" means the section of the Title V Maternal and Child Health CSHCN Block Grant that supports the program.
- (24) "Vendor or supplier" means authorized person, persons, or facilities approved by the State of Tennessee to provide services in conjunction with established Department of Health and Department of Finance and Administration guidelines.

Authority: T.C.A. §§ 4-5-202, 68-1-103, 68-12-101 et seq., and 42 U.S.C. § 701(b).

1200-11-3-.03 Eligibility Requirements.

- (1) General Eligibility. To be eligible for the Program's services, a child shall:
- (a) be a resident of Tennessee;

(Rule 1200-11-3-.08, continued)

- (b) not have reached his or her twenty-first birthday;
  - (c) meet the diagnostic and financial eligibility requirements below;
  - (d) complete and sign the application form approved by the Program; and
  - (e) provide proof of application to Medicaid or CHIP within ninety (90) days of completing and signing the Program's application form (if Medicaid or CHIP eligible).
- (2) Diagnostic Eligibility. To be eligible for the Program's services, a child shall provide a physician's certification that the child has an eligible diagnosis which causes the child to meet the definition of "child with a physical disability" defined by T.C.A. § 68-12-102. The physicians shall base the certification upon a physical examination conducted within the 12 months preceding the date of certification.
- (3) Financial Eligibility. A child shall be financially eligible for services if his or her family's gross annual income as adjusted is at or below 200% of the Federal Poverty Guidelines. When a family has more than one (1) child with an eligible diagnosis(es), the program may add one person to the total number of family members when determining eligibility.
- (a) For purposes of financial eligibility, a "family" is defined as two or more persons (including the child) related by birth, marriage or adoption who reside together, unless one of the following alternative scenarios applies.
1. If the parent or parents of a child under the age of eighteen (18) have voluntarily placed the child in another party's home to reside, the child and the parents are a "family."
  2. If the parent or parents of a child under the age of eighteen (18) have been court-ordered to provide financial support to the child when the child lives in another party's home, the child and the parent or parents are a "family."
  3. If a child eighteen (18) years of age or older does not live with a relative, the child alone is considered a "family."
  4. A foster child alone is considered a "family" and the Department of Children's Services (DCS) foster care board payments to the foster parents are considered the family's income.
- (b) The program shall determine the family's gross annual income and financial eligibility by calculating the following:
1. Wages, salaries, tips/gratuities, and/or commissions;
  2. Income from rental property or equipment;
  3. Profits from self-employment enterprises, including farms;
  4. Alimony, maintenance and/or child support;
  5. Inheritances, lottery winnings and/or other windfalls;
  6. Pensions and benefits.

(Rule 1200-11-3-.08, continued)

- 7. DCS foster care board payments; and
  - 8. Public assistance grants.
- (c) After the program determines the family's gross annual income, the program may adjust income by taking into consideration the probable total cost of treatment and the family's other financial responsibilities, including but not limited to the following:
- 1. Verification of medical payments including medical or health insurance premiums made by the family for any family member during the previous twelve (12) months. The program shall deduct this amount from the gross annual income.
  - 2. Verification of alimony, maintenance and/or child support paid to another household, which the program shall deduct from the gross annual income.
  - 3. Number of dependents.
- (d) The program shall review its available funding and historical spending annually. In any year in which, in the best judgment of the program, it appears that funds are available to serve families with gross annual income as adjusted greater than 200% of the Federal Poverty Guideline, the program may, in its sole discretion, post on its website an increased income eligibility limit and serve families with gross annual incomes as adjusted up to the posted limits.
- (4) Subsequent determinations of eligibility. The program shall recertify enrolled children annually. A child shall meet all eligibility criteria in order to remain enrolled in the program.

Authority: T.C.A. §§ 4-5-202, 68-1-103, 68-12-101 et seq., 68-12-103, 68-12-112, 42 U.S.C. § 701; and 42 U.S.C. § 705(a)(1)(C) and (a)(3)(B).

1200-11-3-.04 Covered and Non-Covered Services.

- (1) When a child enrolled in the program requires services for which one or more third party payors are financially responsible, the program may provide the child with services limited to care coordination, subject to availability of funding.
- (2) Covered services are those described in Rule 1200-11-3-.02 that are not covered by third party payors and are limited to those that directly relate to the child's eligible diagnosis. Covered services may include, but are not limited to, the following:
  - (a) inpatient hospitalization; outpatient hospitalization or clinic services; care coordination services; orthodontic/dental treatment; drugs, devices and supplies such as medication, and nutritional supplements; standard rehabilitative therapies; assistive technology/augmentative communication devices; co-pays, co-insurance and deductibles; or other support services as determined by the Commissioner and the program.
  - (b) subsequent hospitalizations, clinic visits, routine care, transplants and implants deemed medically necessary, medications (including immunosuppressive therapy), and supplies after transplant and implant surgeries; and
  - (c) rental or purchase of durable medical equipment; maintenance, repair, or replacement of durable medical equipment; and, where appropriate, training of the enrolled child or the child's family in the use of the equipment.

(Rule 1200-11-3-.08, continued)

- (3) Services not eligible for reimbursement from the program include, but are not limited to, the following:
- (a) Drugs, food and nutritional/dietary supplements not approved by the Food and Drug Administration (FDA).
  - (b) Orthodontic/Dental services except treatment for eligible cranio-facial (including cleft lip and cleft palate) and designated cardiac diagnoses.
  - (c) Psychiatric treatment and psychological services; treatment and services for mental, emotional and behavioral disorders, developmental disabilities and learning disabilities.
  - (d) Treatment for alcohol and drug abuse and/or dependence.
  - (e) Ambulance fees and transportation costs, except for emergency transportation from one hospital to another, as related to the child's eligible diagnosis.
  - (f) Services rendered while a child is admitted to a nursing home for continuous or episodic care.
- (4) The program shall determine the type and amount of covered services by the availability of funds. When budgetary constraints are indicated the program may:
- (a) Create a waiting list of children requesting elective hospital admissions. (The program will evaluate the waiting list on a monthly basis and approve elective admissions according to availability of funds).
  - (b) Eliminate inpatient hospitalization services as defined in 1200-11-3-.02, except for life-threatening conditions and conditions that would cause a permanent disability, if not treated immediately.
  - (c) Eliminate services for less severe diagnostic categories as designated by the program, and/or
  - (d) Reduce the type and amount of support services, durable medical equipment, care coordination, or other covered services.

Authority: T.C.A. §§ 4-5-202, 68-1-103, 68-12-101 et seq., and 42 U.S.C. § 704(b)(1).

1200-11-3-.05 Authorization and Reimbursements.

- (1) The program shall authorize only those services for reimbursement that relate to the child's eligible diagnosis(es). The Program shall be a payor of last resort, paying for covered services only after exhaustion of the family's other payor sources, except for applicable deductibles, co-insurance, and/or co-payment. The program shall not pay the difference between the billed amount for a service and the amount paid by a third party payor based upon a contractual agreement. Except as provided in 1200-11-3-.05(5), the program shall only authorize reimbursement for services for children currently enrolled in the program.
- (2) Reimbursement.
- (a) The program shall authorize reimbursement for services as follows:

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## (Rule 1200-11-3-.08, continued)

1. Inpatient hospitalization and rehabilitation services shall be based on a per diem rate as negotiated between the Program and the facility.
  2. Drug reimbursements shall be based upon the Department's average wholesale price. The shipping and handling fee may be reimbursed according to the program's most current Delegated Authority (DA).
  3. Services for which there is a Medicare fee shall be at least the equivalent of the prior year's Medicare fee schedule for Tennessee multiplied by 75%. The program shall update the required minimum reimbursement rate on a biennial basis, but at its discretion, the program may at other times update the reimbursement rate to account for significant changes in fees. The updated National Conversion Factor is referenced in the Federal Register on or about October 31 each year.
  4. Therapies, medical supplies, durable medical equipment, prosthetics, orthotics, and orthodontic/dental treatment services shall be based on the American Medical Association Physicians' Current Procedural Terminology (CPT) codes relative value units and determined by the State of Tennessee purchasing procedures and the Delegated Purchase Authority for the program.
  5. Nutritional supplements, hearing aids, and hearing aid supplies shall be determined by the State of Tennessee purchasing procedures and the Delegated Purchasing Authority for the Program.
  6. Non-hospital services for which there is no Medicare fee shall be paid at least 75% of the average of three (3) bids, one from each grand division of the state.
- (b) The program shall not authorize reimbursement for any covered service provided over twelve (12) months prior to the receipt of the request for reimbursement.
- (3) The program shall determine authorization of providers and vendors for reimbursement in accordance with the standards as designated in these rules and determined by the Department of Health and the Department of Finance and Administration.
  - (4) The Department shall determine billing procedures for hospitals, institutions, facilities, agencies, providers, vendors, or distinct parts thereof rendering services.
  - (5) Upon receipt of a determination from the assigned provider that a requested service is urgent and medically necessary, the State CSS Program Director may grant authorization prior to exhaustion of resources from third party payors, provided however, that the grant or denial of such authorization shall be final.

Authority: T.C.A. §§ 4-5-202, 68-1-103, 68-12-101 et seq., 42 U.S.C. § 701(a); 42 U.S.C. § 704(b)(1); and 42 U.S.C. § 706(a)(2)

1200-11-3-.06 Providers.

- (1) All providers shall be appropriately certified and/or licensed in their respective specialties.
- (2) Providers participating in a TennCare Managed Care Organization (MCO) network shall be recognized by the program as providers and must complete an application to the program for reimbursement purposes. Providers not participating in a TennCare MCO network must complete an application and be approved to serve as a provider before submitting any costs for reimbursement.

## (Rule 1200-11-3-.08, continued)

- (3) All providers must sign the Department's vendor agreement and abide by these rules.
- (4) Providers shall not submit additional and concurrent charges to the family for the care of a child over and above the amount covered by third party payors, as provided in these rules. This does not preclude a family or other party from making a contribution toward the care of the child when they are willing and able but providers shall not solicit or accept such contributions from the family of a child on TennCare for services covered in whole or in part by TennCare.
- (5) No provider shall charge program enrolled children more than the amount charged for private clients for equivalent accommodations and services.

Authority: T.C.A. §§ 4-5-202, 68-1-103, and 68-12-101 et seq., and § 42 U.S.C. 701(a).

1200-11-3-.07 Out-of-State Treatment

- (1) The program may approve a provider's services in an out-of-state facility under the following conditions.
  - (a) The referring physician shall provide evidence that requested services are not available within Tennessee, or shall provide explicit medical justification to prove such out-of-state treatment is in the best interest of the child.
  - (b) The program shall base reimbursement for services on a negotiated rate paid by the Title V CSHCN Program in that state, or on that state's Medicaid rate, whichever is less.
  - (c) The out-of-state length of stay and estimated hospital charge shall be within the limits established by the program.
  - (d) The out-of-state estimated cost of out-patient follow-up and/or discharge services shall be equal or comparable to the Title V CSHCN rate in that state or that state's Medicaid rate, whichever is less.
  - (e) The program shall provide written approval to the provider prior to the provider's performance of services.
- (2) In order to maintain continuity of care, the program shall refer children receiving services under these rules and regulations who move out of state to the appropriate Title V CSHCN program within the state of new residence upon written permission of the parents or legal guardian, or in the case of an emancipated minor, the minor's permission.

Authority: T.C.A. §§ 4-5-202, 68-1-103, and 68-12-101 et seq., 42 U.S.C. § 701(a).

1200-11-3-.08 Appeals and Termination of Enrollment

- (1) Appeals
  - (a) An enrolled child who receives a determination of ineligibility for program services (or his or her representative) may appeal the decision in writing to the program director within (30) calendar days of receipt of the program's written notice of the child's ineligibility. If the program director upholds the program's determination of ineligibility, the individual may appeal the decision in writing to the Commissioner within ten (10)

(Rule 1200-11-3-.08, continued)

calendar days of receipt of the written notice upholding the program's determination. The decision of the Commissioner shall be final.

(2) Termination of Enrollment

(a) The program may terminate a child's enrollment in the Program for the following reasons, none of which are subject to appeal:

1. Child has received maximum treatment for the eligible diagnosis;
2. Child has attained the age of twenty-one (21) years;
3. Child has moved out of state;
4. Child is deceased;
5. Child is not diagnostically eligible;
6. Child is not financially eligible;
7. Child's family is not interested; and/or
8. Child cannot be located by the program.

Authority: T.C.A. §§ 4-5-202, 68-1-103, and 68-12-101 et seq., and 42 U.S.C. § 701(a).

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Division of Children's Special Services (board/commission/ other authority) on 05/01/2015 (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: 02/26/15 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 05/01/15 (mm/dd/yy)

Date: 6.16.15

Signature: Mary Kennedy

Name of Officer: Mary Kennedy

Deputy General Counsel

Title of Officer: Department of Health



Subscribed and sworn to before me on: 6/16/15

Notary Public Signature: Mark Ingram

My commission expires on: July 6, 2015

**My Commission Expires:**  
**July 6, 2015**

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.

Herbert H. Slatery III

Herbert H. Slatery III  
Attorney General and Reporter

8/4/2016

Date

**Department of State Use Only**

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Filed with the Department of State on: 9/6/16

Effective on: 12/5/16

Tre Hargett

Tre Hargett  
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Wildlife Resources Agency

DIVISION: Director's Office

SUBJECT: Firearms Possession - Fishing

STATUTORY AUTHORITY: These rules are being amended in order to accurately reflect changes in Tennessee state law. These amendments will remove the conflicting language, bringing the rules in line with the law.

EFFECTIVE DATES: December 18, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: As a result of legislative changes to state law, legal possession of firearms has been expanded, and this rule still had prohibitions on possession in certain instances that were in conflict with the changes in the law.

### 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.

RULE: 1660-01-05-.03

New	<u>      </u>
Amendment	<u>  X  </u>
Repeal	<u>      </u>

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There were no public comments to the above-described rule.

Attached hereto are the responses to public comments.

### **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.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule;

There are no businesses, small or otherwise, that would bear the cost of or directly benefit from the proposed rule.

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;

All recordkeeping and administrative costs are estimated to be minimal and would be borne by the Agency through existing staff.

(3) A statement of the probable effect on impacted small businesses and consumers;

The rule as proposed would have no effect on businesses or consumers.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business;

The rule puts forth necessary due process protections to fully implement previously passed legislation.

(5) A comparison of the proposed rule with any federal or state counterparts; and

The rule is fairly similar to those that have been passed in participating compact states.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Businesses, small or otherwise, will not be impacted as there are no requirements placed on business.

### **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)

Will passage of this rule have a projected financial impact on local governments?

The Agency does not believe that the rule will have any impact on local governments.

Please describe the increase in expenditures or decrease in revenues:

The rule will neither increase expenditures, nor decrease revenues.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

As a result of legislative changes to state law, legal possession of firearms has been expanded and this rule still had prohibitions on possession in certain instances that were in conflict with the changes in the law.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These rules are being amended in order to accurately reflect changes in Tennessee state law. These amendments will remove the conflicting language, bringing the rules in line with the law.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Individuals possessing firearms on TWRA owned lands. There is no opposition or support for these changes.

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

None

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None

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

Chris Richardson, [chris.richardson@tn.gov](mailto:chris.richardson@tn.gov), 615-428-3728

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

Chris Richardson, TWRA Special Assistant to the Director/Policy and Legislation, will explain the rule at the scheduled meeting of the Government Operations Committee.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Chris Richardson, Tennessee Wildlife Resources Agency, P.O. Box 40747, Nashville, TN 37204, (615) 837-6016, [Chris.Richardson@tn.gov](mailto:Chris.Richardson@tn.gov)

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

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**For Department of State Use Only**

Sequence Number: 09-25-16  
Rule ID(s): 6310  
File Date: 9/19/16  
Effective Date: 12/18/16

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	Tennessee Wildlife Resources Agency
<b>Division:</b>	Director's Office
<b>Contact Person:</b>	Lisa Crawford
<b>Address:</b>	PO Box 40747, Nashville, TN
<b>Zip:</b>	37204
<b>Phone:</b>	615-781-6606
<b>Email:</b>	Lisa.Crawford@tn.gov

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

- Amendment
- 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
1660-01-05	Rules and Regulations for Fishing
Rule Number	Rule Title
1660-01-05-.03(7)	TWRA Lakes

Amendment

1660-01-05-.03(7), TWRA Lakes, is amended by deleting "Firearms are prohibited on all areas except those open to hunting."

- (7) Hunting is permitted during the regular hunting season on the following lakes and adjacent state lands, except on areas posted as safety zones: Garrett Lake, VFW Lake, Whiteville Lake, Coy Gaither Bedford Lake, Laurel Hill Lake, Carroll Lake (no big game hunting allowed on Carroll Lake and State owned land adjacent thereto), and Reelfoot-Indian Creek Watershed Lakes. Trapping is allowed on Reelfoot-Indian Creek Watershed Lakes as set out in statewide regulations. Waterfowl hunting is permitted from temporary or natural blinds only on Garrett Lake, Laurel Hill Lake, Whiteville Lake, and Reelfoot-Indian Creek Watershed Lakes. Blinds and decoys must be removed daily from Garrett Lake, Whiteville Lake, and Reelfoot-Indian Creek Watershed Lakes. ~~Firearms are prohibited on all areas except those open to hunting.~~

Boats may be used for waterfowl hunting on Garrett Lake, Laurel Hill Lake, Whiteville Lake, and Reelfoot-Indian Creek Watershed Lakes.

*Authority: T.C.A. §§69-9-209, 70-1-206 and 70-4-107. Administrative History: Original rule certified May 8, 1974. Amendment filed June 9, 1978; effective July 10, 1978. Amendment filed May 19 1980; effective July 3, 1980. Repeal and new rule filed February 4, 1983; effective March 7, 1983. Amendment filed February 20, 1986; effective March 22, 1986. Amendment filed June 9, 1986; effective July 9, 1986. Amendment filed February 26, 1987; effective April 12, 1987. Amendment filed April 20, 1988; effective June 4 1988. Amendment filed December 18, 1989; effective February 1, 1990. Amendment filed January 14, 1991; effective February 28, 1991. Amendment filed September 26, 1996; effective December 10, 1996. Amendment filed February 27, 1998; effective May 13 1998. Amendment filed September 4, 1998; effective November 18, 1998. Amendment filed January 5, 2001; effective March 22, 2001. Amendment filed January 3, 2003; effective March 19, 2003. Amendment filed February 10, 2005; effective April 26, 2005. Amendment filed May 12, 2005; effective July 26, 2005. Amendment filed February 9, 2007; effective April 25, 2007. Amendment filed May 31, 2013; effective August 29, 2013. Amendment filed March 27, 2015; effective June 25, 2015. A six day stay of effective date filed March 27, 2015; new effective date July 1, 2015.*

\* If a roll-call vote was necessary, the vote by the Commission on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chad Baker	✓				
Jim Bledsoe	✓				
Harold Cannon	✓				
Jeff Cook	✓				
Bill Cox	✓				
Kurt Holbert	✓				
Connie King	✓				
Jeff McMillan	✓				
Jim Ripley	✓				
Bill Swan	✓				
Trey Teague	✓				
David Watson	✓				
Jamie Woodson	✓				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish & Wildlife Commission on 08/19/2016 (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: 06/22/2016

Rulemaking Hearing(s) Conducted on: (add more dates). 08/19/2016



Date: 8-29-16

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: 8-29-16

Notary Public Signature

*Lisa Crawford*

My commission expires on: 03/10/2019

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.

*Herbert H. Slatery III*  
Herbert H. Slatery III  
Attorney General and Reporter

9/12/2016

Date

Department of State Use Only

Filed with the Department of State on:

9/19/16

Effective on:

12/18/16

*Tre Hargett*

Tre Hargett  
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Wildlife Resources Agency

DIVISION: Director's Office

SUBJECT: Firearms Possession - Field Trials and Dog Training

STATUTORY AUTHORITY: These rules are being amended in order to accurately reflect changes in Tennessee state law. These amendments will remove the conflicting language, bringing the rules in line with the law.

EFFECTIVE DATES: December 20, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: As a result of legislative changes to state law, legal possession of firearms has been expanded, and this rule still had prohibitions on possession in certain instances that were in conflict with the changes in the law.

## 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.

RULE: 1660-01-04

New	<u>      </u>
Amendment	<u>  X  </u>
Repeal	<u>      </u>

---

There were no public comments to the above-described rule.

Attached hereto are the responses to public comments.

### **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.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule;

There are no businesses, small or otherwise, that would bear the cost of or directly benefit from the proposed rule.

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;

All recordkeeping and administrative costs are estimated to be minimal and would be borne by the Agency through existing staff.

(3) A statement of the probable effect on impacted small businesses and consumers;

The rule as proposed would have no effect on businesses or consumers.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business;

The rule puts forth necessary due process protections to fully implement previously passed legislation.

(5) A comparison of the proposed rule with any federal or state counterparts; and

The rule is fairly similar to those that have been passed in participating compact states.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Businesses, small or otherwise, will not be impacted as there are no requirements placed on business.

### **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)

Will passage of this rule have a projected financial impact on local governments?

The Agency does not believe that the rule will have any impact on local governments.

Please describe the increase in expenditures or decrease in revenues:

The rule will neither increase expenditures, nor decrease revenues.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

As a result of legislative changes to state law, legal possession of firearms has been expanded and this rule still had prohibitions on possession in certain instances that were in conflict with the changes in the law.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These rules are being amended in order to accurately reflect changes in Tennessee state law. These amendments will remove the conflicting language, bringing the rules in line with the law.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Individuals possessing firearms on TWRA owned lands. There is no opposition or support for these changes.

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

None

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None

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

Chris Richardson, [chris.richardson@tn.gov](mailto:chris.richardson@tn.gov), 615-428-3728

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

Chris Richardson, TWRA Special Assistant to the Director/Policy and Legislation, will explain the rule at the scheduled meeting of the Government Operations Committee.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Chris Richardson, Tennessee Wildlife Resources Agency, P.O. Box 40747, Nashville, TN 37204, (615) 837-6016, [Chris.Richardson@tn.gov](mailto:Chris.Richardson@tn.gov)

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

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Sequence Number: 09-29-16  
Rule ID(s): 6311  
File Date: 9/21/16  
Effective Date: 12/20/16

## Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	Tennessee Wildlife Resources Agency
<b>Division:</b>	Director's Office
<b>Contact Person:</b>	Lisa Crawford
<b>Address:</b>	PO Box 40747, Nashville, TN
<b>Zip:</b>	37204
<b>Phone:</b>	615-781-6606
<b>Email:</b>	Lisa.Crawford@tn.gov

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

- Amendment  
 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
1660-01-04	Rules and Regulations For Field Trials and Dog Training
Rule Number	Rule Title
1660-01-04-.04	Release and Recapture Pens

#### Amendment

1660-01-04-.04, Release and Recapture Pens, is amended by deleting the rule in its entirety and replacing it with the following:

- (1) Pen-reared Bobwhite quail may be released and recaptured for the purpose of training bird dogs on a year-round basis.
- (2) All bobwhite quail released shall bear a leg band approved by the Wildlife Resources Agency.
- (3) Shooting of released quail is allowed only during the open statewide quail season or during the shooting preserve season if released on a licensed shooting preserve. ~~Possession of firearms prohibited at all other times.~~
- (4) Each release and recapture pen must be identified with the name and address of the person attempting to release or recapture pen-reared quail.
- (5) Release and recapture pens may be used only with landowner approval.
- (6) The dog trainer must show the location of all release and recapture pens to the wildlife officer on request.
- (7) All species of wildlife other than the banded quail which may be trapped in the pens must be released unharmed immediately.
- (8) All release and recapture pens must be checked daily to insure proper maintenance.

Authority: T.C.A. §70-1-206. Administrative History: Original rule certified May 8, 1974. Amendment filed August 2, 1982, effective August 31, 1982. Amendment filed August 9, 1993, effective October 23, 1993.

\* If a roll-call vote was necessary, the vote by the Commission on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chad Baker	✓				
Jim Bledsoe	✓				
Harold Cannon	✓				
Jeff Cook	✓				
Bill Cox	✓				
Kurt Holbert	✓				
Connie King	✓				
Jeff McMillan	✓				
Jim Ripley	✓				
Bill Swan	✓				
Trey Teague	✓				
David Watson	✓				
Jamie Woodson	✓				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish & Wildlife Commission on 08/19/2016 (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: 06/22/2016

Rulemaking Hearing(s) Conducted on: (add more dates). 08/19/2016



Date: 8-29-16

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

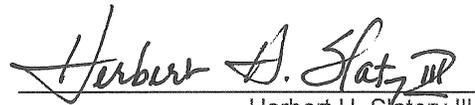
Subscribed and sworn to before me on: 8-29-16

Notary Public Signature: Lisa Crawford

Tennessee Wildlife Resources Agency  
Rule 1660-01-04-.04  
Rules for Field Trials and Dog Training  
Release and Recapture Pens

My commission expires on: 03/10/2019

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.



Herbert H. Slatery III  
Attorney General and Reporter

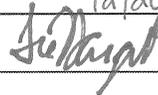
9/13/2016

Date

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Filed with the Department of State on: 9/21/16

Effective on: 12/20/16



Tre Hargett  
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Wildlife Resources Agency

DIVISION: Office of the Director

SUBJECT: Firearms Possession – Refugees, Wildlife Management Areas, and Public Hunting Areas

STATUTORY AUTHORITY: These rules are being amended in order to accurately reflect changes in Tennessee state law.

EFFECTIVE DATES: December 27, 2016 through June 30, 2017

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: As a result of legislative changes to state law, legal possession of firearms has been expanded and this rule still had prohibitions on possession in certain instances that were in conflict with the changes in the law.

**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.

RULE: 1660-01-14

New	_____
Amendment	<u>  X  </u>
Repeal	_____

---

There were no public comments to the above-described rule.

Attached hereto are the responses to public comments.

### **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.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule;

There are no businesses, small or otherwise, that would bear the cost of or directly benefit from the proposed rule.

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;

All recordkeeping and administrative costs are estimated to be minimal and would be borne by the Agency through existing staff.

(3) A statement of the probable effect on impacted small businesses and consumers;

The rule as proposed would have no effect on businesses or consumers.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business;

The rule puts forth necessary due process protections to fully implement previously passed legislation.

(5) A comparison of the proposed rule with any federal or state counterparts; and

The rule is fairly similar to those that have been passed in participating compact states.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Businesses, small or otherwise, will not be impacted as there are no requirements placed on business.

### **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)

Will passage of this rule have a projected financial impact on local governments?

The Agency does not believe that the rule will have any impact on local governments.

Please describe the increase in expenditures or decrease in revenues:

The rule will neither increase expenditures, nor decrease revenues.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

As a result of legislative changes to state law, legal possession of firearms has been expanded and this rule still had prohibitions on possession in certain instances that were in conflict with the changes in the law.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These rules are being amended in order to accurately reflect changes in Tennessee state law. These amendments will remove the conflicting language, bringing the rules in line with the law.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Individuals possessing firearms on TWRA owned lands. There is no opposition or support for these changes.

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

None

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None

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

Chris Richardson, [chris.richardson@tn.gov](mailto:chris.richardson@tn.gov), 615-428-3728

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

Chris Richardson, TWRA Special Assistant to the Director/Policy and Legislation, will explain the rule at the scheduled meeting of the Government Operations Committee.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Chris Richardson, Tennessee Wildlife Resources Agency, P.O. Box 40747, Nashville, TN 37204, (615) 837-6016, [Chris.Richardson@tn.gov](mailto:Chris.Richardson@tn.gov)

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

**Department of State**  
**Division of Publications**  
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 Phone: 615-741-2650  
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Sequence Number: 09-33-16  
 Rule ID(s): 6314  
 File Date: 9/28/16  
 Effective Date: 12/27/16

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

**Agency/Board/Commission:** Tennessee Wildlife Resources Agency  
**Division:** Director's Office  
**Contact Person:** Lisa Crawford  
**Address:** PO Box 40747, Nashville, TN  
**Zip:** 37204  
**Phone:** 615-781-6606  
**Email:** [Lisa.Crawford@tn.gov](mailto:Lisa.Crawford@tn.gov)

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

- Amendment  
 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
1660-01-14	Rules and Regulations for Refuges, Wildlife Management Areas, and Public Hunting Areas
Rule Number	Rule Title
1660-01-14-.10	State Operated Wildlife and/or Waterfowl Refuges
1660-01-14-.13	Hunting and Miscellaneous Uses of Wildlife Management Areas and other Tennessee Wildlife Resources Agency Controlled Lands
1660-01-14-.14	Hunting and Miscellaneous Uses of Public Hunting Areas

Amendment

1660-01-14-.10, State Operated Wildlife and/or Waterfowl Refuges, is amended by deleting the rule in its entirety and by replacing it with the following:

- (1) The following regulations apply to wildlife and/or waterfowl refuges:
  - (a) The hunting, fishing, killing, taking and/or attempted taking of any species of wildlife is prohibited, except where specifically provided by proclamation.
  - (b) The discharging or firing of any type of weapon within, or into a refuge is prohibited,

except during designated hunts.

- (c) The concentrating, driving, rallying, or disturbance of waterfowl, cranes, and/or coots by means of the aid of water, land, or air conveyance or by any other means whatsoever is prohibited.
  - (d) Public use of refuge lands is permitted, except as otherwise prohibited by proclamation or rule. Public use is limited to activities of a temporary nature only.
  - ~~(e) Weapons are prohibited on lands and waters of refuges at all times, except:
    - 1. Weapons are permitted while traveling through refuges on main river channels.
    - 2. Weapons are permitted during designated hunts.~~
  - (f) e) The construction of piers, boathouses, grills, or any other structure which is permanently affixed to the land or water is specifically prohibited on Hiwassee and Paint Rock Refuges.
- (2) The following regulations apply to Amnicola Refuge and Nickajack Cave Refuge:
- (a) Use of alcohol and drugs is prohibited.
  - (b) Camping or loitering is prohibited.
  - (c) ~~Firearms and/or~~ Fireworks are prohibited.
  - (d) Picnicking prohibited unless provided for at designated areas.
  - (e) Pets must be confined to leash or carrier.
  - (f) Entrance on and/or use of Amnicola Refuge shall be by written permission only, and only at such time specified in the written permit.
  - (g) The Executive Director of the Tennessee Wildlife Resources Agency or persons designated by him shall have sole authority to grant the permission described above.
  - (h) Persons desiring use of Amnicola Refuge must contact the TWRA Region 3 Office, 464 Industrial Blvd., Crossville, Tennessee 38555 at least 10 days prior to the date for which permission is desired in order to allow adequate time for processing the permit.
  - (i) Trespass by land or water for any use is prohibited on or in the Nickajack Cave Refuge except that use of the observation deck and access trail to the deck is permitted between April 1 and October 15, inclusive, and that fishing by sport fishing methods as set out by statute or proclamation is permitted as long as no vessel or person enters the refuge boundary.

Authority: T.C.A. §§70-1-206 and 70-4-107. Administrative History: Original rule filed June 8, 1977; effective July 8, 1977. Amendment filed May 19, 1980; effective July 3, 1980. Amendment filed June 27, 1985; effective July 27, 1985. Amendment filed June 27, 1988; effective August 11, 1988. Amendment filed October 26, 1988; effective December 10, 1988. Amendment filed June 8, 1989; effective July 23, 1989. Amendment filed August 29, 1990; effective October 13, 1990. Amendment filed October 21, 1991; effective December 5, 1991. Amendment filed December 14, 1992; effective January 29, 1993. Amendment filed August 9, 1993; effective October 23, 1993. Amendment filed April 4, 1994; effective June 18, 1994. Amendment filed September 26, 1996; effective December 10, 1996. Amendment filed September 30, 1997; effective December 13, 1997. Amendment filed July 19, 2001; effective October 2, 2001. Amendment filed July 1, 2014; effective September 29, 2014.

## Amendment

1660-01-14-.13, Hunting and Miscellaneous Uses of Wildlife Management Areas and Other Tennessee Wildlife Resources Agency Controlled Lands, is amended by deleting the rule in its entirety and by replacing it with the following:

(1) General.

- (a) On management areas, the hunter (except raccoon, opossum, and turkey hunters) may not enter prior to two (2) hours before sunrise, and he must be out of the area by one (1) hour after sunset or legal closing time. Raccoon and opossum hunters must be out of the area one (1) hour after sunrise, except on the Cherokee Wildlife Management Area.
- (b) Only guides approved by the hunt manager will be allowed on managed hunts and these may not carry guns while guiding unless they possess a valid hunting license, big game stamp and area hunt permit. When compartments are assigned by the hunt manager, hunters must remain in the compartment assigned.
- (c) Unauthorized persons are prohibited from being in the wildlife management area during deer, bear, and turkey hunts, except on the Cherokee and Land Between the Lakes Wildlife Management Areas, or as otherwise specified by rule or proclamation.
- ~~(d) Use, possession or transportation of firearms, bows and arrows or other weapons is expressly prohibited except when authorized under these regulations. On areas where overnight camping is permitted weapons must remain in camp except during legal hunting hours.~~

(2) Safety Rules.

- (a) No hunt participant shall be in possession of any alcoholic beverage, narcotic drug, barbiturate, or marijuana while hunting within a management area or other Wildlife Resources Agency controlled lands. No individual may be under the influence of these substances at any time while within a management area or other Wildlife Resources Agency controlled lands.
- ~~(b) Firearms loaded with ammunition in either the chamber or magazine may not be transported in or on motorized vehicles. Except that, muzzleloaders may be transported in a loaded condition if the percussion cap or primer is removed from the nipple or tube. Flintlock muzzleloaders must have the priming powder removed from the pan, the frizzen open and the vent plugged.~~
- ~~(c) Hunt participants may not carry sidearms while within the management area except during hunts where authorized. Hunt participants may not carry sidearms on their person except during authorized hunting hours on wildlife management area.~~
- (d b) Target practice is prohibited except at ranges provided by the Wildlife Resources Agency or the USDA Forest Service. Safety Zones may be designated and posted by the area manager. Safety Zones are defined as an area of protection which may have restricted hunting activities around dwellings, recreation areas, firing and archery ranges and roads.

(3) Dogs.

- (a) Use or possession of dogs is prohibited on wildlife management areas or on other Wildlife Resources Agency controlled lands except when authorized by Commission proclamation or regulation.
- (b) These rules and regulations shall not be construed to conflict with rules and regulations promulgated by any State or Federal Agency with whom the Wildlife Resources Agency manages any area under terms of a cooperative agreement.

- (c) Any dog found on Wildlife Resources Agency controlled lands shall be impounded and disposed of according to the procedures outlined in T.C.A. §70-4-118.
- (4) Camping And Picnicking.
- (a) Camping is specifically prohibited at State fish hatcheries. Visiting prohibited between 5 p.m. and 8 a.m.
  - (b) Overnight camping may be permitted on designated areas by permission from the Area Manager, except on non-Agency lands where legally promulgated rules specify otherwise. Camping shall not exceed 3 weeks in length from the beginning to the end of the camping stay. Owner's contact information (name, phone number, address) or TWRA ID number and date of arrival must be displayed on camper, tent, vehicle, etc., at all times.
  - (c) Houseboats, floats and other watercraft are permitted to anchor and/or moor along the shoreline of Chuck Swan and Cove Creek WMAs from the third Thursday of May through the second Tuesday of September. Houseboats, floats and other watercraft are prohibited from blocking access to coves. In addition, mooring lines cannot be placed to prevent cove access or create a boating hazard. Anchoring and/or mooring shall not exceed 21 consecutive days in length from the beginning to the end of the anchoring and/or mooring stay.
  - (d) Picnicking is permitted on designated areas.
- (5) Miscellaneous.
- (a) Other use of wildlife management areas and other Wildlife Resources Agency controlled lands is subject to approval of the Executive Director, Regional Manager, Park Superintendent, State Forest Supervisor, National Forest Supervisor, or Forest Service National Recreation Area Supervisor.
  - (b) All motorized vehicles must be muffler equipped to suppress noise and be spark arrestor equipped to prevent fires. Operation of motorized vehicles is confined to roads and trails not designated as closed or as authorized by the Area Manager. On LBL, motorized vehicles are prohibited on all roads and trails not designated as open by signs and/or other appropriate methods. Driving off road into woods, fields, or on foot trails or utility right-of-way is prohibited on all agency owned wildlife management areas. Motorized vehicles may be prohibited on any agency owned wildlife management area if deemed necessary to protect wildlife, vegetation, and/or properties.
  - (c) Vehicles shall not be parked in any manner that will block or deny access to any road or trail.
  - (d) In addition to the above, the following apply to the use of trail bikes, mini-bikes, and other off-highway-vehicles:
    - 1. Off Highway Vehicles (OHVs) are restricted to use on roads open to other motorized traffic, except where prohibited by state or federal statute, and designated trails only. Roads shall be posted if closed.
    - 2. OHVs may be prohibited from certain high use areas and at certain times when there is a threat to public safety or wildlife as indicated by signs.
    - 3. Driving off roads and designated trails into woods, fields, and utility rights of way is prohibited unless otherwise provided.
    - 4. OHVs may be operated during daylight hours and at other times when

participating in authorized activities.

5. OHVs must be equipped with properly functioning mufflers and spark arresters.
  6. OHVS MAY NOT BE OPERATED IN A RECKLESS OR OTHERWISE UNSAFE MANNER. NO HARASSMENT OR DISTURBANCE OF PEOPLE OR WILDLIFE IS PERMITTED.
  7. ALL INCIDENTS RESULTING IN THE INJURY TO PERSONS OR DAMAGE TO PROPERTY MUST BE REPORTED BY THE PERSON OR PERSONS INVOLVED AS SOON AS POSSIBLE TO THE DISTRICT FORESTER, AREA MANAGER, OR PARK SUPERINTENDENT. THIS REPORT DOES NOT RELIEVE PERSONS FROM THE RESPONSIBILITY OF MAKING ANY OTHER ACCIDENT REPORTS WHICH MAY BE REQUIRED UNDER STATE LAW.
  8. Off Highway Vehicle is any vehicle capable of traveling off highways within the state. The term includes all-terrain vehicles, motorcycles, dune buggies and other four-wheeled vehicles used for off-road activities.
- (e) The use of wire, nails or other metal materials is expressly prohibited in the building or attaching of climbing devices or hunting stands on or in trees. Hunting is prohibited from any stand attached to a tree with these materials. Portable climbing devices or stands that do not injure trees are excepted from this rule.
  - (f) Acts of disorderly, obnoxious, or boisterous conduct, including acts that interfere with the orderly process of hunting, are prohibited. Violators shall be removed from the area and/or prosecuted. When an individual is convicted for a flagrant violation(s) or repeated violations of regulations governing management areas, the Executive Director shall at his discretion bar said individual from all management areas for a period of up to two years of date of written notification.
  - (g) No person shall deface, damage, destroy or remove any equipment, structure, trees, fruits, nuts, crops, or other plants, dirt, gravel or sod from any wildlife management area or other Wildlife Resources Agency controlled lands without specific authorization.
  - (h) No garbage, rubbish, litter or any refuse, sewage or other material which would pollute said area or waters, or render them unsightly or unsanitary shall be thrown, left or deposited on the area.
  - (i) No warming, camping or any type fire shall be allowed except at designated camping areas. Anyone causing a forest fire shall be held liable for the cost of suppression.
  - (j) The following apply to the use of saddle and pack animals on Wildlife Management Areas:
    1. Horses and other saddle and pack animals are permitted on roads and trails open to motorized traffic and other trails or routes established for their use.
    2. Riding off roads into woods, fields, or on foot trails is prohibited unless otherwise provided.
    3. Horses and other saddle and pack animals may be prohibited from certain high use areas such as campgrounds, picnic areas, main-traveled roads, etc. as indicated by signs.
    4. Horses and other saddle and pack animals are prohibited at all times on Bridgestone/Firestone Centennial Wilderness, Foothills and Oak Ridge Wildlife Management Areas.

5. Horses and other saddle and pack animals are prohibited during big game seasons on Cheatham, Laurel Hill, and Yanahli Wildlife Management Areas.
- (k) The following shall apply to abandoned and unattended property:
1. Abandonment of any vehicle or other personal property is prohibited and such property may be impounded by the Area Manager or an authorized person.
  2. Leaving any vehicle or other personal property unattended for longer than 24 hours, without prior permission of the Area manager or other authorized person, is prohibited and any property so left may be impounded by the Area Manager or an authorized person, and may be disposed of according to state procedures. In the event unattended property interferes with a safe and orderly management of the area, it may be impounded at any time.

**Authority:** T.C.A. § 70-1-206. **Administrative History:** Original rule filed July 19, 2001; effective October 2, 2001. Amendment filed June 3, 2008; effective August 17, 2008. Amendment filed July 1, 2014; effective September 29, 2014. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.

#### Amendment

1660-01-14-.14, Hunting and Miscellaneous Uses of Public Hunting Areas, is amended by deleting the rule in its entirety and replacing it with the following:

- (1) PERMITS (ON PUBLIC HUNTING AREAS WHERE REQUIRED, AS PER AGREEMENT)
  - (a) Before any person may hunt on a public Hunting Area he must possess a valid and appropriate hunt permit purchased from a Public Hunting Area permit agent. This permit must be available for inspection while on the area.
  - (b) A public hunting area permit is subject to cancellation if the permittee violates any of the rules and regulations of the area.
- ~~(2) General~~
  - ~~(a) Use, possession or transportation of firearms, bows and arrows or other weapons is expressly prohibited except during times when they may be legally used for hunting. Persons possessing a firearm on Public Hunting Lands are required to have a valid Public Hunting Area permit.~~
- (3) Safety Rules
  - ~~(a) The hunter's permit is subject to cancellation if he is found to be careless with firearms and no permit fee refund will be made.~~
  - (a) No hunt participant shall be in possession of any alcoholic beverage, narcotic drug barbiturate, or marijuana while hunting within the Public Hunting Area. No person may be under the influence of these substances while hunting on a Public Hunting Area.
  - ~~(c) Firearms loaded with ammunition in either the chamber or magazine may not be transported in or on motorized vehicles. Except that, muzzleloaders may be transported in a loaded condition if the percussion cap or primer is removed from the nipple or tube. Flintlock muzzleloaders must have the priming powder removed from the pan, the frizzen open and the vent plugged.~~
  - (d) Hunting is specifically prohibited inside safety zones on all public hunting areas.
- (4) Miscellaneous

- (a) All motorized vehicles must be muffler equipped to suppress noise and be spark arrestor equipped to prevent fires. Operation of motorized vehicles is confined to roads not designated as closed and driving off road into woods fields, strip mines, foot trails and utility rights-of-way is prohibited. Enduros, rallies, and/or motocross competition is prohibited on all agency-owned wildlife management areas.
- (b) Vehicles shall not be parked in any manner which will block or deny access to any road or trail.
- (c) The use of wire, nails or other metal materials is prohibited in the building or attaching or attaching of climbing devices or hunting stands on or in trees. Hunting is prohibited from any stand attached to a tree with these materials. Portable climbing devices and stands that do not injure trees are excepted from this rule.
- (d) No person shall deface, damage, destroy or remove any equipment, structure, sign, trees, plants, dirt or gravel from any Public Hunting Area without proper authorization.
- (e) No garbage, refuse, litter or sewage shall be left or deposited on a Public Hunting Area.
- (f) The use of buckshot for hunting and/or taking of deer and turkey is specifically prohibited.
- (g) The use of ATVs (4 wheelers, 3 wheelers, dirt bikes, etc.) or any unlicensed motorized vehicle is prohibited on the Weyerhaeuser Public Hunting Area.
- (h) Open fires are prohibited on all public hunting areas.
- (i) Other miscellaneous uses of public hunting areas shall be in accordance with posted notices and/or as indicated on the hunt permit.

**Authority:** T.C.A. §§ 70-1-206 and 70-2-225. **Administrative History:** Original rule filed July 19, 2001; effective October 2, 2001. Amendment filed May 2, 2003; effective July 16, 2003. Amendment filed \_\_\_\_\_; effective \_\_\_\_\_.

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

Board Member	Aye	No	Abstain	Absent
Chad Baker	✓			
Jim Bledsoe	✓			
Harold Cannon	✓			
Jeff Cook	✓			
Bill Cox	✓			
Kurt Holbert	✓			
Connie King	✓			
Jeff McMillan	✓			
Jim Ripley	✓			
Bill Swan	✓			
Trey Teague	✓			
David Watson	✓			
Jamie Woodson	✓			

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish & Wildlife Commission on 08/19/2016 (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: 06/22/2016

Rulemaking Hearing(s) Conducted on: (add more dates). 08/19/2016

Date: 8/19/16

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: 8-19-16

Notary Public Signature: Lisa Crawford

My commission expires on: 3-10-19



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.

Herbert H. Slatery III  
Herbert H. Slatery III

Attorney General and Reporter

9/21/2016

Date

Department of State Use Only

Filed with the Department of State on: 9/28/16

Effective on: 12/27/16

*Tre Hargett*  
Tre Hargett  
Secretary of State

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SECRETARY OF STATE  
PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Department of Human Services

DIVISION: Adult and Family Services

SUBJECT: Child Care Agency Employees

STATUTORY AUTHORITY: Chapter 839 of the Public Acts of 2016

EFFECTIVE DATES: December 27, 2016 through June 30, 2017

FISCAL IMPACT: It is estimated that increases in state expenditures in FY 16-17 are estimated to be \$673,129.00. FY 16-17 will require the largest number of background checks in order to reach compliance with the law and rule requirements. It is estimated that background checks will be required for an estimated 14,469 individuals at a cost of \$42.00 per individual, resulting in state expenditures estimated to be \$607,698.00. In addition, the Department will need to hire one Special Investigator position with recurring expenditures estimated to be \$65,431.00 (\$48,000.00 salary and \$17,431.00 benefits).

The recurring increase in state expenditures in FY 17-18 and subsequent years is estimated to be \$126,205.00. This is based on an estimate that 1,447 individuals will need background checks at \$42.00 per individual, resulting in state expenditures of \$60,774.00. Added to this, is the recurring cost for one Special Investigator position of \$65,431.00 (\$48,000.00 salary and \$17,431.00 benefits).

All costs associated with this will be funded with existing federal CCDBG funds and existing State Maintenance of Effort funds in the Department's recurring budget. No additional state appropriations will be needed.

STAFF RULE ABSTRACT: Public Chapter 839 was signed into law on April 21, 2016. The law relates to criminal background checks for those individuals working or proposing to work in child care agencies. Among other things, the law requires criminal background checks for existing child care employees every five years (Section 10) and requires additional training requirements for newly hired child care agency staff (Section 13). The Act takes effect July 1, 2016. (Section 14). The passage of the Act on April 21, 2016, and its July 1, 2016, effective date does not provide adequate time to conduct a notice of rulemaking hearing. Due to the length of time necessary to complete the rulemaking process to

promulgate rules related to background checks for individuals working in child care agencies, these emergency rules are required in order for the Commissioner to comply with the enactment of the Legislature. The Department is simultaneously issuing a notice of rulemaking hearing regarding these rules and will promptly conduct a rulemaking hearing to consider comments on the adoption of these as permanent rules.

These rules also implement provisions of the federal Child Care and Development Block Grant (CCDBG) which was reauthorized by Congress and passed in November 2014. The CCDBG Reauthorization requires states to allow homeless children to receive CCDF assistance after an initial eligibility determination but before providing required documentation (including documentation related to immunizations) to make it easier for vulnerable families to access child care services. States are also required to make public information about the results of health and safety monitoring that includes information about the annual number of deaths, the annual number of serious injuries, and the annual number of incidences of substantiated child abuse in child care settings. In addition, the CCDBG Act requires states to establish pre-service and ongoing training requirements for providers serving children receiving CCDF assistance relating to the following health and safety topics:

- Prevention and control of infectious diseases (including immunization)
- Prevention of sudden infant death syndrome and use of safe sleeping practices
- Administration of medication, consistent with standards for parental consent
- Prevention of and response to emergencies due to food and allergic reactions
- Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic
- Prevention of shaken baby syndrome and abusive head trauma
- Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602(a)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(a)(1))
- Handling and storage of hazardous materials and the appropriate disposal of bio contaminants
- Precautions in transporting children (if applicable)

- First aid and cardiopulmonary resuscitation

The CCDBG provisions included in the current rule amendments are required to be implemented by September 30, 2016, by the State's Child Care Development Fund (CCDF) State Plan, based on implementation requirements issued by the federal Office of Childcare, Administration of Children and Families. The rules need to be in place by July 1, 2016, in order to allow the department sufficient time to implement the data reporting requirements, homeless children CCDF assistance processes, and provide required and necessary training to childcare agency staff by the September 30, 2016 deadline. Failure to comply with the September 30 deadline could result in a 5% loss of federal funding. See Section 658E(c)(3)(B)(ii)(II)(cc).

## **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.

Following are comments received either orally or in writing at the public hearing(s) concerning the above rules or which were received within the time permitted for submission of comments following the hearing, together with the responses of the Department of Human Services. Similar or identical responses have been grouped together for purposes of response:

### **Comment One (Drop-in Centers):**

Regarding 1240-04-02-.04 and 1240-04-02-.05 relating to drop-in centers, did the Department intend to make all requirements applicable to drop-in centers, such as requiring having immunization records on file (could be numerous) for all children versus a current statement of health; requiring onsite visits and parent handbooks; requiring a written expulsion and transfer policy; and the data reporting requirements? These will be difficult for drop-in centers to comply with.

Other concerns regarding the drop-in center changes included a request to clarify what we mean by non-traditional hours; clarification around what active enrollment mean for a drop in center; and whether the rules regarding smoke-free environment and transportation are necessary because they are already smoke-free pursuant to state law and do not provide any transportation services.

### **Response:**

1240-04-02-.04 and 1240-04-02-.05 applicable to drop-in centers have been modified to remove the immunization records requirement (leaving the current requirement to have a signed statement regarding current immunizations form on file); removing the requirement for an onsite visit; removing the requirement for parent handbooks; and removing the requirement for a transfer policy.

Regarding non-traditional hours, non-traditional hours are hours for care outside of those traditional care hours typically offered by licensed childcare agencies, typically 6:00 am until 6:30 or 7:00 pm. The term "active enrollment" as applicable to drop-in centers refers to a list of current participants at the drop-in center. The rule regarding a smoke-free environment requires the agency to include such a statement in its policies, and does not need to be modified. The transportation rule provides that "if the agency provides transportation..." it needs to have a transportation plan on file. Agencies not providing such transportation would therefore not need to have a transportation plan on file. As such, no change is necessary with respect to these rule provisions.

### **Comment 2 (Training Requirements):**

The Department received a number of comments on training requirements, which are contained in the following rules: 1240-04-01-.03, 1240-04-02-.05, 1240-04-03.07, and 1240-04-04-.03. Clarification was requested on what was necessary for pre-orientation and ongoing training, and how often ongoing training must be completed, and for which components. Commenters also requested the required number of training hours now, and whether the Department would now require 30 hours of training. Questions were also asked about what training was required before employment (and would be satisfactory for the Department) and what training was required within the first two weeks of employment.

Other comments asked if the Department would offer group training options, in particular for Shaken Baby Syndrome (and whether everyone had to obtain) and Before You Begin (other than during the day) and whether the cost would be borne by the provider or the Department, and when the training was required to be completed. Another commenter wanted to know if Cytomegalovirus information could be included in Department procedures and policies so they could obtain sample forms.

Another commenter wanted clarification on what documentation would be required to show compliance with the training requirements. On the training components, a commenter asked where they could obtain training on

building and physical premises safety and emergency preparedness training. Requests were made for the Department to inform Child Care Resource & Referral ("CCR&R") of the requirement to obtain training for prevention and control of infectious diseases because it is not available.

Commenters requested a source to verify their training was recognized by the Department.

Clarification was requested on the CPR training requirement, as it appears to be the same in the rule (one per center on duty), but their local program evaluator indicated everyone in the center needed to comply with the requirement.

A request was made to remove the language "such as but not limited to" before the list of required training topics because they need to know upfront what training is required.

A commenter requested that "pediatric" be added before the words "cardiopulmonary resuscitation" in the rules in order to align with language in the applicable federal regulations.

**Response:**

Pre-orientation training requires two hours of orientation to the topics listed in the rules—training containing an orientation to the required components that lasts the requisite two hours will satisfy this rule. Ongoing training must be completed annually, and the Department will communicate a policy on how many components must be covered annually. The amount of annual training required is not changed in these rules. The language "such as but not limited to" will remain in the list of requirements for training components to allow for flexibility if new safety issues or concerns arise that the Department feels need to be addressed by training. If new components arise, the Department will communicate the need for training to all providers, and allow sufficient time for providers to complete the training. This also allows the staff person the flexibility to take other training not specifically noted in the list.

The Department will make group training available for certain training components and may provide DVD copies of such training; those trainings will not include a cost to the providers. The Department can provide more information or links to resources on the Cytomegalovirus on the Department's provider website.

Documentation necessary to show compliance with the training requirements includes maintaining documentation of certificates obtained for attending trainings. Building and premises safety training and training for the prevention and control of infectious diseases are currently covered in the existing Tennessee Child Care On-line Training System ("TCCOTS") and/or Child Care Resource & Referral ("CCR&R").

Emergency preparedness training can be located at: <https://training.fema.gov/is/courseoverview.aspx?code=is-36>. Additional resources can be found here: <http://www.acf.hhs.gov/occ/resource/emergency-preparedness-resources-for-child-care-programs>.

The Department maintains a list of recognized training courses, which program evaluators can provide upon request.

The CPR training requirement has not changed—it still requires one person per duty to be CPR certified. This requirement may later change when the final federal regulations are published.

The word "pediatric" will be added before the words "cardiopulmonary resuscitation" in the rules for that training component.

**Comment 3 (Background Checks):**

The Department received a number of comments with respect to new background check requirements contained in the following rules: 1240-04-01-.03, 1240-04-02-.05, 1240-04-02.07, and 1240-04-04-.03. The comments were grouped into the following categories:

**Criminal Offenses for Drivers:** The rule excludes persons from transportation if they have pled guilty or been convicted of an offense involving vehicle damage. Commenters did not feel this was something that should exclude a driver, and felt that this would include simple accidents with vehicle damage as an excludable offense.

**Who Is Subject to the Background Check Requirement.** Commenters requested clarification on who has to be background check. Particular questions regarding whether parents needed to undergo a background check because they could "have access to children," and whether a juvenile aged fifteen (15) who attends the center during the day for a few hours after school must be checked.

Another question involved whether volunteers had to be background checked and if so, after how many hours of service. Also, one commenter indicated that Department of Education Rules should be similar. Someone requested further clarification on which employees had to be checked.

One commenter requested a change in the background check requirements, to have anyone who comes into an agency fingerprinted prior to entering the agency and having access to children because the rule only requires substitutes to obtain a background check if they will provide substitute services for more than 36 hours in a calendar year. An at-home provider asked how they would know if parents, extended family members, or homeless people are sexual offenders that they are letting into their programs/homes?

**When.** Several commenters stated that it was cumbersome to require the background checks be completed prior to employment. Another commenter asked that the Department send guidance on when they need to start sending employees for the five-year checks.

**Does DHS Complete the Checks.** Commenters asked if providers would be responsible for checking registries and juvenile records, and if so how they could accomplish this.

**Unable to Obtain Fingerprints.** Commenters wanted to know if they could only go through one background check agency and if so, what the cost involved. Commenters also wanted to know if they did everything correctly but had to resend the check in, if they would be responsible for the cost of the second background check. Another commenter asked if the mistake was a result of a Department mistake, would the provider have to pay for a new fingerprint/background check.

**Every Five Year Requirement.** Commenters wanted to know if they had to immediately exclude a caregiver if they had been there for a long time but had a five year background check show an excludable offense. Will the state pay for these checks every five years?

**Exclusion Comment.** What happens if someone is excluded, how do they appeal and will we pay attorneys' fees for the appeal. One commenter thought we should not exclude for misdemeanor drug offenses.

Another commenter asked where the information could come from as the rule mentions information coming from a source other than the Department.

#### **Responses:**

**Criminal Offenses for Drivers:** The rule as written only applies to criminal offenses which include an element of vehicle or property damage within the last five (5) years. As such, it would not be applicable to "fender benders" or other traffic accidents not resulting in any criminal charges.

**Who Is Subject to the Background Check Requirement.** All childcare employees must be background checked before beginning work, and again every five years thereafter. Parents of children do not need to be background checked, nor do juveniles visiting centers for a few hours a day who do not reside in the facility. Volunteers serving more than 36 hours in a center must be checked prior to starting their volunteer service or before exceeding the 36 hour volunteer requirement, pursuant to Public Chapter No. 839. No change to these rules will be made.

Regarding the home provider questions about parents, extended family members or homeless people, those persons are not required to undergo background checks under these rules.

**When.** For new employees, background checks must be completed no more than 90 days prior to employment, and then again every five years. The Department will send guidance on when to start sending employees for the every five-year checks, and has already sent one such communication to child care agencies.

**Does DHS Complete the Checks.** The Department will complete all background checks, including registry checks.

**Unable to Obtain Fingerprints.** If a fingerprint sample is rejected, the rejection notification letter already includes a code that allows the person to submit another fingerprint sample within 60 days without any additional charge.

**Every Five Years Requirement.** If a background check is performed on a current employee who has not undergone such a check within the past five years, and the results demonstrate an excludable offense, the person must be immediately excluded from access to children to protect the health and safety of such children. The State will cover the costs of these background checks.

**Exclusion Comment.** If excluded, an aggrieved party can file a request for a waiver; attorneys' fees must be paid by the party filing the request. The list of excludable offenses includes misdemeanor drug offenses, pursuant to the recently passed state law, Public Chapter No. 839.

**Comment Four (Expulsion Policies):**

The Department received multiple comments on the expulsion policy requirement contained in the following rules: 1240-04-01-.02, 1240-04-02-.04, 1240-04-03-.05, and 1240-04-04-.02.

Comments requested more details and clarification on what should be contained in expulsion policies and if we would provide templates. Another commenter indicated that while they may think their parent communication is clear, the program evaluators might not agree. Providers do not agree with having to have such a policy. One commenter requested an indicator manual, and noted that other states have these. Another commenter was upset that the burden was on the center versus the parents to transfer to another center. A request was made to know who the quarterly reports would be made to and how often. One commenter requested an allowance for disenrollment due to not paying tuition in their expulsion policy.

Another commenter said the CCFBG does not require an expulsion plan, but rather requires education for the public parents on expulsion. Many providers have smaller handbooks and would not want an expulsion policy to dominate the material offered at enrollment. There will much technical assistance needed in this area. Another commenter states that section (c) goes far beyond what is outlined in the CCDBG and causes undue burden and stress on private daycare providers and should be omitted.

**Response:**

No change will be made to the rules requiring an expulsion policy. Clear communication and expulsion plans provide parents with the center or facility's expectations for when a child can be disenrolled. Each provider must develop its own expulsion policy and the criteria for disenrollment and clearly communicate such information to parents, which would include inclusion of such information in the parent handbooks, and notification to parents that the policy exists. If the provider wants to include a provision regarding disenrollment for nonpayment of tuition, the provider should include that information in its expulsion policy.

**Comment Five (Immunizations):**

The Department received several comments on the immunization record exemption for children in foster care, alien children, and homeless children contained in 1240-04-01-.02, 1240-04-01-.06, 1240-04-02-.04, 1240-04-03-.05, 1240-04-04-.02, and 1240-04-04-.06.

Commenters wanted the homeless children and foster children exemption for immunization records to be expanded to include children who had moved to Tennessee from out of state. Other providers felt that this exemption might put other children in the centers at risk. Another provider wanted to know when the proposed rule will give parents of homeless, foster, or alien children 30 days to get their shot records submitted so she will know when she can immediately accept these children into care. Another provider wanted to know if the rule was going to change the allowance for her to obtain shot records from other states if such parents lived on the border, such as in Georgia or Alabama.

**Response:**

No change will be made in response to comments on this rule. The exemptions for children in these special situations, such as foster care, alien children, and homeless children is logical and takes into account the additional effort it may take to obtain such records for these children and their immediate need for quality care.

**Comment Six (Data Reporting):**

The Department received a few comments on data reporting requirements, contained in 1240-04-01-.02, 1240-04-01-.06, 1240-04-02-.04, 1240-04-03-.05, 1240-04-04-.02, and 1240-04-04-.06. Commenters wanted to know who would handle the reporting, to whom the reports would be made, how the reports would be made and in what format, and how often. Other commenters were concerned that it would be difficult to report data regarding children with emotional/behavioral problems. Other commenters did not see the need for reports of child abuse and requested it be changed to "instances of substantiated child abuse that occur in the childcare setting each year," indicating the Department would already have this information. Other providers felt that the requirement for quarterly reports adds an undue burden to childcare providers.

**Response:**

The data reporting requirements are on an as requested basis and not more often than quarterly. The Department will send providers guidance on format of reporting and how often the Department anticipates requesting such data. Reporting such data should not place an undue burden on providers, and no change will be made in response to these comments.

**Comment 7 (Release of a child):**

Commenters suggested that the rule(s) regarding release of the child in 1240-04-01-.02, 1240-04-02-.04, 1240-04-03-.05, and 1240-04-04-.02 should include a written plan of consent for release of the child. A question was asked what if a parent calls and requests child be picked up by another family member, and they do have written permission, but the person is listed on the original application, then are they allowed to release the child. Commenters wanted clarification on the section regarding release anyone whose behavior might place the child at immediate risk of danger regarding what they legally could and could not do. A commenter wanted to know if a parent appeared intoxicated, could they deny release.

**Response:**

The rules already require a written child release plan stating to whom the child shall be released. They also require a clear policy be developed by the agency regarding release of child(ren) to anyone whose behavior may place the child(ren) in immediate risk. The specific question regarding written release permission to another family member can be addressed in the agency's written release policy. The same policy can also address releasing a child to someone whose behavior might place the child at risk.

**Comment 8 (Parent Engagement):**

Regarding 1240-04-03-.05(5)(f), commenters noted that the parental engagement strategies recognized by the Department have not been specified.

**Response:** Parent/family involvement involves parents and other family members in the child care program. Children in programs that emphasize active partnerships with parents generally receive higher quality care. Recognized parental engagement strategies may include, but are not limited to: quarterly updated bulletin boards for communications/announcements to parents; monthly written communication to parents; group parent meetings once per licensing year; individual parent conferences once a year; parent education handouts; one activity or project offered to families per licensing year; one educational training offered to families per licensing year; providing parents with current community resources when enrolling; offering parents an annual opportunity to evaluate the curriculum, structure and parent involvement aspects of the program, and maintaining a parental advisory council with documented meetings at least 2 times per year.

**Comment 9 (Documentation of Incidents):**

The Department received a few comments on documentation of incident rules. One commenter questioned whether under the provisions documentation and dis-enrollment before dis-enrolling a child because of an incident, does she first have to call her program evaluator since she has documentation?

**Response:**

There is no requirement that a provider notify the program evaluator prior to dis-enrolling a child. No changes were made in response to this comment.

**Comment 10 (Notification Issues):**

The Department received a number of comments on the lack of notification regarding the regular and emergency rules to provider, and the lack of clear, consistent communication from the Department. Another commenter indicated there should be a website just for resources for providers on the Department's website.

**Response:**

The Department published the regular rules and the emergency rules on the Department's website and the Secretary of State's website. The Department also sent out a provider letter the week before the rules hearings to remind providers of when and where they were occurring. The Department maintains a link to a website dedicated to resources and information for childcare providers, which can be located at: <http://tn.gov/humanservices/topic/child-care-services>.

No change to the rules is necessary.

**Comment 11:**

There is a typographical error in rule 1240-04-01-03(2)(v). "Ehicular homicide" should be "vehicular homicide".

**Response:**

This typographical error will be corrected.

**Comment 12:**

A comment was received about provider supervision during high risk outdoor activities such as eating or outdoor play, and having to sit at the table with the children. This commenter felt the providers should not be required to sit at the table with the children.

**Response:**

Nothing in the proposed rules changed the definition of high risk activity or the supervision requirements; no change is necessary in response to this comment.

**Comment 13:**

One commenter requested clarification and/or specific direction as to regulations specifically related to the Child Care Certificate Program.

**Response:**

The rules are equally applicable to both agencies that provide care for children of families who receive child care assistance and those that do not. No change to the rules is necessary in response to this comment.

**Comment 14:**

One commenter felt that the rule allowing parent access at all times to children was problematic because the longer the parent stays, the worse the child gets.

**Response:**

The lead agency associates unlimited parental access with best regulatory practices that contribute to the quality of care for children. Unscheduled visits by parents provide an incentive for agencies to maintain compliance with licensing rules and to maintain their overall level of quality. No change to the rules is necessary in response to this comment.

**Comment 15:**

Regarding 1240-04-03-.05(f), a commenter requested that the Department look into considering the age of children served for an on-site visit, specifically school-age program children being served by after-school program, and whether there should be an age requirement on this item.

**Response:**

The benefits associated with pre-enrollment visits are not limited to young children. A pre-enrollment visit is important for the parents and a child of any age. As such, no changes to the rules will be made in response to this comment.

**Comment 16:**

A commenter voiced concern regarding the grouping categories in the ratio section of the rules, and suggested incorporating a "walking group" of infants age 16-36 months to solve the problem.

**Response:**

No change was made in the rules to the ratio groupings, so no change is necessary in response to this comment.

**Comment 17 (Parental Observation):**

Regarding 1240-04-03-.05(6)(a)(3) requiring written parental permission before non-agency childcare staff person observe a child, one commenter asked if this should be part of the parent communication at enrollment. She indicated that a blanket permission that lacks details on the observation does not inform the parents, and parents should not be required to sign a blanket permission form, but rather, should sign for permission at the time of observation.

**Response:**

The rules address requiring facilities to have written policies that address written parental permission for observation of children by non-child care agency staff, but do not dictate what form that permission must take and/or when it must be signed. An agency may include in its policy a requirement for specific written permission at the time of observation. No change to the rules is necessary in response to this comment.

**Comment 18:**

In 1240-04-03-.07(9)(h), "Form" should be "from".

**Response:**

This typographical error, which is also found in 1240-04-01-.03(1)(a)(6)(xi), 1240-04-02-.05(1)(e)(8), and 1240-04-04-.03(1)(a)(6)(viii), will be corrected.

**Comment 19:**

One commenter noted that calling the hotline on the same business day could be problematic for providers. Accreditation agencies allow for 72 hours to report issues. It is more important that the person be excluded, not that the call be made in the same business day. We don't see this requirement in the federal law.

**Response:**

Nothing in the amendments to the rules addresses this requirement, and no change is necessary in response to this comment.

**Comment 20:**

Regarding 1240-04-03-.07(c)(10), one commenter noted that this section is a repeat of the previous section 9 and actually refers to the old law.

**Response:**

The new rules relating to the background check requirements found in the amended 1240-04-03-.07(c)(9) are independent of the existing provisions found in 1240-04-03-.07(c)(10) relating to the exclusion of persons from contact with children, which are not changed in the proposed rules. No changes were made in response to this comment.

## **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The rules impact child care centers, group child care homes, family child care homes, and drop-in child care centers regulated by the Department of Human 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)

These rules will have no projected financial impact on local governments.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

See (B) below.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Public Chapter 839 was signed into law on April 21, 2016. The law relates to criminal background checks for those individuals working or proposing to work in child care agencies. Among other things, the law requires criminal background checks for existing child care employees every five years (Section 10) and requires additional training requirements for newly hired child care agency staff (Section 13). The Act takes effect July 1, 2016. (Section 14). The passage of the Act on April 21, 2016, and its July 1, 2016, effective date does not provide adequate time to conduct a notice of rulemaking hearing. Due to the length of time necessary to complete the rulemaking process to promulgate rules related to background checks for individuals working in child care agencies, these emergency rules are required in order for the Commissioner to comply with the enactment of the Legislature. The Department is simultaneously issuing a notice of rulemaking hearing regarding these rules and will promptly conduct a rulemaking hearing to consider comments on the adoption of these as permanent rules.

These rules also implement provisions of the federal Child Care and Development Block Grant (CCDBG) which was reauthorized by Congress and passed in November 2014. The CCDBG Reauthorization requires states to allow homeless children to receive CCDF assistance after an initial eligibility determination but before providing required documentation (including documentation related to immunizations) to make it easier for vulnerable families to access child care services. States are also required to make public information about the results of health and safety monitoring that includes information about the annual number of deaths, the annual number of serious injuries, and the annual number of incidences of substantiated child abuse in child care settings. In addition, the CCDBG Act requires states to establish pre-service and ongoing training requirements for providers serving children receiving CCDF assistance relating to the following health and safety topics:

- Prevention and control of infectious diseases (including immunization)
- Prevention of sudden infant death syndrome and use of safe sleeping practices
- Administration of medication, consistent with standards for parental consent
- Prevention of and response to emergencies due to food and allergic reactions
- Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic
- Prevention of shaken baby syndrome and abusive head trauma
- Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602(a) (1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(a)(1))
- Handling and storage of hazardous materials and the appropriate disposal of bio contaminants
- Precautions in transporting children (if applicable)
- First aid and cardiopulmonary resuscitation

The CCDBG provisions included in the current rule amendments are required to be implemented by September 30, 2016, by the State's Child Care Development Fund (CCDF) State Plan, based on implementation requirements issued by the federal Office of Childcare, Administration of Children and Families. The rules need to be in place by July 1, 2016, in order to allow the department sufficient time to implement the data reporting requirements, homeless children CCDF assistance processes, and provide required and necessary training to childcare agency staff by the September 30, 2016 deadline. Failure to comply with the September 30 deadline could result in a 5% loss of federal funding. See Section 658E(c)(3)(B)(ii)(II)(cc).

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule will impact Child Care Agencies, including Day Care Centers, Family Home Centers, Group Home Centers and Drop In Centers.

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

There are no Judicial Rulings of Attorney General Opinions that related directly to these rule amendments.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

It is estimated that increases in state expenditures in FY 16-17 are estimated to be \$673,129.00. FY 16-17 will require the largest number of background checks in order to reach compliance with the law and rule requirements. It is estimated that background checks will be required for an estimated 14,469 individuals at a cost of \$42.00 per individual, resulting in state expenditures estimated to be \$607,698.00. In addition, the Department will need to hire one Special Investigator position with recurring expenditures estimated to be \$65,431.00 (\$48,000.00 salary and \$17,431.00 benefits).

The recurring increase in state expenditures in FY 17-18 and subsequent years is estimated to be \$126,205.00. This is based on an estimate that 1,447 individuals will need background checks at \$42.00 per individual, resulting in state expenditures of \$60,774.00. Added to this, is the recurring cost for one Special Investigator position of \$65,431.00 (\$48,000.00 salary and \$17,431.00 benefits).

All costs associated with this will be funded with existing federal CCDBG funds and existing State Maintenance of Effort funds in the Department's recurring budget. No additional state appropriations will be needed.

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

Joyce Turner,  
Interim Director of Operations  
Community and Social Services

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

Joyce Turner,  
Interim Director of Operations  
Community and Social Services

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Joyce Turner  
Interim Director of Operations  
Community and Social Services  
400 Deaderick Street  
Citizen's Plaza Building, 15th Floor  
Nashville, TN 37243  
615-313-4771  
Joyce.Turner@tn.gov

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

N/A

**Department of State  
Division of Publications**

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Sequence Number: 09-36-16  
Rule ID(s): 6318-6321  
File Date: 9/28/16  
Effective Date: 12/27/16

# Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

<b>Agency/Board/Commission:</b>	Tennessee Department of Human Services
<b>Division:</b>	Adult and Family Services
<b>Contact Person:</b>	Nicole Armstrong
<b>Address:</b>	Office of General Counsel Citizens Plaza Building, 15th Floor 400 Deaderick Street Nashville, Tennessee
<b>Zip:</b>	37243-1403
<b>Phone:</b>	615-313-4731
<b>Email:</b>	Nicole.Armstrong@tn.gov

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

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1240-04-01	Standards for Group Child Care Homes
Rule Number	Rule Title
1240-04-01-.02	Ownership and Administration
1240-04-01-.03	Staff
1240-04-01-.06	Health and Safety

Chapter Number	Chapter Title
1240-04-02	Licensure Rules for Drop-In Child Care Centers
Rule Number	Rule Title
1240-04-02-.04	Ownership, Organization and Administration
1240-04-02-.05	Staff Requirements

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<b>Chapter Number</b>	<b>Chapter Title</b>
1240-04-03	Licensure Rules for Child Care Centers
<b>Rule Number</b>	<b>Rule Title</b>
1240-04-03-.05	Ownership, Organization, and Administration
1240-04-03-.07	Staff

<b>Chapter Number</b>	<b>Chapter Title</b>
1240-04-04	Standards for Family Child Care Homes
<b>Rule Number</b>	<b>Rule Title</b>
1240-04-04-.02	Ownership and Administration
1240-04-04-.03	Staff
1240-04-04-.06	Health and Safety

*Redline*

**RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN SERVICES  
ADULT AND FAMILY SERVICES DIVISION**

**CHAPTER 1240-04-01  
STANDARDS FOR GROUP CHILD CARE HOMES**

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1240-04-01-.04	Equipment	1240-04-01-.10	Care of Children with Disabilities
1240-04-01-.05	Program	1240-04-01-.11	Appendices
1240-04-01-.06	Health and Safety		

**1240-04-01-.01 INTRODUCTION.**

- (1) Purpose Of Licensing. The primary purpose of licensing is the protection of children. Minimum requirements seek to maintain adequate health, safety, and supervision of children while in a group care setting. Developmental (comprehensive) child care provides appropriate educational experiences, health services, and social services to children and their families.
- (2) Types Of Agencies. Child care services may be offered by family day care homes, group day care homes, day care or child development centers, nursery schools, day nurseries, and kindergartens as well as schools or agencies providing before and after school care. Regardless of name, purpose, or auspices, all are subject to licensure unless exempt by law. (See specific definitions below.)
- (3) General Standards And Requirements.
  - (a) Issuance of a license is based on achievement in meeting and maintaining compliance with minimum standards, or requirements, set forth in these rules. The license applies only to the agency, organization, or person(s) to which or to whom it is issued and only to the building and premises approved for the operation of the child welfare agency. In addition to state licensing requirements, it is the responsibility of the applicant/licensee to comply with all applicable local ordinances, including zoning ordinances and business tax licenses or other locally required permits.
  - (b) A day care home must comply with all requirements in these rules to receive an annual license. In addition to fire safety and environmental sanitation approval, the applicant must demonstrate good faith intent to comply with these rules before a conditional license may be issued. Failure to meet such requirements, or to demonstrate good intention in meeting them in the case of a conditional license, shall constitute grounds for denial of a license or for revocation of a license already issued.
  - (c) Appendices to these rules which contain fire safety, health, environmental sanitation regulations, summaries of applicable laws, and other information are incorporated herein by reference.
- (4) Legal Basis For Licensing. *TCA §71-3-501 et seq.* provide for defining, inspection, licensing, and regulation of child welfare agencies including day care homes. (See Appendix A for summary of applicable laws.) The Tennessee Department of Human Services has responsibility for licensing all such agencies offering child care to groups of children.

(Rule 1240-04-01-.01, continued)

- (5) Definitions. For the purpose of this Chapter, the following definitions are applicable:
- (a) Annual License. An annual permit issued by the Department to a child welfare agency or to a child care system central operator, authorizing the licensee to provide child care in accordance with provisions of the license, the law, and requirements (rules) of the Department. Issuance of a license is not an endorsement of child care methods or of an agency's operational philosophy. A license is not transferable from one location to another or from one licensee/operator to another.
  - (b) Approved Day Care Home. An approved day care home is a day care home which is related through contractual or employment arrangements to a central operator. The approved day care home must meet the same requirements and must have been evaluated by the central operator in the same manner as an individual licensed day care home.
  - (c) Caregiver(s). Any person who provides all or part of the care of a group of children, including the primary caregiver.
  - (d) Central Operator. The individual(s), or the corporation, partnership, cooperative, or other private or public entity of any kind, who or which, through their authorized representative(s), in addition to other activities, if any, owns, administers or operates a child care system. The central operator shall have ultimate responsibility for the administration/operation of any or all day care homes and child care centers in the system and shall, together with the primary caregiver, sign the application for a license. The central operator shall be the licensee.
  - (e) Child. A person under 17 years of age.
  - (f) Child Care. The wide variety of arrangements made by parents (or guardians) for the care outside of their home of children under 17 years of age, for less than 24-hour periods without transfer of custody.
  - (g) Child Care System. The existence of any day care homes approved or licensed and used by a licensed and incorporated day care agency or a licensed child-placing agency in its work; or the existence of two (2) or more facilities used for day care purposes which facilities are under the ownership, administration or control of any individual(s), corporation, partnership, cooperative, or other public or private entity of any kind.
  - (h) Commissioner. The executive head of the Department of Human Services, appointed by the Governor.
  - (i) Conditional License. A permit issued by the Department to a new child welfare agency or to a new child care system central operator, permitting and authorizing the licensee to begin child care operations. It is valid for 90 days and is issued upon application by the operator only if the staff and facility do not present any apparent hazards to the children that may be in care and only if the facility has received fire safety and environmental sanitation approval. If, at the end of the 90-day period, evidence is provided by the applicant/ licensee that such child welfare agency is suitable and properly managed and that the agency is in compliance with these rules, the Department will issue an annual license to the child welfare agency.
  - (j) Day Care. Synonymous with definition of child care, above.
  - (k) Department (DHS). The Tennessee Department of Human Services and its representatives.

(Rule 1240-04-01-.01, continued)

- (l) Family Day Care Home. A home (an occupied residence) operated by a person for the purpose of receiving therein a minimum of five and a maximum of seven children under 17 years of age, who are not related to such person and whose parent(s) or guardian(s) are not residents in the same house, for less than 24 hours per day for care, without transfer of legal custody.
- (m) Group Day Care Home. Any facility operated by a person, social agency, corporation or institution, or any other group which receives a minimum of eight and a maximum of 12 children (and up to three additional school-age children who will only be present before and after school, on school holidays, on school snow days, and during school summer vacation) for less than 24 hours per day for care outside their own homes, without transfer of legal custody. Before a group day care home opens, fire safety and environmental inspectors must approve the facility.
- (n) High School Diploma. As used in the context of caregivers' qualifications, refers to a document recognizing graduation from an accredited institution, public or private, based on the issuing state's required number of academic credits, including passing a GED test. As used in this Chapter, a certificate or statement of attendance or similar document, or correspondence or video courses, do not qualify as or for a high school diploma.
- (o) Infant. A child who is six weeks through 15 months of age.
- (p) Law. The licensing law as contained in *TCA §§71-3-501 through 71-3-531*, and related statutes or other referenced statutes or regulations.
- (q) Licensee. The person(s), agency(ies), or central operator to whom a license is issued and who must assume ultimate responsibility for a day care home or homes. In a single-site home, the licensee is the primary caregiver. In a child care system of approved homes, the central operator is the licensee. (The term as used herein also refers to an agency.)
- (r) Parent. A biological or adoptive parent, guardian, or custodian who has primary responsibility for a child.
- (s) Preschool Child. A person who is 31 months through five years of age. The term includes infants and toddlers.
- (t) Primary Caregiver. The adult who is responsible for direct care and supervision of children in a day care home and for the daily operation of a home. In a group day care home which is not operated by a central operator, the primary caregiver is the licensee. Duties may include hiring, training, and supervision of other caregivers.
- (u) School-age Child. A person who is five years of age and in kindergarten or older (refers to kindergarten through grade six).
- (v) Staff. Full and part-time caregivers, employees, and volunteers, if any.
- (w) Substitute. Paid or unpaid persons who are replacement for regular staff. The names, addresses, telephone numbers and dates of service shall be recorded for all substitutes in the staff personnel records of the home. Substitutes providing services for thirty-six (36) hours or more in a calendar year are required to have a criminal background check pursuant to 1240-04-01-.03(1)(a)6 and shall meet the same requirements for regular staff for physical examinations as required by 1240-04-01-.06(3); provided, however, for purposes of 1240-04-01-.03(1)(a)6, persons serving

(Rule 1240-04-01-.01, continued)

temporarily as caregivers in field service placements as part of an educational course of study or other curriculum requirement shall not be considered as substitutes for purposes of this rule.

- (x) Toddler. A child who is 16 months through 30 months of age.
  - (y) Volunteer. A person who provides services for a child care agency without payment and who is used to supplement regular staff or substitutes. The volunteer shall not be used to meet classroom adult:child ratios. The names, addresses, telephone numbers and dates of service for all volunteers shall be recorded in the staff personnel records of the home.
- (6) Procedures For Getting A License.
- (a) The Department offers one preclosure consultation session. When an individual or group is giving consideration to opening a child care service/business, the local county office of the Tennessee Department of Human Services should be contacted. The individual or group will be given the name of a licensing representative who will serve as their consultant.
  - (b) The Department will offer preclosure training to prospective providers of day care. Interested persons or groups should contact a licensing representative to determine the date of the next meeting in their area.
  - (c) The licensing representative will inform the interested individuals or entity of the appropriate time to apply for a license. The group day care home application fee is \$10.
  - (d) Upon satisfaction of the following minimum requirements, a conditional license may be issued:
    - 1. Primary caregiver's qualifications meet the requirements (see Chapter 1240-04-01-.03);
    - 2. Three satisfactory references for the primary caregiver are verified;
    - 3. Physical facilities receive fire safety and environmental approval; and
    - 4. If staff and facility do not present any apparent hazards to the children who may be in care.
  - (e) Receipt of an application begins the evaluation process which is completed with the issuance or denial of an annual license. This process includes:
    - 1. At least two visits to the day care home, one of which is unannounced;
    - 2. Observation of caregivers' interaction with children;
    - 3. Review of agency records;
    - 4. Request for written and oral information related to licensure requirements; and
    - 5. Use of an evaluation checklist, itemizing requirements and noting compliance or noncompliance, a copy of which is left with the applicant.

(Rule 1240-04-01-.01, continued)

- (f) Upon issuance of an annual license, the licensee is expected to maintain compliance with requirements throughout the year.
  - (g) Near the end of a licensing term, the licensee will be notified by mail of a scheduled reevaluation for a new license. Application for a renewed license must be made prior to the expiration of the existing license. The reevaluation process is similar to the initial evaluation, but agencies receiving two consecutive annual licenses are rewarded with a shorter, less involved reevaluation and/or fewer reevaluations. A home accredited by the National Association for Family Day Care (NAFDC) may be reevaluated every three years. (See Appendix A for further information regarding the licensing process.)
- (7) Licensing Action And Appeal Rights. Procedures for applications, suspensions, denials, revocations of licenses and appeal rights are governed by Chapter 1240-5-11.
- (8) Grace Period. Because the amount of in-service training required has been increased, new agencies and new primary caregivers will be granted a reasonable grace period if needed to obtain the required hours of training.
- (9) Investigations Of Child Abuse And Neglect; Custodial Authority Of Children.
- (a) A child care provider is required by law to cooperate with the Department and other investigators by reporting any suspected child abuse and neglect to the Department. The child care provider must further cooperate by providing access to the records of children and staff and by allowing investigators to interview children and staff.
  - (b) A child care provider should protect the child by requesting the investigator's identification and by knowing who is entitled to custody of the child. An investigator may take a child off of the premises of the agency if he/she has obtained custody of the child through voluntary placement agreement with the parent, through court order or through emergency assumption of custody under TCA §37-1-113 without parental permission or if the child's parent or legal guardian is present and approves, or in conjunction with investigative procedures under the child abuse laws.
  - (c) Child care providers do not have a right to be present during interviews with staff or children or to receive information or results of the interviews or investigations concerning child abuse or neglect unless directly related to efforts to enforce the child abuse or licensing laws.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105, 71-3-501 et seq., and Acts 2000, ch. 981, §§ 8 and 14.  
**Administrative History:** Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Amendment filed March 17, 1980; effective June 29, 1980. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed April 30, 1996; effective July 14, 1996. Amendment filed September 29, 2000; effective December 13, 2000.

#### 1240-04-01-.02 OWNERSHIP AND ADMINISTRATION.

- (1) Ownership/Sponsorship.
  - (a) The licensee of a single-site group day care home shall be the primary caregiver.
  - (b) In a child care system, an adult person or persons shall be designated as having ultimate responsibility for the administration/operation of any or all day care home(s) in the system. Such person(s) shall be known as the central operator. The central operator and a primary caregiver shall sign an application for a license for each home sponsored (unless sponsoring agency is classified public).

(Rule 1240-04-01-.02, continued)

- (c) The name, address, and phone number of an applicant, central operator, and all primary caregivers shall be made known to the Department of Human Services and to parents of children enrolled in the home(s) and become public record.
  - (d) The applicant/licensee shall notify DHS before changing location of a group day care home.
  - (e) The primary caregiver shall assume responsibility for daily operation of a day care home and shall meet specified qualifications prior to licensure. (See Rule 1240-04-01-.03.)
  - (f) Day care agencies sharing common land shall be located in separate facilities and shall not share equipment or facilities with the exception of outdoor equipment and play area, which shall be used by children from one agency at a given time.
- (2) Policies.
- (a) A new primary caregiver shall complete in the presence of the Licensing Counselor the "Checklist of Services" or write out a Statement of Purpose.
  - ~~(b) A group child care home shall have written policies concerning~~
    - ~~1. Services offered;~~
    - ~~2. Provision for children's individual needs;~~
    - ~~3. The home's admission policies and enrollment procedures;~~
    - ~~4. Fees charged (if applicable) and plan for payment;~~
    - ~~5. Handling of children's personal belongings; and~~
    - ~~6. If the agency provides transportation for children in the agency's care, the written statement required by 1240-04-01-.07(1)(a) describing transportation plans, procedures and equipment utilized in the transportation process and parental permission for trips away from facility.~~
  - [(b) A group child care home shall have written policies that include/address, at a minimum:
    - 1. Services offered;
    - 2. Written parental permission for observation of children by non-child care agency staff;
    - 3. Provision for children's individual needs;
    - 4. The home's admission policies and enrollment procedures;
    - 5. Rates;
    - 6. Fees charged, including late fees (if applicable) and plan for payment;
    - 7. Behavior management techniques;
    - 8. Hours of operation;

(Rule 1240-04-01-.02, continued)

9. Inclement weather;
  10. Emergency policy;
  11. Whether the environment is smoke free;
  12. Meal service policy;
  13. Handling of children's personal belongings;
  14. If the agency provides transportation for children in the agency's care, the written statement required by 1240-04-01-.07(1)(a) describing transportation plans, procedures and equipment utilized in the transportation process and parental permission for trips away from facility; and
  15. Expulsion of a child, which policy shall be:
    - (i) Clearly articulated to staff and parents;
    - (ii) Developmentally appropriate and consistent;
    - (iii) Non-discriminatory;
    - (iv) Other options shall be considered prior to expulsion, such as but not limited to reducing the number of days or amount of time the child may attend, or if applicable, referrals to the Center on the Social and Emotional Foundations for Early Learning (CSEFEL), Early Intervention System, Individuals with Disabilities Education Act (IDEA);
    - (v) Procedures shall be developed to allow for a planned transition of a child to another program if expulsion must occur; and
    - (vi) Aggregate data that includes reasons for expulsions shall be maintained and reported to the Department annually.]
- (c) A policy statement signed by both the primary caregiver and the parent shall be given to the parent, and a signed copy or other documentation that parent received a copy shall be kept on file.
- (3) Enrollment of Children and Parent Involvement.
- (a) Children shall be at least six weeks of age before entering day care.
  - ~~(b) Prior to admission of children, the parent shall submit a completed information (application) form and current health record. [See 4(e) below and Chapter 1240-04-01-.06.]~~
  - ~~(c) A copy of "Summary of Licensing Requirements" (furnished by the Department) shall be given to the parent(s) of each child enrolled.~~
  - ~~(d) During normal hours of operation, parents shall be permitted access to their children, and ready access to all licensed areas of the home and premises shall be granted to Department representatives and inspection authorities (i.e., fire safety, sanitation, and health).~~

(Rule 1240-04-01-.02, continued)

- ~~(e) Parents must be informed in advance of the child's removal from the premises except in cases of emergencies or pursuant to investigative procedures conducted pursuant to the child abuse laws.~~
  - [(b) The agency shall not admit a child into care until the parent/guardian has supplied the agency with a completed application, valid Tennessee Department of Health Official Immunization Certificates record (for children over two (2) months of age), and a health history. Exception: After an initial eligibility determination, children who are homeless and/or children in state custody may receive care prior to providing all required documentation as determined by the Department. Care without documentation of immunizations shall not exceed thirty days. [See 4(e) below and Chapter 1240-04-01-.06.]
  - (c) The agency shall maintain written documentation that the parent/guardian performed an on-site visit to the agency prior to the child being enrolled into care and that the agency provided and reviewed parent engagement strategies recognized by the Department with the parent during the required pre-placement visit. Exception: a pre-placement visit is not required for children of homeless families.
  - (d) A parent handbook that includes a copy of the agency's policies, operating procedures, information on parent engagement, and the Department's Summary of Licensing Requirements shall be supplied to the parent(s) upon admission of the child. The agency's policies shall include:
    - 1. Criteria for the disenrollment of children [see expulsion policy requirements in 1240-04-01-.02 (b)(14)], and
    - 2. Specific criteria concerning the release of children to anyone whose behavior may place the children at immediate risk.
  - (e) During normal hours of operation, parents shall be permitted access to their children, and ready access to all licensed areas of the home and premises shall be granted to Department representatives and inspection authorities (i.e., fire safety, sanitation, and health).
  - (f) Parents must be informed in advance of the child's removal from the premises except in cases of emergencies or pursuant to investigative procedures conducted pursuant to the child abuse laws.]
- (4) Records.

The following records shall be kept and shall be available to the Department:

- (a) An annual operating budget (actual or projected), which includes a statement of income and expenditures. Adequate financing of the day care operation shall be maintained.
- (b) Staff records including:
  - 1. Recommendations from three nonrelated references on each applicant and caregiver. The central operator's/primary caregiver's reference information shall be given to the licensing counselor;
  - 2. Training received during the year for each caregiver;
  - 3. Reserved;

(Rule 1240-04-01-.02, continued)

4. Adult health records.
  - (c) Children's health records.
  - (d) Daily attendance records on children; on staff if more than one caregiver.
  - (e) A record on each child which includes the following information:
    1. Name, date of birth, name of parent(s), home address, business address and telephone, work hours, child's background information, transportation plan, and the names of persons allowed to pick the child up.
    2. The following information shall be kept where it can be found quickly in an emergency: The name, address, and telephone number of the person parents wish to be called if they cannot be reached. The name, address, and telephone number of a doctor to call in an emergency; written permission of parent authorizing emergency medical care.
    3. A written plan of how the primary caregiver intends to communicate daily with parents of every child below 31 months of age.
  - ~~(f) Children's records shall be kept for one year following the child leaving the agency.~~
  - [(f) A child's record shall be kept in a central location and shall be kept for one (1) year following the child's leaving the agency. Exception: The health record shall be returned to the parent/guardian upon request when the child leaves the agency.
  - (g) All children, including related children younger than age nine (9), shall have required records on file before care is provided. Exception: After an initial eligibility determination, children of homeless families and/or children in state custody may receive care prior to providing required documentation as determined by the Department.]
- (5) Right to Privacy/Confidentiality. The licensee and caregivers shall not disclose or knowingly permit the use of by other persons any information concerning a child or family except as required by law or regulation.
- (6) Posting of License. During the hours of operation, an up-to-date license to operate a group day care home shall be posted near the main entrance where anyone entering may see it.
- (7) Liability and Medical Payment Insurance Coverage.
  - (a) General liability, automobile liability and medical payment insurance coverage shall be maintained on the vehicles owned, operated or leased by the child care agency and on the operations of the child care agency's facilities.
  - (b) Automobile liability coverage shall be maintained in a minimum amount of Three Hundred Thousand Dollars (\$300,000) combined single limit of liability. The requirement of this subparagraph only applies to child care programs that transport children.
  - (c) General liability coverage on the operations of the child care agency facilities shall be maintained in a minimum amount of Three Hundred Thousand Dollars (\$300,000) per occurrence and Three Hundred Thousand Dollars (\$300,000) general aggregate coverage, or Three Hundred Thousand Dollars (\$300,000) per occurrence.

(Rule 1240-04-01-.02, continued)

- (d) Medical payment coverage, as the primary coverage, shall be maintained in the minimum amount of Five Thousand Dollars (\$5,000) for injuries to children being transported in vehicles owned, operated or leased by the child care agency under subparagraph (b), and in the minimum amount of Five Thousand Dollars (\$5,000), for injuries to children resulting from the operation of the child care agency under subparagraph (c).
  - (e) The requirements of this paragraph shall not apply to an agency that is under the direct management of a self-insured administrative department of the state, a county or a municipality or any combination of those three (3) or that has, or whose parent entity has, a self-insurance program that provides, as determined by the Department, the coverages and the liability limits required by these rules.
  - (f) Documentation that the necessary insurance is in effect, or that the administrative department or other entity is self-insured, shall be maintained in the records of the child care agency and shall be available for review by the Department's licensing staff.
- [(8) Data Reporting. Agencies shall submit data as requested by the Department quarterly on topics such as but not limited to: active enrollment, homeless children, non-traditional hours, deaths/serious injuries, child abuse, English as a Second Language/dual language learners, and children with disabilities.]

**Authority:** T.C.A. §§4-5-201 et seq., 4-5-202, 71-1-105, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), 71-3-502(a)(4)(B), and Acts 2000, ch. 981, §§ 3(a)(4) and 14. **Administrative History:** Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed July 1, 1993; effective September 14, 1993. Amendment filed November 18, 1999; effective January 31, 2000. Amendment filed September 29, 2000; effective December 13, 2000. Amendment filed August 30, 2001; effective November 13, 2001. Amendment filed November 21, 2002; effective February 4, 2003.

#### 1240-04-01-.03 STAFF.

- (1) Qualifications.
  - (a) All Caregivers.
    - 1. Every staff person, including volunteers, practicum students, and substitutes, shall be physically, mentally, and emotionally capable of performing his/her duties satisfactorily.
      - (i) Drug Screening for Child Care Vehicle Drivers Upon Reasonable Cause.
        - (I) The Department, in its sole discretion, may require any individual, who drives or may drive at any time any vehicle transporting children on behalf of the agency or its contractors, to undergo a drug screening test when, in the Department's sole determination, there is reasonable cause to believe that such individual may have an impairment or possible impairment that potentially poses a risk of harm to children in the care of the agency caused by the use, or possession and potential use, of any drug. For purposes of this part, the term "drug" shall include alcohol.
        - (II) An individual directed to undergo such examinations or screenings may refuse to do so, but will not be permitted to drive a vehicle transporting children in the agency or have any further contact with

(Rule 1240-04-01-.03, continued)

children in the care of the child care agency until evidence is provided that is satisfactory, in the Department's discretion, to demonstrate that the individual does not represent a risk of harm to the children in the agency's care.

## (ii) Safety Plans.

- (I) The Department may require, in its sole discretion, the child care agency to enter into a safety plan approved by the Department that prohibits or limits such individual's contact with children in the care of the child care agency pending the outcome of such testing.
  - (II) The Department may otherwise require, in its sole discretion, that the child care agency enter into a long-term or permanent safety plan that prohibits or limits the driving duties by an individual described in part 1 for, or contact by such individual with, children in the care of the agency.
  - (III) Failure to adhere to the safety plan shall be grounds for action by the Department against the child care agency's license as permitted by T.C.A. § 71-3-508(c).
  - (IV) The child care agency, or any individual whose employment status is directly and adversely impacted by a safety plan or by refusal to undergo an examination as directed by the Department may, at any time during the existence of the plan or during the pendency of the directive for an examination, make written request to the Director of Licensing for an intradepartmental review of the safety plan. Such review shall be conducted by the Director or the Director's designee within ten (10) business days of receipt of the written request.
  - (V) Any individual or child care agency that has received an adverse decision from the intradepartmental review set forth in subpart (IV) above, may appeal such safety plan to the Department by filing a written request for an administrative hearing before the Department's Administrative Procedures Division within ten (10) business days of the Director's decision. The hearing shall be held by the Division within twenty (20) business days of the receipt of the request for an administrative hearing.
  - (VI) Any safety plan that exceeds ninety (90) days when proposed or that continues for more than ninety (90) days may be appealed by the child care agency to the Child Care Agency Board of Review.
2. A person who has a physical, mental, or emotional condition which is in any way harmful to children shall not be present with the children.
  3. To be counted in the caregiver to child ratio, caregivers shall be at least 16 years of age and able to read and write, and must be supervised by an adult.
  4. Caregivers shall be of suitable character to work with young children.
  5. —Reserved.
  - [5. Training of Employees

(Rule 1240-04-01-.03, continued)

- (i) Training of New Employees - Prior to assuming duties, each new employee shall receive documented instruction in and have a working knowledge of:
  - (I) Program philosophy and policies;
  - (II) Job description;
  - (III) Emergency health and safety procedures;
  - (IV) Behavior management procedures;
  - (V) Detection, reporting, and prevention of child abuse;
  - (VI) Procedures for receiving and releasing children;
  - (VII) Safe sleep procedures;
  - (VIII) Shaken baby syndrome/abusive head trauma;
  - (IX) Meal service and safe food preparation policies;
  - (X) Supervision during high risk activities such as eating and outdoor play;
  - (XI) Food allergies;
  - (XII) Expectations for communications with parent/guardian;
  - (XIII) Disease control and health promotion;
  - (XIV) An overview of licensing requirements;
  - (XV) Information on risks of Cytomegalovirus (CMV) to female employees of childbearing age;
  - (XVI) A minimum of two (2) hours pre-service training as recognized by the Department; and
  - (XVII) Documentation of the requirements in this subparagraph (i) shall be maintained in the staff file.
  
- (ii) Ongoing Training Requirements – any ongoing training required for employees shall include health and safety topics, such as but not limited to:
  - (I) Prevention and control of infectious diseases (including immunization);
  - (II) Prevention of sudden infant death syndrome and use of safe sleeping practices;
  - (III) Administration of medication, consistent with standards for parental consent;

(Rule 1240-04-01-.03, continued)

- (IV) Prevention of and response to emergencies due to food and allergic reactions;
  - (V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
  - (VI) Prevention of shaken baby syndrome and abusive head trauma;
  - (VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);
  - (VIII) Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;
  - (IX) Precautions in transporting children (if applicable); and
  - (X) First aid and pediatric cardiopulmonary resuscitation.]
6. ~~Criminal history and abuse registry background checks; appeals; exemptions.~~
- (i) ~~Each person:~~
    - (I) ~~Applying to work with children as a paid employee, a director, or manager of a child care agency;~~
    - (II) ~~Applying to work as a new substitute in a child care agency;~~
    - (III) ~~Who applies for a license for, or who otherwise seeks to operate (an "operator") a child care agency as defined in TCA §§ 71-3-501 et seq. and who has significant contact with children in the course of the role of operator. For purposes of this subparagraph, an "operator" shall be an individual who is an owner or administrator of a child care agency or a child care system; or~~
    - (IV) ~~Fifteen (15) years of age or older who resides in a child care agency or who moves into a child care agency following initial licensure shall:~~
      - I. ~~Complete a criminal history disclosure form as approved by the Department;~~
      - II. ~~Supply a fingerprint sample in a manner prescribed by the Tennessee Bureau of Investigation in accordance with procedures established by the Department, and shall submit to a fingerprint based criminal history check to be conducted by the Department and the Tennessee Bureau of Investigation in accordance with procedures established by the Department;~~
      - III. ~~Submit to a review of their status on the Department of Health's vulnerable persons registry under Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated.~~

(Rule 1240-04-01-.03, continued)

- ~~IV. Agree to release all records relating to his or her criminal history to the child care agency and to the Department so that the criminal history information can be verified.~~
- ~~(ii) The entity that is seeking to employ the person or use the person as a substitute, or which has the person residing in the agency, or the licensee or operator of a child care agency, shall be responsible for obtaining, and submitting the fingerprint sample and any information necessary to process the criminal history review, in such manner as may be required by the Department, to the Tennessee Bureau of Investigation within ten (10) days of the first day of beginning employment or substitute status, or within ten (10) days of the license application or seeking operator status, or, within ten (10) days of the application for an initial license for a facility in which the person resides or within ten (10) days after the resident moves into the child care facility.~~
- ~~(iii) The child care agency shall be responsible for all costs associated with obtaining, handling and processing of the fingerprint sample which is submitted to the Tennessee Bureau of Investigation. The Department of Human Services will pay for the costs of processing the criminal records background check with the Tennessee Bureau of Investigation using the applicant's fingerprint sample. The Department shall only pay for one (1) processing fee that is required by the Tennessee Bureau of Investigation. If the fingerprint sample is rejected, and further costs are required to process the fingerprint, the child care agency is responsible for any further costs, regardless of the number of efforts required to obtain a valid fingerprint sample.~~
- ~~(iv) Pending outcome of the fingerprint background check and the Department of Health's vulnerable person's registry the applicant for employment, for a license or for operator or for a substitute position shall be conditional and shall be dependent upon the background check. No person whose criminal history disclosure form describes a criminal history or other activities within the prohibitions of subpart (vii) shall be permitted to be employed as a caregiver, a substitute director, nor may such person be allowed to be a licensee, or an operator who has significant contact with the children in the agency's care, nor shall such person be permitted to reside in or otherwise have access to children in the child care facility while children are present.~~
- ~~(v) A copy of the disclosure form and the results of the criminal history check and the results of the inquiry to the Department of Health's vulnerable persons registry shall be maintained in the child care agency's records for review by the Department of Human Services.~~
- ~~(vi) The child care agency shall immediately review the report of the background check received from the Department and the Tennessee Bureau of Investigation, and shall immediately consult with the Department to resolve any questions relative to the person's status. Upon determination that the person's status prohibits the person from having access to children as described in subpart (vii), the child care agency shall immediately exclude such person from access to children. Failure to exclude the person under this part or subpart (iv) will result in immediate suspension of the child care agency's license.~~
- ~~(vii) Exclusions from access to children based upon criminal history or other status.~~

(Rule 1240-04-01-.03, continued)

- ~~(1) No person shall be employed, or otherwise act, as a caregiver or as a substitute caregiver for children in a child care agency, nor shall any person be a licensee, director, or be an operator who has significant contact with children in a child care agency, nor shall a person who is a resident in a child care agency have access to or contact with children in a child care agency, nor shall any other person have any access to children in a child care agency whatsoever, who:~~
- ~~I. has any pending warrant, indictment or presentment;~~
  - ~~II. has been convicted, pled guilty to or pled no contest to any crime or charge, or~~
  - ~~III. has any pending juvenile proceeding or previous juvenile finding which, if an adult, would result in any crime or charge, involving:~~
    - ~~A. Any crime, including a lesser included offense derived from any crime involving the physical, sexual, or emotional abuse or gross neglect of a child or any other crimes involving a threat to the health, safety or welfare of a child; or~~
    - ~~B. Any crime of violence, including a lesser included offense derived from a crime of violence against another person; or~~
    - ~~C. Any crime involving, or lesser included offenses derived from any crime involving, the manufacture, sale, distribution or possession of any drug; or~~
    - ~~D. A violation of TCA §§ 39-13-213; 55-10-101; 55-10-102 or 55-10-401 or any felony involving use of a motor vehicle while under the influence of any intoxicant. Such persons under this subitem may not for a period of five (5) years from the date of the conviction or guilty plea be employed or serve as a driver transporting children for a child care agency.~~
  - ~~IV. Is listed on the abuse registry maintained by the Department of Health pursuant to Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated; or~~
  - ~~V. Known to the management or licensee of a child care agency as a perpetrator of child abuse or child sexual abuse or who is identified to the child care agency's management or licensee by the Department of Human Services or by the Department of Children's Services as a validated or indicated perpetrator of abuse of a child based upon an investigation conducted by the Department of Children's Services or by the child protective services agency of any other state; and~~
    - ~~A. who is associated in providing care or ancillary services in any manner within a child care agency; or~~

(Rule 1240-04-01-.03, continued)

~~B. who is a family member or other person residing at the child care agency's facility(ies) or adjacent residence of the caregiver; or~~

~~C. who has unrestricted access to children in the child care agency as determined by the Department of Human Services.~~

~~(II) An employee or volunteer who has been identified by the Department as having neglected a child based on an investigation conducted by the Department of Children's Services, or any child protective services agency of any state, and who has not been criminally charged or convicted or pled guilty as stated above, shall be supervised by another adult while providing care for children.~~

~~(viii) Appeals of exclusions.~~

~~(I) Any person who is excluded or whose license or operator status is denied based upon the results of the criminal history background review may appeal the exclusion or denial to the Department within ten (10) days of the mailing date of the notice of such exclusion or denial to the subject person.~~

~~(II) If timely appealed, the Department shall provide an administrative hearing pursuant to Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated in which the appellant may challenge the accuracy of the report, and may challenge the failure to grant an exception to the exclusion or denial required by this subsection if a rule for such purpose has been promulgated by the Department pursuant to subpart (ix).~~

~~(III) The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified in the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the report was generated, has been dismissed, nolleed or has resulted in an acquittal.~~

~~(ix) Exemptions from exclusions.~~

~~(I) The Department will consider the granting of exemptions from the prohibitions under subpart (vii).~~

~~(II) The person seeking the exemption may indicate the request on the disclosure form, or may seek the exemption by written request to the Commissioner at any time. The request shall state the basis for the request, including any extenuating or mitigating circumstances that would, in the person's opinion, justify an exemption from the exclusion. Any documentary evidence may also be submitted with the request~~

~~(III) Advisory group to review exemption requests.~~

(Rule 1240-04-01-.03, continued)

- ~~i. The Department will establish an advisory group composed, at a minimum, of law enforcement personnel, persons experienced in child protective services, persons experienced in child development issues and child care providers licensed by the Department to review the requested exemption and advise the Department as to whether such request is warranted.~~
- ~~ii. At the Department's request, the advisory group shall review the written request and any other evidence in any other form which it determines necessary to determine the status of the exemption request.~~
- ~~iii. Based upon the recommendation of the advisory group, the Department shall make the final determination regarding an exemption. The exemption shall only be granted if the circumstances, as reviewed and determined by the advisory group and the Department, clearly warrant the exemption. The decision will be filed with the child care agency and shall be maintained in the Department's record concerning the agency and shall be open to public inspection.~~

~~(IV) Appeal of exemption decision.~~

- ~~i. The Department shall notify in writing the person making the request for exemption of the decision regarding the exemption request and the basis for the decision. A person aggrieved by the Department's determination may appeal the decision by filing a written request with the Commissioner within ten (10) days of the mailing date of the decision as shown by the date of the notice. If timely appealed, the person shall be granted an administrative hearing under the provisions of TCA §§ 4-5-301 et seq.~~
- ~~ii. The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified on the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the criminal background history report was generated, has been dismissed, nolleed or has resulted in an acquittal.~~

~~(x) Alternate and Supplementary Criminal Background Checks:~~

- ~~(i) The Department of Human Services may, at its own expense, utilize background checks pursuant to the provisions of TCA § 71-3-507(g) or (h) to determine the criminal history or other status on the Department of Health's abuse registry of persons applying to work or who are current employees, licensees, operators or volunteers or current residents of child care agencies or persons working with contractors of the Department who are not otherwise required by the provisions of this subparagraph or any other provisions of law to undergo a criminal history background check. The Department may also utilize the abuse registry of the Department of Health under Title~~

(Rule 1240-04-01-.03, continued)

~~68, Chapter 11, Part 10 of the Tennessee Code Annotated, for such persons.~~

~~(II) The Department may require such individuals to complete a disclosure form as required by subpart (i) and to undergo a fingerprint sample. The Department will submit the form and the fingerprints to the Tennessee Bureau of Investigation for review.~~

~~(III) Status Pending Background Check.~~

~~I. Pending the outcome of the background check, if required, the applicant for employment or licensee or operator status or for a substitute or volunteer services position, shall be in a conditional status with the child care agency or the Department contractor, and such status shall be dependent upon the outcome of the background check.~~

~~II. The employment status of persons for whom a post-employment criminal background check was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a child care agency for whom a criminal background check was conducted after license approval, and who were not otherwise subject to a pre-status applicant background check and to the exclusionary provisions provided in this part, shall be governed by any regulations which may govern their status in a regulated entity or by applicable employment law.~~

~~(IV) Name Searches.~~

~~I. As a further supplemental method of criminal background history review for any applicants for employment, license or operator status, or for substitute or volunteer status with child care agencies, or with the Department or its contractors, as listed in subdivision TCA § 71-3-501(g)(1) or with the entities which the Department may regulate, or for residents of new child care agencies, or for current employees, licensees, operators, substitutes or volunteers of child care agencies or for current residents of child care agencies, the Department may require such persons to submit a disclosure form as set forth in part 1, a copy of which shall be maintained with the Department and shall be filed with the entity with whom such person is associated, and may require such person to agree to release all records involving the person relating the criminal history of such person.~~

~~II. The Department may, by agreement with the Tennessee Bureau of Investigation, access the Bureau's criminal history computer database using only the name of the person and such other person as contained on the disclosure form or such other information as may be available. If the Department determines it to be necessary, then the Department may require fingerprint verification pursuant to items (I) and (II) above.~~

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- ~~(V) All provisions of subpart (vii) including, but not limited to, the exclusion of individuals from providing care, from being licensed for the care of children or having access to children upon determination of the criminal background or perpetrator of such individual, the suspension of operations of regulated, certified or approved entities that fail to exclude persons with a criminal background, and the exemptions from the exclusionary provisions shall be applicable to persons having criminal backgrounds or perpetrator status as determined by the processes established by this part.~~
  - ~~(VI) Any person disqualified from care for or access to children based upon the results of the criminal history background review under this part may appeal that determination to the Department as provided in subpart (viii).~~
  - ~~(VII) Nothing in this part shall be construed to prevent the exclusion of any individual from providing care for, from being licensed or approved for the care of children pursuant to this part or from having access to a child in a child caring situation if a criminal or juvenile proceeding background or perpetrator status is discovered and verified in any other manner other than through a procedure established pursuant to this chapter. All procedures, rules, and appeal processes established pursuant to this subparagraph for the protection of children and the due process rights of excluded individuals shall also be applicable to such individuals.~~
  - ~~(xi) Nothing in this part shall be construed to mean that any other law which mandates that criminal background checks be conducted on applicants for employment, license or operator status, for substitute or volunteer positions or for resident status is made voluntary, repealed or superseded in any manner by the provisions of this subparagraph, and the provisions of subpart (x) are supplementary to, and are not in lieu of any mandatory provisions for such other statutorily required criminal background checks.~~
- [6. Criminal history and abuse registry background checks; appeals; exemptions.
- (i) The following persons are required to have a background check no more than (90) days before having access to any child care agency:
    - (I) Any person who owns or operates a child care agency and will have significant contact with children;
    - (II) Any person who applies to work in a child care agency as an employee, director or manager;
    - (III) Any person who will provide substitute services to a child care agency for more than thirty-six (36) hours in a calendar year and who is counted in the adult: child ratio; and
    - (IV) Any person who is fifteen (15) years of age or older who will reside in a child care agency.
  - (ii) New background checks are required for all staff and residents when an agency moves from one class of care to another, such as when a family home becomes a group home or when an agency is sold and staff remain employed by the new owner or any time an agency is issued a license that

(Rule 1240-04-01-.03, continued)

is not the renewal of an existing license. Exception: Does not apply to background checks completed within the last ninety (90) days.

- (iii) Background checks are required for all staff at least every five (5) years.
- (iv) Requirements for Disclosure of Criminal/Juvenile and State Register History and Fingerprinting.
  - (I) The individuals identified in subparagraph (1)(a) above shall:
    - I. Complete a criminal/juvenile administrative findings history disclosure form;
    - II. Submit fingerprint samples for a criminal and juvenile records background check; and
    - III. Complete a criminal, juvenile background check/state review consisting of:
      - A. An investigation of a person's criminal background history by the Tennessee Bureau of Investigation (TBI) and through the Federal Bureau of Investigation's (FBI) national database;
      - B. An investigation of a person's juvenile records history that is available to the TBI;
      - C. A review of any available juvenile court records, if determined necessary by DHS;
      - D. A search of the vulnerable persons registry (VPR), maintained by the Tennessee Department of Health;
      - E. A search of the TN sexual offender registry (SOR), maintained by the TBI; and
      - F. A search of the DCS registry of indicated perpetrators of abuse or neglect of children.
      - G. A search of any state or federal registries required by the Child Care and Development Block Grant Act.
- (v) Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Children Prior to Completion of Criminal History Review.
  - (I) A child care agency, substitute pool, or staffing agency shall be responsible for registration of persons required to have a background check. The responsible entity shall ensure that the process is completed prior to employment.
  - (II) A child care agency may not permit any person who is required to have a background check to assume any role or to have access to children until the agency receives written verification from the Department that the person is cleared to work/reside in the agency.

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- (III) Failure to Complete or Disclose Information on Criminal Disclosure Form.
  - I. Failure to properly complete all sections of the Criminal/Administrative History Disclosure Form shall result in the individual being prohibited from assuming any position for which a background review is required.
  - II. Failure to disclose all criminal and administrative history information may result in the person being:
    - A. Excluded by the Department from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and
    - B. Referred to the appropriate district attorney for criminal prosecution.
- (IV) The Department will pay for the costs of performing one background check per person per agency per year.
- (V) The child care agency shall be responsible for costs associated with the background check if:
  - I. The fingerprint sample is rejected and the fingerprint sample must be resubmitted;
  - II. The agency submits a second fingerprint sample for an individual when the initial background check has not been completed; or
  - III. The agency submits a fingerprint sample for a purpose unrelated to obtaining approval for a prospective employee, volunteer, etc. to have access to child care.
- (vi) Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Children.
  - (I) No person shall be employed, be a licensee or operator or, provide substitute services, reside, or have any access to children in a child care agency if the criminal background check identifies an excludable criminal offense for which the person has:
    - I. Been convicted of, pled guilty or no contest to (or to a lesser included offense);
    - II. Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or
    - III. Been named in a pending warrant, indictment, presentment, or petition.
  - (II) An excludable criminal offense involves:

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- I. The physical, sexual or emotional abuse or neglect of a child;
- II. A crime of violence against a child, or any person;
- III. Any offense, including a lesser included offense, involving the manufacture, sale, distribution or possession of any drug; or
- IV. Any offense that presents a threat to the health, safety or welfare of children.
- V. The criminal offenses for which a person will be excluded from a child care agency include but are not limited to the following offenses as well as their lesser included offenses (even if not listed here):
  - A. Aggravated arson (T.C.A. § 39-14-302);
  - B. Aggravated assault (T.C.A. § 39-13-102);
  - C. Aggravated child abuse (T.C.A. § 39-15-402);
  - D. Aggravated child neglect (T.C.A. § 39-14-302);
  - E. Aggravated cruelty to animals (T.C.A. § 39-14-212);
  - F. Aggravated kidnapping (T.C.A. § 39-13-304);
  - G. Aggravated rape (T.C.A. § 39-13-502);
  - H. Aggravated rape of a child (T.C.A. § 39-13-531);
  - I. Aggravated robbery (T.C.A. § 39-13-402);
  - J. Aggravated sexual battery (T.C.A. § 39-13-504);
  - K. Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);
  - L. Aggravated vehicular homicide (T.C.A. § 39-13-218);
  - M. Arson (T.C.A. § 39-14-301);
  - N. Assault (T.C.A. § 39-13-101);
  - O. Carjacking (T.C.A. § 39-13-404);
  - P. Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);
  - Q. Criminal attempt, under T.C.A. § 39-12-101, to commit any criminal offense that requires exclusion from child care;
  - R. Criminal exposure to HIV (T.C.A. § 39-13-109);

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- S. Criminal homicide (T.C.A. § 39-13-201);
- T. Criminally negligent homicide (T.C.A. § 39-13-212);
- U. Cruelty to Animals (T.C.A. § 39-14-202);
- V. Custodial interference (T.C.A. § 39-13-306);
- W. Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);
- X. Domestic assault (T.C.A. § 39-13-111);
- Y. Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);
- Z. Especially aggravated burglary (T.C.A. § 39-14-404);
- AA. Especially aggravated kidnapping (T.C.A. § 39-13-305);
- BB. Especially aggravated robbery T.C.A. § 39-13-403);
- CC. Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);
- DD. Exploitation of a minor by electronic means (T.C.A. § 39-13-529);
- EE. False imprisonment (T.C.A. § 39-13-302);
- FF. First degree murder (T.C.A. § 39-13-202);
- GG. Incest (T.C.A. § 39-13-302);
- HH. Indecent exposure (T.C.A. § 39-13-511);
- II. Involuntary labor servitude (T.C.A. § 39-13-307);
- JJ. Kidnapping (T.C.A. § 39-13-105);
- KK. Rape (T.C.A. § 39-13-503);
- LL. Rape of a child (T.C.A. § 39-13-522);
- MM. Reckless endangerment (T.C.A. § 39-13-103);
- NN. Reckless homicide (T.C.A. § 39-13-215);
- OO. Robbery (T.C.A. § 39-13-401);
- PP. Second degree murder (T.C.A. § 39-13-210);
- QQ. Sexual battery (T.C.A. § 39-13-505);
- RR. Sexual battery by an authority figure (T.C.A. § 39-13-527);

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- SS. Sexual exploitation of a minor (T.C.A. § 39-17-1003);
  - TT. Solicitation of a minor (T.C.A. § 39-13-528);
  - UU. Stalking (T.C.A. § 39-17-315);
  - VV. Statutory rape (T.C.A. § 39-13-506);
  - WW. Statutory rape by an authority figure (T.C.A. § 39-13-532);
  - XX. Trafficking a person for sexual servitude (T.C.A. § 39-13-309);
  - YY. Vehicular assault (T.C.A. § 39-13-106);
  - ZZ. Vehicular assault while intoxicated (T.C.A. § 39-13-106);
  - AAA. Vehicular homicide (T.C.A. § 39-13-213);
  - BBB. Voluntary manslaughter (T.C.A. § 39-13-211); and
  - CCC. Weapons offenses (unlawful possession, carrying, use, etc.).
- (III) No person may be employed as a driver or serve as a driver for a child care agency if the person:
- I. Is currently charged with; or
  - II. Has been convicted of, or pled guilty, within the last five (5) years to any of the following criminal offenses:
    - A. Vehicular homicide;
    - B. Accidents involving death or personal injury;
    - C. Accidents involving damage to a vehicle;
    - D. Driving under the influence of an intoxicant, drug or drug producing stimulant; or
    - E. Any felony involving the use of a motor vehicle while under the use of any intoxicant.
- (vii) Exclusion from access to child care based on a listing on a state registry.
- (I) No person shall be employed, be a licensee or operator, provide substitute services, reside, or have any access to children in a child care agency if the results of the state registry review identify the person as being:
    - I. Listed on the Vulnerable Persons Registry;
    - II. Listed on the Sexual Offender Registry; or

(Rule 1240-04-01-.03, continued)

- III. Indicated in the records of the Department of Children's Services as a perpetrator of abuse or neglect of a child.
- (viii) Supplemental Background Checks Subsequent to Licensing, Employment or Residence in a Child Care Agency.
  - (l) The Department may, at any time, require a new background check of any individual with access to children in a child care agency.
    - I. For an individual who was not subject to a background check prior to assuming a role, the individual's existing status in their role shall be conditional upon the satisfactory outcome of any requested background check.
  - (ix) Any person who is excluded shall remain excluded pending the outcome of any appeals or waiver review or any determination that the basis for exclusion no longer exists.
  - (x) An individual will also be excluded if a criminal or juvenile proceeding, registry or administrative background review requiring exclusion or any other provision of law is discovered and verified in any manner.
  - (xi) If a child care agency, substitute pool or staffing agency receives information from a source other than the Department that requires them to exclude an employee, substitute, volunteer, or resident they shall immediately exclude the person from any access to children and notify the Department on the same business day by calling the child and adult care complaint hotline.
  - (xii) The exclusion of such persons from access to child care shall be conducted pursuant to T.C.A. § 71-3-507 and this rule.
  - (xiii) Failure of a child care agency to perform the required background check before allowing a person access to child care or to immediately exclude individuals with a criminal history or state registry review status that requires exclusion, shall be the basis for the immediate suspension, denial or revocation of the child care agency's license.]
7. Reserved.
8. Reserved.
9. All caregivers shall be able to explain emergency procedures to follow in case of fire, serious injury or illness of a child or a caregiver, or disaster.
10. All caregivers shall have training in detection, reporting, and prevention of child abuse.
11. All caregivers shall have a minimum of two hours training annually, in addition to other required training in specific subject areas.
- (b) Primary Caregiver.
  1. Prior to issuance of a license, the primary caregiver in a single-site home and all primary caregivers in a system shall:

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- (i) be 18 years of age or older;
    - (ii) be able to read and write English; and
    - (iii) have earned a high school diploma (See definitions in Section 1240-04-01-.01).
  2. A primary caregiver shall complete a DHS-sponsored child care orientation class within three months of licensure.
  3. A substitute for the primary caregiver shall be at least 18 years of age.
  4. A primary caregiver shall present evidence of receiving eight hours of training, consultation, or technical assistance annually in child care or a related field. After the first year of licensure (in any category), this training shall be in addition to other required training in specific subject areas such as Child and Adult Care Food Program (CACFP), personal safety or first aid, etc.
  5. A primary caregiver shall not be employed at any other occupation during child care operating hours.
- (c) Central Operator.
  1. In order to receive a license, the central operator or person in charge of the child care system (or multiple homes) shall have:
    - (i) Graduated a four-year college or university and completed one year of full-time work experience with a group of young children; or
    - (ii) Completed some formal college training in early childhood education or child development (or related field), or received a Child Development Associate (CDA) credential or National Association of Family Day Care (NAFDC) accreditation, and completed one year of full-time work experience with a group of young children; or
    - (iii) A high school diploma or its equivalent (see "Definitions" in Chapter 1240-04-01-.01) and two years full-time work experience with a group of young children.
  2. The central operator or person in charge of the child care system shall complete a DHS-sponsored child-care orientation class within three months of licensure.
- (2) Caregiver to Child Ratios and Supervision.
  - (a) An adult caregiver (at least 18 years of age) shall be present and supervising children in care.
  - (b) The total number of children (including "related" children under nine years of age) shall not exceed 15.
  - (c) If enrollment drops to seven or fewer children, family day care home ratios shall be met.
  - (d) If four (4) or more infants/toddlers are enrolled, they shall have their own space and their own caregiver for their safety and security and for infection control. Children shall

(Rule 1240-04-01-.03, continued)

be cared for in small groups as much as possible, but may be mixed for short periods. Barriers shall be sufficient to provide separation without isolating children.

## (e) Staff Ratios and Chart.

1. A group day care home shall have 1, 2, or 3 caregivers, based upon the ages and numbers of children served.
2. Before eight (8) or more children are enrolled, the facility shall be approved by a fire safety inspector and by an environmentalist.
3. If any child's physical or mental condition requires special care, or if children under nine (9) years of age living in the home increases the group size, or when a field trip is taken off the premises, the number of caregivers shall be increased by one (1).
4. One of the following adult:child ratios shall be met. (A chart is also provided at the end of part 4.):

## (i) Group Day Care Homes with One Caregiver:

- (I) If any number of children up to the maximum of fifteen (15) children are present, and no child is under three (3) years of age, at least one (1) caregiver shall be present.
- (II) If over twelve (12) children are enrolled, the additional children shall be of school age and a school age program shall be provided.

## (ii) Group Day Care Homes with Two Caregivers:

- (I) If any number of children up to the maximum of fifteen (15) children are present, and at least one (1) but not more than nine (9) children are present who are under the age of three (3), then at least two (2) caregivers shall be present. If more than four (4) of those children are under two (2) years of age, three (3) caregivers shall be present.
- (II) If over twelve (12) children are enrolled, the additional children shall be of school age and a school age program shall be provided.

## (iii) Group Day Care Homes with Three Caregivers:

- (I) If any number of children up to the maximum of fifteen (15) children are present, and ten (10) or more children present are under three (3) years of age, there shall be three (3) caregivers present.
- (II) If over twelve (12) children are enrolled, the additional children shall be of school age and a school age program shall be provided.

Caregivers Required <sup>1</sup>	Maximum Number of Children and Ages <sup>2</sup>
1	Maximum of 15 present and no child present is under three (3) years of age. <sup>3</sup>
2	Maximum of 15 present and at least one (1) child up

(Rule 1240-04-01-.03, continued)

	to a maximum of nine (9) children present are under three (3) years of age, but no more than four (4) present are under two (2) years of age. <sup>3</sup>
3	Maximum of 15 if ten (10) or more are under three (3) years of age. <sup>3</sup>
<p><sup>1</sup> If any child's physical or mental condition requires special care, if children under 9 living in the home increases the group size, or when a field trip is taken off premises, the number of caregivers required shall be increased by one.</p> <p><sup>2</sup> Before 8 or more children are enrolled, the facility shall be approved by a fire safety inspector and by an environmentalist.</p> <p><sup>3</sup> If over 12 children are enrolled, the additional children shall be of school age and a school age program shall be provided.</p>	

**Authority:** T.C.A. §§4-5-201 et seq., 4-5-202, 71-1-105, 71-3-501 et seq., 71-3-502(a)(2), 71-3-508(c), Acts 2000, ch. 981, §§ 8 and 14, and Acts 2003, ch. 412, § 2. **Administrative History:** Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed July 1, 1993; effective September 14, 1993. Amendment filed April 30, 1996; effective July 14, 1996. Amendment filed September 29, 2000; effective December 13, 2000. Amendment filed September 29, 2003; effective December 13, 2003.

**1240-04-01-.04 EQUIPMENT.**

## (1) General.

- (a) All equipment shall be well made and safe with no sharp edges, splinters, or other conditions which present a hazard for children.
- (b) Unsafe equipment shall be repaired or removed from the day care home or play yard at once.
- (c) Babies and toddlers shall have additional equipment for comfort and safety, such as cribs, high chairs, etc.
- (d) School-aged children shall have educational materials such as puzzles, craft items, etc., and equipment suitable for their size, interests, and needs.

## (2) Indoor Play Equipment.

- (a) The day care home shall have play equipment for active and quiet play, suitable for the children's ages and interests and for children with special needs, and for all activities required in the Program Section. (See Chapter 1240-04-01-.05.)
- (b) Play materials and equipment shall be in sufficient quantity to provide twice as many activities as there are children at a given time.
- (c) Play materials and equipment shall be placed in such a way that children can get it and return it when needed, so that they can grow in independence.

(Rule 1240-04-01-.04, continued)

- (3) Outdoor Play Equipment.
  - (a) Enough play equipment shall be provided so that each child can take part in many kinds of play each day.
  - (b) Equipment shall be placed to avoid accidents, for example, swings placed out of traffic paths.
  - (c) If there are climbers or swings, they shall be placed on a resilient surface and not over concrete, asphalt, or similar surface such as hard-packed dirt.
  - (d) Climbers, swings, and other large equipment shall be securely anchored.
  - (e) If used, retainer structures for loose material, such as sand or pea gravel, shall be placed at least six (6) feet from the perimeter of play structures.

**Authority:** T.C.A. §§71-1-105(12) and 71-3-501 et seq. **Administrative History:** Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed April 30, 1996; effective July 14, 1996.

#### 1240-04-01-.05 PROGRAM.

- (1) Activities.
  - (a) A balanced daily program of developmentally appropriate activities shall be provided which includes some of the following: reading to and talking with children; art and music activities; building and manipulating toys; and dramatic play activities such as doll play, housekeeping, and role play. Children shall also be allowed to participate in age-appropriate home-type activities, such as cooking, cleaning, gardening, and washing clothes as a meaningful learning experience.
  - (b) There shall be a written and posted schedule of daily routine activities.
  - (c) Children shall be given opportunity to make their own choices in some activities. Other play activities shall be planned by the caregiver.
  - (d) Children shall not spend all day in one room, unless the room has at least 30 square feet of usable play space per child.
  - (e) Television, video tapes, and movies shall be limited to two hours per day and to programs designed for children's education and/or enjoyment. Programs/movies with violent or adult content (including "soap operas") shall not be permitted in children's presence. Other activities shall be available to children during television/movie viewing.
  - (f) Except when the weather is extremely bad, children of all ages, including infants and toddlers, shall have outdoor play each day.
- (2) Discipline.
  - (a) Discipline techniques used shall be positive, appropriate to the age level and needs of children in care; designed to help children learn and maintain self-control and self-esteem; and shall not involve physical punishment, or deprivation of food, rest, or

(Rule 1240-04-01-.05, continued)

toileting. (Physical, or corporal punishment is the infliction of bodily pain as a penalty for the child's behavior of which the punisher disapproves.)

- (b) Praise and encouragement of good behavior shall be used instead of noticing only unacceptable behavior.
  - (c) Punishment which is shaming, humiliating, frightening, or injurious to children shall not be used.
- (3) Physical Care - Naps.
- (a) Preschool children shall have a reclining rest period according to their individual needs. School-aged children shall be allowed to nap if needed but not forced to do so.
  - (b) Each toddler who is able to walk and each preschooler shall have individual napping space, something soft and at least two inches thick to sleep on, and clean bedding. (Examples: couch with cover, thick sleeping bag or foam pad, family bed with cover, or cot with cover.)
  - (c) Each child under 15 months of age and any child unable to walk shall have his/her own crib or playpen and bedding for napping.
  - (d) Because of the risk of Sudden Infant Death Syndrome (SIDS), sleeping infants (under 13 months) shall be checked every 30 minutes by touching them. If a child appears not to be breathing, emergency medical assistance shall be sought immediately.
  - (e) Each child shall have his or her own clean sheet and coverlet.
  - (f) After a child has rested for a reasonable period, she/he shall be allowed to get up.
- (4) Physical Care - Toilet Training.
- (a) Toilet training shall never be started until a child has been in the day care home long enough to feel comfortable.
  - (b) Toilet training shall not be started until a child is able to understand, to do what is asked of them, and to let their need to use the bathroom be known.
  - (c) Children shall not be made to sit on the potty or toilet for more than five minutes.
  - (d) Children shall be diapered or cleaned when needed in a safe, sanitary manner.
- (5) Personal Safety Curriculum.
- (a) For ages three (3) through school-age, a curriculum shall be offered that shall include instruction, at least once a year, in personal safety.
  - (b) Personal Safety Curriculum Components and Guidelines.
    1. The personal safety curriculum shall include a Department-recognized component for the prevention of child abuse, including, for children four (4) years of age and older, a child sexual abuse prevention component.
    2. The curriculum shall be based upon curriculum guidelines provided by the Department to the child care provider in any suitable format. The child care provider may choose terminology and instructional methods for this curriculum

(Rule 1240-04-01-.05, continued)

with a goal of providing clear, effective and appropriate instruction to the children in personal safety, including the prevention of all forms of child abuse.

- (c) Personal Safety Instruction Requirements for School-Age Children.
  - 1. For school-age children, the curriculum shall include instruction for reporting physical, sexual or verbal abuse.
  - 2. Children of school-age shall not be required to receive personal safety instruction from the child care agency if they annually receive personal safety instruction as required by this paragraph (5) in the curriculum of their local public education agency, or, if they receive such instruction in any other educational setting, as approved, in either circumstance, by the Department.
  - 3. Documentation of Personal Safety Instruction in Educational Settings.
    - (i) Written documentation, in a form and manner approved by the Department, verifying that annual personal safety instruction as required by this paragraph (5) is being provided in a public educational setting to each child enrolled in the child care agency, shall be maintained on file with the Department.
    - (ii) For children who do not attend public schools, the child care provider shall secure and maintain documentation, in a form and manner approved by the Department, verifying that each school-age child enrolled in the child care agency is receiving annual personal safety instruction as required by this paragraph (5).
- (d) Beginning October 1, 2008, the personal safety curriculum used by a child care agency shall be made available by the child care agency to parents and legal guardians for review. The child care agency shall use a standard notification form developed by the Department that will be provided to the parents or legal guardians by the child care agency to confirm that the parents/guardians have been notified of the curriculum to be used and of their opportunity to review the personal safety curriculum.
- (e) The record of each enrolled child shall include a copy of the signed notification form acknowledging that parents/legal guardians have been provided an opportunity to review the agency's personal safety curriculum, and have been notified of the sexual abuse/personal safety curriculum for their child.
- (f) If parents/legal guardians have questions regarding the personal safety curriculum, a representative of the child care agency shall meet with the parents/legal guardians to discuss the curriculum.

**Authority:** T.C.A. §§4-5-202, 4-5-209, 71-1-105(12), 71-3-501, 71-3-502(l), 71-3-502 et seq., and 2008 Tenn. Pub. Acts 1032. **Administrative History:** Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Amendment filed June 7, 1982; effective September 30, 1982. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed June 27, 1985; effective September 13, 1985. Amendment filed October 9, 1987; effective January 27, 1988. Amendment filed April 30, 1996; effective July 14, 1996. Public necessity rule filed October 1, 2008; effective through March 15, 2009. Amendment filed December 29, 2008; effective March 14, 2009.

#### 1240-04-01-.06 HEALTH AND SAFETY.

- (1) Children's Health Records.

(Rule 1240-04-01-.06, continued)

- (a) Before a preschool child older than eight weeks is accepted for care, he/she shall have proof of being age-appropriately immunized against the following diseases: diphtheria, tetanus, pertussis, polio, measles, mumps, rubella, and hemophilus influenza type B by having a certification form signed or stamped by a certified health care provider. (Children of six through eight weeks of age may be enrolled before immunizations are begun.)
  - (b) Records of children older than 18 months shall state whether immunizations required for care are complete, and if not complete, when future immunizations will be given. If immunizations are not continued on time by the parent, the child shall not remain in care. If a child has any known allergies, they shall be indicated in the child's health record. Foreign-born children shall also present evidence of tuberculosis (TB) screening. (See Appendix B for information about TB screening.)
  - (c) A copy of each infant/toddler's or preschool child's immunization record shall be on file in the day care home and available to appropriate staff. (Children of six through eight weeks of age may be enrolled before immunizations are begun.)
  - (d) Before a school-aged child is accepted for care, the caregiver shall have on file a statement from the parent (or school) that the child's immunizations are current and that their health record is on file at the specified school which the child attends.
  - (e) If children with mental, physical, or sensory impairment or with a medical disorder are enrolled, their health records shall include a physician's statement which identifies the disabling condition and which gives the physician's special instructions for the child's care.
  - (f) Before infants or toddlers aged 30 months and under are enrolled, they shall have proof of a physical examination within three months prior to admission, signed or stamped by a physician or health care agency. Each infant shall have on file an official health record of the first medical check-up at eight weeks of age.
  - (g) Exceptions to the above requirements in this section shall be made when:
    1. The child's physician or the Department of Health provides a signed and dated statement, giving a medical reason why the child should not be given a specified immunization; or
    2. The child's parent provides a written statement that such immunizations conflict with his/her religious tenets and practices.
    - [3. Care for children of homeless families and/or children in state custody is needed before documentation of immunizations can be confirmed. Care without documentation of immunizations shall not exceed thirty days.]
  - (h) Accidents and injuries to children shall be noted in their records, including date and time occurred, description of circumstances and action taken by caregivers.
- (2) Children's Health Requirements.
- (a) Children shall be checked upon arrival and observed for signs of communicable disease during the day. Every sign of illness or injury shall be reported to the parent as soon as possible but no later than the end of the day in which it occurred.
  - (b) Parents of every child enrolled shall be notified if one of the following communicable diseases has been introduced into the day care home: hepatitis A, food-borne

(Rule 1240-04-01-.06, continued)

outbreaks (food poisoning), salmonella, shigella, measles, mumps, rubella, pertussis, polio, hemophilus influenza type b, meningococcal meningitis. Providers shall report the occurrence of the above diseases to the local health department.

- (c) Prescribed and nonprescribed, internal and external medication shall not be administered to a child except under the direction of a physician or with the parent's written authorization. Medications or drugs shall be labeled with the child's name and specific instructions for administering them. Administration of medications and noticeable side effects shall be charted and reported to parents. Medication shall not be handled by children and shall be stored so as to be inaccessible to children.
  - (d) Good hygiene shall be practiced, such as frequent handwashing; one-time use of tissues, napkins, and washcloths; proper storage and use of personal articles; and hygienic diapering techniques.
- (3) Caregivers' Health Requirements.
- (a) Before beginning to work, each caregiver shall have written evidence of a physical examination and statement that the caregiver's general physical and mental condition will permit the individual to direct and actively participate in the activities of a group of young children. The form or statement shall be signed or stamped by a physician.
  - (b) An updated statement of each caregiver's physical health shall be obtained every third year or more often if deemed necessary by the Department. A statement of a caregiver's mental or emotional health shall be obtained from a psychiatrist or clinical psychologist when deemed necessary by the Department.
  - (c) Each caregiver (whether employed full-time or part-time), volunteers, and others who are in contact with the children 30 or more calendar days per year shall have on file evidence of a tuberculin skin test or chest X-ray with negative results, in accordance with Department of Health recommendations. (See guidelines in Appendix B.)
  - (d) Caregivers shall not smoke while physically interacting with the children. Parents shall be informed if anyone in the home smokes.
  - (e) For the protection of children and adults, caregivers and helpers shall wash their hands immediately after changing a child's diaper, or aiding in toileting, before changing or aiding another child.
  - (f) For the protection of children and adults, when blood is to be handled (e.g., resulting from injury to a child or adult, from nosebleed or from spillage), vinyl or latex gloves shall be used and properly disposed of following use with/by one individual.
  - (g) Following a diaper change or blood spillage, surfaces shall be cleaned and sanitized with a solution of 1/4 cup chlorine bleach to one gallon of water.
- (4) Safety.
- (a) The primary caregiver shall have evidence of completing, or being currently enrolled in, a pediatric first aid course (a minimum of three hours) taught by a qualified instructor.
  - (b) The primary caregiver shall have evidence of completing, or being currently enrolled in, a pediatric CPR course (a minimum of three hours) taught by a qualified instructor.
  - (c) First aid information shall be posted, and caregivers and helpers shall be familiar with it.

(Rule 1240-04-01-.06, continued)

- (d) A first aid kit shall be available to staff. The contents shall include a digital thermometer, bandages, and other items listed in Appendix C.
- (e) The home shall have a working telephone accessible to caregivers for incoming and outgoing calls.
- (f) These telephone numbers shall be posted near the telephone: fire department, law enforcement, hospital, child abuse hotline, civil defense/emergency management, and numbers where parents may be reached. Rescue squad, ambulance, and poison control center numbers shall also be posted if available in the community.
- (g) All homes shall annually present a child sexual abuse prevention program to children enrolled in and cared for by the home.
- (h) Suspected abuse or neglect of a child shall be reported immediately to the local DHS office. Failure to do so is, by itself, grounds to deny or revoke the agency's license.
- (i) The primary caregiver shall be reasonably prepared to protect children in the event of a disaster by knowing who to contact and how to cooperate with the local Emergency Management Plan.
- (j) Emergency transportation shall be planned for and shall be provided as needed.
- (k) Firearms and other deadly weapons or tools on the premises shall be secured in such a way that they are inaccessible to children.
- (l) Use of swimming pools shall comply with environmental sanitation regulations in Appendix E. Wading pools which have not been approved by the environmentalist shall not be used.
- (m) Pets shall be vaccinated in accordance with a veterinarian's recommendation. Unconfined pets and children shall not be together on a regular basis. An adult shall be present while pets are with children. Animals and birds shall not be allowed in areas of food storage, preparation, or service.

**Authority:** T.C.A. §§71-1-105(12), 71-3-501 et seq., and 37-1-603(b)(1)(A). **Administrative History:** Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Amendment filed June 7, 1982; effective September 30, 1982. Repeal and new rule filed December 6, 1983; effective January 5, 1984.

#### 1240-04-01-.07 TRANSPORTATION.

- (1) Management Responsibility, Loading\Unloading and Verification Procedures; Staff Qualifications.
  - (a) Management Responsibility.
    - 1. Existing child care agencies, or those applying or re-applying for licenses, that provide transportation services, must provide a written statement to the Department describing:
      - (i) The type(s) of transportation that will be offered, e.g., from the child's home to the child care agency, from the child care agency to the child's school, etc.;

(Rule 1240-04-01-.07, continued)

- (ii) The types of vehicles that will be used for the transportation of children, e.g., a 1999 fifteen (15) passenger Ford van;
  - (iii) Any contracts, agreements or arrangements with any third parties for the provision of transportation services;
  - (iv) The provider's plan for maintaining compliance with the transportation time limits set forth in 1240-04-01-.07(6);
  - (v) The provider's policy and procedures for maintaining compliance with the transportation verification procedures set forth in 1240-04-01-.07(1)(b);
  - (vi) The provider's policy and procedures for attaining and maintaining compliance with child restraint procedures required by: these rules; Tennessee Code Annotated, Title 55, Chapter 9, Part 6; applicable Federal Motor Vehicle Safety Standards relative to child safety restraints, and; the child restraint and vehicle manufacturer's design requirements for the type of child restraints and vehicles used to transport children; and
  - (vii) The provider's policy and procedures for the emergency evacuation of the vehicle.
2. The child care home's management shall be fully responsible for the transportation of children between home and the child care home, to or from school, and/or on field trips on any vehicle which it operates, for which it contracts or which is otherwise under its direction or control.
  3. Vehicles used to transport children and which are owned or operated by, contracted for or which are otherwise under the direction and control of the child care agency, shall carry automobile liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by Rule 1240-04-01-.02(7).
- (b) Loading\Unloading and Verification Procedures.
1. The driver of the vehicle or any other designated staff person riding on the vehicle shall use a passenger log to record the name of each individual child received for transport as the child enters the vehicle. No child shall be accounted for by use of a single entry in the log that would include all, or part, of a group of other siblings or relatives with the same last name and with whom the child is being transported. For example, three (3) siblings with the same last name, e.g., "Doe", who are transported on the same vehicle shall not be recorded by the single entry "Doe" which only records the group's last name and is used by the child care home to signify that all three (3) "Doe" children are accounted for. Each child shall, instead, be separately listed by first and last name.
  2. During transportation, the passenger log shall be used to take roll each time the vehicle makes a stop as each child is loaded or unloaded.
  3. Whenever children being transported are released from the vehicle to their parent or other designated person, the passenger log shall immediately be updated to reflect which children have been released.
  4. Immediately upon unloading the last child/children from the vehicle, and to ensure that all the children being transported have been unloaded, the driver and any other staff members riding on the vehicle shall immediately deliver the

(Rule 1240-04-01-.07, continued)

passenger log to the person designated by the child care home in part 5 and shall immediately:

- (i) physically walk through the vehicle; and
- (ii) inspect all seat surfaces, under all seats and in all compartments or recesses in the vehicle's interior.

5. Additional caregiver/staff review and verification requirements.

- (i) The child care home shall also designate a caregiver or management level staff person, other than the person responsible for the recording in the passenger log on the vehicle, who shall provide additional review and additional verification that the children have been unloaded from the vehicle and properly accounted for.
- (ii) When unloading children at the child care home or field trip destinations, or when, prior to being parked at the child care home or other location, and to ensure that all children have been unloaded, the person designated pursuant to subpart (i) of this part 5 shall also immediately request the passenger log from the person on the vehicle responsible for maintaining the log and shall immediately:
  - (I) reconcile the passenger log with the children's attendance records; and
  - (II) conduct the same inspection as required in subparts (1)(b)4(i) and (ii) above.
- (iii) Verification of the passenger logs and attendance records required by this subparagraph (b) shall be made by having the printed name of the persons who complete the logs and records written or printed on the passenger log and attendance record accompanied by the handwritten initials of such persons. Passenger logs and attendance records shall be maintained for a period of one (1) year or until the next re-evaluation of the group child care home for an annual license, whichever is first.

6. The driver or any accompanying staff member shall assure that every child is received by a parent or other designated person.

7. When children are transported to school, they shall be released in accordance with the following procedures:

- (i) the children shall be unloaded only at the location designated by the school;
- (ii) the children are only allowed to unload from the group child care home's vehicle at the time the school is open to receive them;
- (iii) the driver/caregiver shall watch the children who are unloaded from the vehicle walk through the entrance door designated by the school for the children; and
- (iv) any additional procedures established by the school.

(Rule 1240-04-01-.07, continued)

8. The provisions of this subparagraph (b) apply to child care agency staff and to personnel operating vehicles for any contracted transportation service for a licensed or approved child care agency or for any other transportation service that is under the direction or control of a child care agency, that provides such services for children enrolled in the child care agency.

(c) Transportation Staff Qualifications.

1. Driver License Requirements.

- (i) All persons responsible, or who may in the course of their duties become responsible, at any time, for driving a vehicle that transports children enrolled in the child care agency, shall hold, at a minimum, a current Tennessee driver license with an "F" ("for hire") endorsement pursuant to T.C.A. § 55-50-102(20)(F) unless such persons already have an endorsement or hold a license which the Department of Safety recognizes as inclusive of the "F" endorsement requirements, or shall hold such other license or endorsement provided for by State law or regulation governing driver qualifications for the type or size of vehicle used, or which may otherwise govern driver qualifications, for transportation of children enrolled by licensed or approved child care agencies.
- (ii) Effective January 1, 2004, all persons subject to this part 1 shall obtain a certification document from the Department of Safety to signify that they have passed additional written or skills tests required for persons who may, in the course of their duties drive a vehicle that transports children enrolled in a child care agency.
- (iii) Effective January 1, 2004, all persons subject to this part 1 shall be required to obtain annual training that is utilized for school bus drivers offered by the Department of Safety or such other equivalent training as the Department of Safety may determine is appropriate.
- (iv) Evidence of completion of the requirements in subparts (i)-(iii) for each person employed or otherwise utilized by the agency under any contract or any other arrangement shall be maintained in the records of the child care agency. Failure to obtain or timely exhibit completion of this additional certification when requested shall result in ineligibility of the person from any further driving duties for the child care agency until such requirements are fulfilled.

2. Health Examinations and Drug Screenings.

(i) Health Examinations.

All persons driving vehicles at any time for the transportation of children enrolled in the child care agency shall annually provide to the Department a health statement or statements, based upon an examination of the individual, that are signed by the examining licensed physician, licensed psychologist, licensed clinician, Nurse Practitioner, or Physician's Assistant, verifying that the individual is physically, mentally and emotionally capable in all respects of safely and appropriately providing transportation for children.

(ii) Drug Screenings.

(Rule 1240-04-01-.07, continued)

- (I) Any person, in accordance with procedures established by the Department, shall pass a drug screen:
  - I. Prior to such person being employed as a full or part-time employee with a licensed or approved child care agency for a position which has any duties involving driving any vehicle utilized by the child care agency to transport children enrolled in that child care agency; or
  - II. Prior to such person being employed, in any position which has any duties involving driving any vehicle utilized to transport children enrolled in any child care agency, as a full-time or part-time employee by a contractor of a licensed or approved child care agency, or by any other persons or entities, any of which transports, for any compensation, children enrolled in the care of the child care agency as part of the agency's transportation program or service for such children offered by such child care agency; or
  - III. Prior to the assumption, at anytime, of any driving duties by an existing full-time or part-time employee of the licensed or approved child care agency, or, of an existing full-time or part-time employee of a contractor or other person or entity providing transportation, for compensation, to the child care agency as part of such child care agency's transportation program or service.
- (II) Effective January 1, 2004, all existing drivers who have been previously assigned by the child care agency or its contractors or by any other person or entity as a driver of any vehicle providing child care transportation for a licensed or approved child care agency, under any arrangement and who have not been tested as required by item (I), shall have a drug screen in accordance with procedures established by the Department.
- (iii) The child care agency shall immediately review the results of the drug screen upon receipt, and upon receipt by the child care agency of a positive drug screen result for an employee of the child care agency, or upon receipt of notification of such result for a tested individual from a contractor or other person or entity providing transportation, for compensation, to the child care agency as part of such child care agency's transportation program or service, the child care agency shall immediately:
  - (I) Notify the Department and prohibit, or require its contractor or other entity providing transportation for compensation to the child care agency as part of the child care agency's transportation program to prohibit, the individual from any driving duties involving any transportation of children enrolled in the child care agency; and
  - (II) Enter into a safety plan approved by the Department that excludes the individual from driving for the child care agency until the individual passes a drug screen test and is otherwise approved, in writing, by the Department, to provide driving duties involving the transportation of children for the child care agency.

(Rule 1240-04-01-.07, continued)

3. Prior to assuming their duties, all persons responsible, or who may in the course of their duties become responsible, at any time, for transporting children (including drivers and monitors) shall complete Department of Human Services-recognized pre-service transportation training in:
    - (i) The proper daily safety inspection of the vehicle set forth in subparagraph (2)(b) below;
    - (ii) The proper use of child safety restraints set forth in paragraph (4) and Tennessee Code Annotated, Title 55, Chapter 9, Part 6 and applicable Federal Motor Vehicle Safety Standards relative to child safety restraint systems and vehicle design requirements for the type of vehicle used to transport children;
    - (iii) The proper use of the verification procedures set forth in subparagraph (1)(b) above;
    - (iv) The proper use of a blood borne pathogen kit;
    - (v) The proper procedures for the evacuation of the vehicle based upon the type of vehicle and the ages of the children served; and
    - (vi) The developmentally appropriate practices applicable to the behavior management of children during transportation.
  4. Following the completion of pre-service transportation training, all persons responsible at any time for the transportation of children (including drivers and monitors), shall complete Department of Human Services-recognized transportation training that includes the subject matter set forth in 1240-04-01-.07(1)(c)3, above, a minimum of every six (6) months.
  5. Emergency Aid Training.
    - (i) All persons responsible, or who may in the course of their duties become responsible at any time, for the transportation of children shall hold current certification in Infant/Pediatric Cardiopulmonary Resuscitation (CPR) from the American Red Cross, the American Heart Association, or other certifying organization, as recognized by the Department.
    - (ii) Effective July 1, 2004, all persons responsible, or who may in the course of their duties become responsible at any time, for the transportation of children shall complete a first aid course sponsored or approved by the American Red Cross, or other first aid course, as recognized by the Department.
  6. The provisions of this subparagraph (c) apply to child care agency staff and to personnel operating vehicles for any contracted transportation service for a licensed or approved child care agency or for any other transportation service under the direction or control of a child care agency.
  7. The requirements of 1240-04-01-.07(1)(c) do not apply to individuals who provide transportation services exclusively for occasional field trips.
- (2) Vehicle Inspections; Passenger Limitations; Vehicle Design Requirements; Child Seating Space Requirements; Emergency Equipment; Prohibition of Firearms or other Weapons on Vehicles.

(Rule 1240-04-01-.07, continued)

- (a) The requirements of this paragraph (2) include vehicles used at anytime for the regular child care vehicle(s) and those used as back-up vehicles. Exception: The requirements of this paragraph (2) do not apply to vehicles operated solely for the purpose of providing transportation for occasional field trips.
- (b) The child care agency shall maintain, and shall require providers of transportation services for children under contract to the agency or under the agency's direction or control to maintain, documentation that designated child care, contractor, or other entity staff perform daily the following inspections, followed by any necessary repairs or other appropriate actions, before beginning transportation of children for the child care agency:
  - 1. A visual inspection of the vehicle's tires for wear and adequate pressure;
  - 2. A visual inspection for working headlights and taillights, signals, mirrors, wiper blades and dash gauges;
  - 3. An inspection for properly functioning child and driver restraints;
  - 4. An inspection for properly functioning doors and windows;
  - 5. An inspection for the presence of safety equipment required by these rules or any other provisions of law or regulations, and repair or replacement as necessary based upon visual evidence of the need do so;
  - 6. A determination that the vehicle has adequate fuel; and
  - 7. An inspection for, and cleaning of, debris from the vehicle's interior.
- (c) The child care agency shall maintain, and shall require providers of transportation services for children under contract to the agency or under the agency's direction or control to maintain, documentation that the vehicles used to transport children receive regular inspections and maintenance by a certified mechanic in accordance with the maintenance schedule recommended by the vehicle manufacturer, and, in addition shall have the following vehicle equipment certified as inspected at least every four thousand (4,000) miles if not covered by, and/or serviced in accordance with the manufacturer's maintenance schedule:
  - 1. Brakes;
  - 2. Steering;
  - 3. Oil levels, coolant, brake, windshield washer and transmission fluids;
  - 4. Hoses and belts.
- (d) Beginning January 1, 2004, the Department of Safety will conduct annual vehicle safety inspections on all vehicles used by the child care agency directly, under contract, or under the control or direction of the agency designed by the vehicle manufacturer to carry ten (10) or more passengers. Any necessary maintenance or repair to the vehicles disclosed by the inspections shall be the sole responsibility of the child care agency.

(Rule 1240-04-01-.07, continued)

- (e) All documentation of the child care agency or providers of transportation services for children under contract to the agency or under the agency's direction or control shall be made available upon request to Department staff.
- (f) No vehicle which does not pass the inspections required in subparagraphs (b), (c) or (d) shall be used by the child care agency or by its contractors, or others subject to the agency's direction and control, to provide transportation services until necessary repairs, as determined by the Department, have been made.
- (g) Passenger Restraints, Capacity Limitations and Cargo Requirements.
  - 1. All children and adults riding in a vehicle used to transport a child to and from a child care agency, to and from school, or to and from field trips must be restrained by separate passenger restraint devices in the vehicle's seating area, at a minimum, as required by state or federal law or regulation, or, as otherwise required by these rules.
  - 2. The total number of adults and children in vehicles used for the transportation of children enrolled in a licensed or approved child care agency shall never exceed the manufacturer's rated passenger capacity.
  - 3. In a vehicle being used for the transportation of children enrolled in a licensed or approved child care agency, all cargo, luggage or equipment of any type shall be adequately secured at all times in such manner as to protect the passengers in case of accident or emergency maneuvers.
  - 4. The provisions of this subparagraph (g) also apply to vehicles operated by any contracted transportation service for a licensed or approved child care agency, or for any other transportation service under the direction or control of a child care agency.
- (h) Requirements for Child Care Transportation Vehicles Effective January 1, 2007.
  - 1. Effective January 1, 2007 all vehicles that the child care agency operates, for which it contracts, or which are otherwise under its direction or control, that are designed to carry ten (10) or more passengers must conform to all Federal Motor Vehicle Safety Standards (FMVSS) governing either "large" school buses or "small" school buses, as applicable, in accordance with the provisions of the FMVSS described in 49 Code of Federal Regulations Part 571, or as such Part may be amended.
  - 2. Effective January 1, 2007, if buses in either the "large" or "small" classes of school buses under the FMVSS are used, they must have factory-installed passenger restraint anchorages and passenger restraints that are suitable for use in transporting children of any age who are to be transported on either a "large" or "small" school bus.
  - 3. The requirements of this subparagraph (h) do not apply to vehicles used exclusively for the provision of occasional field trips.
- (i) A minimum of ten (10) inches seat space per child is required in a vehicle transporting children.
- (j) A vehicle used to transport children shall have fire extinguishers, emergency reflective triangles, a first aid kit and a blood-borne pathogenic clean-up kit, and an adult familiar

(Rule 1240-04-01-.07, continued)

with the use of this equipment on board. Emergency exiting procedures shall be practiced on a regular basis by all staff responsible for transporting children.

- (k) The carrying, possession or storage of firearms or other weapons is prohibited in vehicles used to transport children.

(3) Vehicle Signage Requirements; Exceptions.

- (a) The requirements of this paragraph (3) are effective March 1, 2003, and are applicable to all vehicles used for the transportation of children enrolled in a child care agency licensed or approved by the Department, including vehicles operated by a contractor of the agency or vehicles operated by any other provider of services under the direction or control of the child care agency, unless specifically exempted by the provisions of subparagraph (e) below.

- (b) All vehicles used for the transportation of children enrolled in the child care agency must, as determined by the Department, clearly and readily identify to the driving public that the vehicle is used for the transportation of children who are in child care.

1. On each side of the vehicle the following information shall be displayed:

- (i) The full name of the child care agency and emergency contact number for the agency in any font or color, including the agency's current logo and lettering scheme; provided that the lettering is not less than one and one-half inches (1½") in height and is clearly readable at a distance of fifty feet (50') on a stationary vehicle in daylight conditions; and
- (ii) The words "Child Care Transportation Complaints" followed by the Department of Human Services' toll-free Child Care Transportation Complaint phone number in black lettering in a block font, not less than one and one-half inches (1½") in height. This text shall appear on a clearly contrasting background that is clearly readable at a distance of fifty feet (50') on a stationary vehicle in daylight conditions.

2. On the rear of the vehicle the following information shall be displayed:

- (i) The full name of the child care agency and the words "Child Care Transportation Complaints" followed by the Department of Human Services toll-free Child Care Transportation Complaint phone number in black letters in a block font not less than one inch (1") in height on a clearly contrasting background that is clearly readable at a distance of forty feet (40') on a stationary vehicle in daylight conditions.
- (ii) The provisions of this part (2) shall not apply to passenger automobiles (excluding minivans) used for transportation by the child care agency with a manufacturer's rated seating capacity of six (6) or fewer passengers.

- (c) The information required in subparagraph (b) must be applied to the vehicle in one of the following formats:

- 1. Painted directly on the vehicle in accordance with the paint manufacturer's instructions using paint recommended by the paint manufacturer as appropriate for use on a vehicle; or
- 2. A weather-resistant sign securely fastened to the vehicle. The term "securely fastened" includes magnetic signs and signs bolted to the vehicle. The term

(Rule 1240-04-01-.07, continued)

does not include adhesives such as tape or glue unless recommended by the adhesive manufacturer as being appropriate for outdoor use on a vehicle.

- (d) Special Requirements for Centralized Transportation.
  - 1. Central operators or any other entity that may own or operate more than one child care agency and which may provide centralized transportation services for its child care agencies; and/or
  - 2. Contractors, or other transportation service providers under the direction or control of the child care agency, which may provide centralized transportation services to more than one child care agency may substitute for the name and phone number of the child care agency required by parts 1240-04-01-.07(3)(b)1 and 2 above the full name and emergency contact number of the central operator, contractor or other transportation service providers under the direction or control of the child care agency. If the name on the vehicle does not clearly designate the agency or entity as one providing child care transportation, words such as "Child Care Transportation Vehicle" or "Child Care Transportation Services", or similar language approved by the Department, must be displayed on the vehicle in a manner that demonstrates, as determined by the Department, that the vehicle is providing child care transportation.
- (e) Exceptions to Vehicle Identification Requirements.
  - 1. Vehicles used exclusively for the provision of occasional field trips; and
  - 2. Vehicles used exclusively for the limited provision of emergency transportation, e.g., as a result of the mechanical breakdown of the regular child care vehicle.
  - 3. The Department may, in its discretion, determine if exceptions to the requirements of this paragraph (3) may be made for child care agencies owned, operated, or under the direction or control of a public agency. For purposes of this subparagraph (e), a "public agency" is any entity controlled, owned or operated by a state, county or local entity, or a political subdivision of the State of Tennessee.
  - 4. The Department may, in its discretion, determine if certain child care agencies may be exempted from any or all of the requirements of this paragraph (3) due to facts which may clearly warrant such exemptions.
- (4) Child Safety Restraints.
  - (a) The provisions of this paragraph (4) shall apply to any vehicle used to transport children as of the effective date of these rules, unless stated otherwise by the rule. Any vehicle whether:
    - 1. A passenger car;
    - 2. A stock or custom van or sport utility vehicle;
    - 3. A school bus classified as a "small" or "large" bus as required in FMVSS contained in 49 Code of Federal Regulations Part 571; or
    - 4. Any other vehicle must be properly equipped with the child passenger restraints required by subparagraphs (c) - (f) below and must comply with all other provisions of this paragraph (4).

(Rule 1240-04-01-.07, continued)

- (b) Children under four (4) years of age shall never be placed in the front seat of the vehicle.
- (c) Children who weigh less than twenty pounds (20 lbs.) shall be placed to face the rear of the vehicle. Children who weigh twenty pounds (20 lbs.) or more shall be placed to face the front of the vehicle unless the special needs of a disabled child otherwise require the child to face the rear of the vehicle.
- (d) Children who weigh less than forty pounds (40 lbs.) shall be restrained in a Federally-approved child restraint device in accordance with the child restraint device manufacturer's instructions. The child restraint device shall be secured to the vehicle in accordance with the child restraint device manufacturer's instructions.
- (e) Children Between Forty Pounds (40 lbs.) and Eighty Pounds (80lbs.).
  - 1. Children who weigh between forty pounds (40 lbs.) and eighty pounds (80 lbs.) may be restrained in a belt-positioning booster seat (BPBS) that has been secured in accordance with the vehicle and restraint manufacturers' instructions. BPBS devices shall always be secured to the vehicle in accordance with the vehicle and the restraint device manufacturer's instructions. If, however, a BPBS restraint device is not used, the child shall be restrained in both a lap belt and a shoulder belt if available in the vehicle. If a lap and shoulder belt restraint system is not available in the vehicle, the child shall be restrained by a lap belt.
  - 2. Effective January 1, 2007, children who weigh between forty pounds (40 lbs.) and eighty pounds (80 lbs.) shall be restrained in a belt-positioning booster seat (BPBS) in accordance with the BPBS manufacturer's instructions. BPBS devices shall always be secured to the vehicle in accordance with the vehicle and the restraint device manufacturer's instructions.
- (f) Children Weighing More Than Eighty (80 lbs.) or Who are Taller Than Four Feet Nine Inches (4'9").
  - 1. Children who weigh more than eighty pounds (80 lbs.) or who are taller than four feet nine inches (4'9") may be restrained in an adult lap belt and shoulder belt that has been secured in accordance with the vehicle manufacturer's instructions. If, however, an adult lap belt and shoulder belt is not used, the child shall be restrained by a lap belt.
  - 2. Effective January 1, 2007, children who weigh more than eighty pounds (80 lbs.) or who are taller than four feet nine inches (4'9") shall be restrained in an adult lap belt and shoulder belt in accordance with the vehicle manufacturer's instructions.
- (g) Passenger air bags shall remain turned off unless an adult or a child fifteen (15) years of age or older is riding in the front passenger seat of the vehicle.
- (h) No child shall ride on the floor of a vehicle and no child shall be placed with another child in the same restraint device.
- (i) Notwithstanding the provisions of this paragraph (4), until January 1, 2007, children of school-age (in kindergarten or any grade level above) shall not be required to use child restraints when being transported in school buses classified in the "large" category under FMVSS.

(Rule 1240-04-01-.07, continued)

- (5) Supervision of Children During Transportation.
  - (a) An adult must be in the vehicle whenever a child is in the vehicle.
  - (b) Adult Monitor Requirements for Child Care Transportation.
    1. An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more children ages six (6) weeks through five (5) years of age, who are not in kindergarten; provided, however an adult monitor, in addition to the driver, is required on the vehicle for all routes exceeding thirty (30) minutes for children ages six (6) weeks through five (5) years of age, who are not in kindergarten, regardless of the numbers of children being transported.
    2. An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more non-ambulatory children (permanent or temporary) of any age.
    3. On field trips off premises, the number of adults at the destination shall be double the requirements on the adult:child ratio charts in paragraph (2) of subchapter 1240-04-01-.03, Caregiver to Child Ratios and Supervision; provided, however, the adult monitor referenced in parts 1 and 2 of this subparagraph (b) may be used for purposes of this requirement.
- (6) Limits on Time Children Are Transported/Transportation Waivers.
  - (a) Children shall not spend more than forty-five (45) minutes traveling one way; provided, however, this provision is not applicable for occasional field trips.
  - (b) If extended transportation beyond the limits in subparagraph (a) is necessary in special circumstances, or as may be required by geographic factors, an individualized plan shall be established and signed by the parent(s) and the child care agency and approved by the Department prior to providing such transportation.
- (7) Except as otherwise exempted, the provisions of paragraphs (4)—(6) shall apply to all vehicles used for the transportation of children enrolled in a child care agency licensed or approved by the Department, including vehicles provided by a contractor of the agency or vehicles operated by any other provider of services under the direction or control of the child care agency.

**Authority:** T.C.A. §§4-5-202, 55-50-102(11) and (20), 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), 71-3-508(c), Acts of 2003, Public Chapter 412, §§1(c), 2, and 3, and 49 Code of Federal Regulations Part 571. **Administrative History:** Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed November 21, 2002; effective February 4, 2003. Amendment by Acts of 2003, Public Chapter 412, §§1(c) and 3 filed June 25, 2003; effective July 1, 2003. Amendment filed September 29, 2003; effective December 13, 2003. Amendment filed October 21, 2004; effective January 4, 2005.

#### 1240-04-01-.08 FOOD.

- (1) Nutritional Needs.
  - (a) For children in the home at least four hours, one snack (defined as two of these four choices: fluid milk; meat or meat alternate; fruit, vegetable or full-strength juice; or

(Rule 1240-04-01-.08, continued)

whole grain or enriched bread) shall be provided, unless the four-hour period covers a normal meal hour, in which case a meal shall be provided.

- (b) Snacks provided shall be nourishing and planned as a part of the day's food allowances. Carbonated drinks, fruit-flavored drinks, imitation milk drinks, and candy shall not be served as snack foods. Powdered milks shall be used only in a cooked food product. (Real juice will be labeled "100% juice" or "full-strength juice". Powdered milk does not meet the requirement.) (See Appendix D for suggested food pattern for snacks.)
  - (c) For children in the home five to 10 hours, one meal (defined as meat or meat alternates, vegetable and/or fruit, bread or bread product, and milk) and one or two snacks shall be provided, two snacks if the period is as much as seven hours. (See Appendix D for suggested meal patterns.)
  - (d) For those in the home longer than 10 hours, two meals and two snacks shall be furnished.
  - (e) Breakfast (defined as fruit, vegetable or full-strength juice; cereal or bread product; and milk) shall be offered to children who arrive before 7:00 a.m. and who have not had breakfast at home.
  - (f) Diets of infants and other special diets shall be prepared as prescribed by a physician.
  - (g) The week's menus shall be planned and posted by the first day of each week and remain posted until the following week so that parents can be aware of the food their children are receiving. These menus shall be followed, although reasonable substitutions are permissible if the substituted food contains the same nutrients. The change shall be documented in advance of the meal. (Information on menu-planning is available upon request.)
- (2) Meal Service.
- (a) Caregivers and children shall wash their hands before eating or prior to any preparation of food.
  - (b) High chairs and tables on which food is served shall be washed with soap and water prior to and after snacks and meals.
  - (c) Napkins and forks and/or spoons shall be provided for children who feed themselves.
  - (d) All formulas and food brought from home shall be labeled with the child's name. Milk shall be placed immediately in the refrigerator. Previously opened baby food jars shall not be accepted by caregivers. All formulas remaining in bottles after feeding shall be discarded.
  - (e) When children are capable of using a high chair, they shall be allowed to do so and to experiment with food, with feeding themselves, and to eat with fingers or spoon.
  - (f) Bottles shall not be propped or given to children who are lying flat.
  - (g) Solid foods shall not be given in a bottle, or with infant feeders, to children of normal eating abilities.

(Rule 1240-04-01-.08, continued)

- (h) All infant's feeding schedule shall be made and adapted to a child's need rather than on the hour.
- (i) Weaning shall not be started immediately after enrollment but after parents and caregivers have communicated to establish consistency in the weaning process and after a child has become familiar with a cup or glass.
- (j) Introduction of new foods to infants and toddlers shall be gradual, one at a time, over a five to seven-day period with parents' approval.
- (k) The size of servings shall be adequate to meet children's needs. (Portion size depends on child's age. See Appendix D for chart of age/portion size.)
- (l) Food, including dessert, shall not be forced on or withheld from a child.
- (m) Floors under tables and high chairs on which food has been served shall be swept and/or vacuumed after each meal and mopped as needed.

**Authority:** T.C.A. §§71-1-105(12) and 71-3-501 et seq. **Administrative History:** Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-01-.07).

**1240-04-01-.09 PHYSICAL FACILITIES.**

- (1) Any new group day care home/facility, or one that is remodeled, enlarged, or changed in any way, shall be approved by a state or authorized local fire safety inspector and by an environmentalist before day care operation can begin.
- (2) Group day care homes shall be inspected and approved annually by a state or local fire safety inspector and by an environmentalist. Requirements in Appendices E and F shall be met before a license can be issued. (Requests for inspections are made by the Licensing Counselor.)
- (3) Physical facilities shall continue to meet all standards in Appendices E and F and any updated fire prevention or environmental standards which are applicable.
- (4) The inside of the home shall provide 30 square feet of usable play space per child, including children who are related to caregivers. (Usable play space does not include office space, bathrooms, or space occupied by large pieces of furniture.)
- (5) The home shall have at least two exits directly to the outside, other than from the kitchen.
- (6) When infants are in care, the diapering area shall be located as close to a handwashing lavatory as possible but not in the kitchen.
- (7) The home shall not be located in a building used for other purposes which would be hazardous or would limit outdoor play.
- (8) The outdoor play area shall contain at least 50 square feet of space per child, including children who are related to caregivers.
- (9) The areas where children play or are cared for shall be properly maintained. These areas shall be free of hazardous items or materials unless adequately protected by storage, inaccessibility, proper supervision, or other safety procedures. These areas shall present no conditions which are hazardous to children. All such areas shall be free of all animal wastes.

**Authority:** T.C.A. §§71-1-105(12) and 71-3-501 et seq. **Administrative History:** Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-01-.08).

**1240-04-01-.10 CARE OF CHILDREN WITH DISABILITIES.**

- (1) When children with disabilities are enrolled, the home shall provide those children equal opportunity to participate in the same program activities as their peers.
- (2) Adaptations to the environment shall be directed toward normalizing the lifestyle of the child with a disability by helping him/her become independent and develop self-help skills.
- (3) Any efforts to provide specialized services (e.g., speech/hearing therapy, physical therapy, psychological evaluation, or services for mentally retarded), either directly or by referral, shall be conducted only with written permission by parent and documented in the child's record. Any informational exchange regarding these services shall also be documented.
- (4) The home shall have a written individualized evacuation plan, which has been approved by the Licensing Counselor and is practiced in every monthly fire drill, for every child enrolled

(Rule 1240-04-01-.10, continued)

who requires more assistance to evacuate the facility than other children of the same age or in the same group.

**Authority:** T.C.A. §§71-1-105(12) and 71-3-501 et seq. **Administrative History:** Original rule filed April 22, 1992; effective June 6, 1992. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-01-.09).

#### 1240-04-01-.11 APPENDICES.

- (1) The following Appendices referenced in the foregoing rules are incorporated in these rules by reference:
  - (a) Appendix A - I. Summary of Applicable Laws
    - II. Questions and Answers About Day Care Licensing
  - (b) Appendix B - Guidelines for TB Screening
  - (c) Appendix C - Contents of First Aid Kit
  - (d) Appendix D - Meal/Snack Patterns and Portion Sizes
  - (e) Appendix E - Environmental Standards for Group Child Care Homes
  - (f) Appendix F - Fire Safety Inspection Report
- (2) Any conflict between summaries of the language of statutes or regulations in the Appendices and official statutes and regulations will be resolved by reference to the language of the official statutes or regulations.

**Authority:** T.C.A. §§71-1-105(12) and 71-3-501 et seq. **Administrative History:** Original rule filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-01-.10).

#### APPENDIX A

##### I. Summary Of Applicable Laws.

- (A) Child Welfare Agencies (TCA §71-3-501 et seq.) (A complete copy of the licensing law is available upon request.)
  1. Specifies the types of agencies that DHS has a mandate to license. Licensing of day care (less than 24-hour care) begins with five children. (Care for one to four children is exempt.)
  2. Provides for development of standards, based on certain criteria by a 16 member "standards committee" appointed by the Commissioner. Standards are to be reviewed (and revised, if needed) every five years.
  3. Requires DHS to provide applicants or licensees with assistance in meeting standards.
  4. Requires annual application for a license and an application processing fee.
  5. Upon receiving fire safety and environmental sanitation approval, provides that DHS will issue a 90-day conditional license if no apparent hazards to the children in care are present.

(Rule 1240-04-01-Appendix A, continued)

6. Provides for denial, suspension, or revocation of license and a waiting period ranging from 60 days to one year prior to reapplication.
  7. Provides for appeals and hearings before the Board of Review, which includes representatives from the Departments of Health, Education, of the "advisory board" of DHS, from the appropriate Standards Committee, and three at-large members selected by the others. Appeals from the Board's decision may be made to Chancery Court.
  8. Imposes a misdemeanor penalty of imprisonment for six months and a fine of \$500 or both for each offense (day) of operating without a license.
  9. Requires public agencies to meet the same standards as other child welfare agencies and a method of reporting to the public any uncorrected deficiencies.
  10. Requires DHS to regularly inspect agencies without prior notice and grants the Department access to facilities and records in order to make an evaluation of the "kind and quality of work done" and to make recommendations regarding licensure.
  11. Requires DHS to investigate reports of noncompliance.
  12. Allows DHS to impose civil penalty (\$25 - \$150) for substantial noncompliance and probation for continued noncompliance.
  13. Contains specified and defined exemptions for Parents' Day Out programs, kindergartens, and "drop-in" programs. Also provides a waiver of adult to child ratios and group size requirements for certain Montessori schools.
  14. Requires screening for criminal violations of persons applying to work with children through the registry maintained by the Tennessee Bureau of Investigation (TBI).
  15. Allows DHS to investigate all reports of abuse, neglect, or sexual abuse, even in exempt agencies, and enables DHS to revoke the license of a licensed agency and to enjoin an unlicensed person or agency from continuing to provide child care where abuse of children occurs.
- (B) Access to Public Records (*T.C.A. §§10-7-503 and 10-7-504*). Requires public bodies to provide any citizen of Tennessee access to public records except for specified confidential records (e.g., medical records, TBI investigative records, students' records). DHS' records on child welfare agencies are public records except as they may contain information obtained in the course of child abuse or neglect investigations.
- (C) Child Protective Services (*TCA §§37-1-401 et seq. and 37-1-601 et seq.*).
1. Requires any individual or organization (such as day care agency, hospital, or school) having knowledge of suspected child abuse or neglect to report it to a juvenile judge, the Department of Human Services, or a law enforcement official. (Look in your telephone book under "Child Abuse", or call the county DHS office or local law enforcement.)
  2. Requires the identity of a reporting person to be kept confidential, subject to disclosure only by consent of the person or by judicial process. Provides immunity from civil or criminal liability if reports are made in good faith.
  3. Gives DHS authority and responsibility to investigate reports of abuse or neglect.

(Rule 1240-04-01-Appendix A, continued)

4. Requires that all written records and information regarding investigations be confidential. Release of information is permissible to certain specified persons and to those having responsibility for administration of the law. Persons found not guilty of severe child abuse or child sexual abuse shall have their names expunged from the TBI's abuse registry.
5. Charges DHS with the responsibility of conducting a continuing publicity and education program to encourage reporting and to strengthen and improve child sexual abuse detection, prevention, and treatment efforts.

(D) Federal Funding.

Section 504 of the Rehabilitation Act of 1973 and Title VI of the Civil Rights Act of 1964 require agencies receiving federal funding to employ nondiscriminatory policies and practices. Persons receiving federal funding such as reimbursement from the USDA Child/Adult Care Food Program, DHS vendor or Transitional Child Care payments, Social Services Block Grants (SSBG), Dependent Care Grant funds for school-age child care, etc.; and persons receiving federal support in the form of space, staff, services, equipment, etc., are required to comply with the following.

1. Title VI of the Civil Rights Act of 1964 by ensuring that no person (child, parent, or employee) in your agency "shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance"; and by employing nondiscriminatory policies and practices and advertising such.
2. Section 504 of the Rehabilitation Act of 1973 by ensuring that no otherwise qualified handicapped person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any program activity solely on the basis of a handicap (applies to children, parents, and employees); and by making reasonable accommodations to serve or hire an otherwise qualified individual with a handicapping condition.

(E) Child Passenger Protection and Safety Belt Use (Transportation) (*TCA §55-9-601 et seq.*).

1. Requires any person transporting a child under the age of four years in a motor vehicle to provide for children's protection by providing and properly using a federally approved child restraint system (manufactured after January 1, 1981). Violation is subject to a \$50 fine or 30 days in jail or both.
2. Specifies that no one is to operate a motor vehicle unless all persons four and older in the front seat are properly restrained by a safety belt.
3. Imposes a fine of \$50 or 30 days in jail or both for each violation after the first; however, the violator can be cited or arrested only after being cited or arrested for another violation of law.
4. *TCA §§55-50-102(11) and 55-50-102(12)(B)* requires the driver of a vehicle designed to carry 15 or more passengers (including the driver) to have a commercial driver's license.

(F) Administrative Rules and Procedures (*TCA §4-5-301 et seq. and Chapter 1240-5-11 et seq.*).

(Rule 1240-04-01-Appendix A, continued)

1. Provides for an administrative hearing of any contested cases (i.e., on denial or revocation of licenses or on notice of intent to put an agency on probation) after proper notice which includes references to particular statutes and rules involved.
2. Requires that hearings before the members of the Board of Review to be conducted by the administrative judge or a hearing officer, who rules on admissibility of evidence and other matters and otherwise ensures that proceedings are properly carried out.
3. Allows the contesting licensee to be represented (at licensee's own expense) by counsel.
4. Allows the judge or hearing officer at his/her discretion or upon request of licensee or the Department of Human Services to schedule a prehearing conference in order to simplify or expedite the disposition of the appeal action.
5. Requires that the hearing be open to the public.
6. Requires the final order be entered by the Board of Review. The final order shall include conclusions of law, factual findings, prescribed remedy, and procedures and time limits for seeking judicial review.
7. Provides that while an application for a license is pending, an existing license does not expire until disposition of the application has been finally determined, unless the license must be summarily suspended pending completion of the proceedings because the Department determines that "public health, safety, or welfare imperatively requires" emergency action, and notifies licensee of that finding "pending proceedings for revocation or other action".

## II. Questions And Answers About Day Care Licensing.

### (A) *How does a person get information about opening a child care agency?*

The local county office of the Tennessee Department of Human Services will furnish information; a licensing representative will provide assistance free of charge to an individual or a group that is planning to provide child care.

### (B) *How many children am I allowed to care for?*

In Tennessee, a person without a license may care for no more than four children. To care for five to seven children, in addition to "related" children, you must be licensed as a "family day care home" operator. To have eight(8) - twelve (12) children, you must be licensed as a "group" day care home operator. (Under certain conditions, a group day care home may have up to 15 children.)

### (C) *How is a license obtained?*

1. After a completed application and the required fee are received, arrangements will be made for a representative to visit your facility and evaluate the day care operation and/or facility in accordance with the required standards in this booklet.
2. Before a day care home can be licensed, it must pass fire safety and environmental sanitation inspections. The licensing representative will explain the procedure for getting inspected.

### (D) *What types of licenses are issued?*

(Rule 1240-04-01-Appendix A, continued)

1. An "annual license" is granted when compliance with licensure requirements is confirmed by the Department.
2. A "conditional license" is granted to a new agency for 90 days when it does not meet all the required standards, but there is evidence that an effort is being made to comply with the requirements and it has first met fire safety and environmental sanitation approval.

(E) *Who determines whether a license is issued?*

The Commissioner has ultimate responsibility for issuance or denial, based upon an evaluation and recommendation by a licensing representative of the Department.

(F) *Is the license permanent?*

No, it is issued for up to one year. Prior to its expiration, an evaluation is made to determine whether compliance with requirements is being maintained and reissuance should be recommended.

(G) *Is there a fee?*

Yes, the fee is payable upon application and is nonrefundable. The fee for day care homes is \$5 for a family day care home and \$10 for a group day care home.

(H) *Where is the license kept?*

It must be posted in a conspicuous place in the day care home during business hours.

(I) *Are licenses transferable?*

No. The license applies only to the agency, organization, and person(s) to whom it is issued. It also applies only to the building approved.

(J) *Does the same license for "day care" cover (1) nighttime care, (2) "drop-in" children, and (3) sick children?*

1. Yes. An agency that provides less than 24-hour care to children during nighttime hours receives the same license as a child care agency operating during daytime hours, and one license covers both programs in the same agency. An agency cannot provide continuous 24-hour care for two or more children without a residential license. If not licensed for day care, a residential license is needed for more than one child. Ask a licensing counselor about the procedure for obtaining a residential license.
2. "Drop-in" children are counted in the ratio and group and can be cared for only if required records are on file before they are cared for.
3. The day care home license also includes care of mildly ill children. Only mildly ill children (i.e., not "contagious") should be cared for in a day care home and only then if staffing is adequate. Mild illnesses are generally those in a recuperative stage (e.g., getting over mumps or influenza).

(K) *Who enforces licensure requirements for a child care system?*

If homes are approved as an extension of a child welfare agency's license, the central operator (the licensee) is responsible for monitoring compliance. The Department of Human Services monitors the agency's compliance as well as licensed homes within a system.

(Rule 1240-04-01-Appendix A, continued)

(L) *What is the procedure when a license is revoked, denied, or suspended?*

The Department may deny, suspend, or revoke a license at any time by giving the owner, operator, or board a written notice by listing the specific reason or reasons for the action. Specified time periods are provided in the law. Any conduct or condition which might immediately jeopardize the safety of children, shall be cause for immediate suspension of the license, pending the outcome of revocation procedures.

(M) *How can an operator or applicant appeal such action?*

The licensing law provides for a Board of Review. If a license is denied or revoked by the Department, a request may be made for a hearing before the review board. An appeal of the decision from the review board may be judicially reviewed. The periods of time allowed for the appeals are set out in the law.

(N) *Where do I call to file a complaint or get a license?*

1. If you have a question about these standards, or if you want to report an unlicensed facility or a facility that is violating licensing requirements, call the DHS county office. It is listed in the telephone directory under Tennessee State Government, Human Services Department. Someone there will refer you to the licensing unit in your area.

If you want to open a child care facility, call that office before you do anything. You cannot care for a group of five or more children without a license.

2. If you have a question or concern about these standards or the licensing procedure, call or write:

Day Care Licensing Coordinator  
Tennessee Department of Human Services  
Citizens Plaza Building  
400 Deaderick Street  
Nashville, TN 37248-9800  
Phone: (615) 313-4778

**APPENDIX B****RECOMMENDATIONS FOR TUBERCULOSIS SCREENING OF PROGRAMS UNDER THE SUPERVISION OF THE DEPARTMENT OF HUMAN SERVICES<sup>1</sup>**

Programs that provide care for periods less than 24 hours per day.

A. Employees.

Employees should be screened for tuberculosis within 90 days prior to but no later than two weeks after employment. The screening examination should include a tuberculin test<sup>2</sup> and if it is positive, a chest X-ray and, if necessary, other specific tests. Prospective or current employees who are known to have a positive tuberculin reaction or who refuse to have a tuberculin skin test shall receive a chest X-ray to rule out infectious tuberculosis. If infectious tuberculosis is ruled out, no further screening is necessary during their employment unless persistent pulmonary symptoms develop or there is contact with tuberculosis.

<sup>1</sup>Tuberculosis screening is not recommended for programs providing care for less than two weeks.

<sup>2</sup>The preferred method is the Mantoux technique using 5 TU PPD.

B. Children.

1. Foreign-Born.

All foreign-born children should present evidence of a tuberculin skin test<sup>3</sup> performed in the United States. This test performed in the United States may have been done at any time after 12 months of age. Any child with a positive tuberculin skin test should be referred to a physician for evaluation. After the initial evaluation, future periodic screening is not required unless the child develops persistent pulmonary symptoms or there is contact with tuberculosis.

2. Native-Born.

Special screening of children born in the United States is not required unless there is history of contact to tuberculosis or there are symptoms and/or physical findings suggestive of tuberculosis.

If the tuberculin test is negative, no future screening is required unless persistent pulmonary symptoms develop or there is contact with tuberculosis. If the tuberculin skin test is positive, the child should be referred to a physician for evaluation.

<sup>3</sup>The preferred method is the Mantoux technique using 5 TU PPD.

## APPENDIX C

## INVENTORY FOR THE FIRST AID KIT

Every child care setting should have a first aid kit stocked with items on the list below. You can buy the supplies for the first aid kit at drug stores or at hospitals or medical supply stores.

Each first aid kit should be large enough to hold all the necessary supplies for first aid in the child care setting. Use a container that will close tightly. It should be stored where adults can reach it easily, but it must be stored out of reach of children. You should arrange the contents so you can reach items easily without emptying the kit. You should be sure that the contents are wrapped tightly and are sanitary. You should restock the kit after each use.

A first aid kit should contain the following items:

- |  |   |
|--|---|
| II First aid cards*  | II Commercial cold pack or plastic bag for ice cubes  |
| II Adhesive strip bandages (1/2", 3/4", 1" strips)                   | II Clean cloth  |
| II Gauze bandages (4"x4", nonstick, sterile)                         | II Soap   |
| II Rolled flexible or stretch gauze                                  | II Small plastic cup  |
| II Bandage tape  | II Sealed packages of cleansing wipes   |
| II Nonstick, sterile pads (different sizes)                          | II Syrup of ipecac (1-ounce bottle)   |
| II Triangular bandages   | II Special items for children with specific health problems (such as bee sting kit or an inhaler for a child with asthma) |
| II Small splints   | II Emergency Telephone Guide  |
| II Eye dressing or pad   | II Emergency contact information (phone numbers of the children's parents)  |
| II Scissors  | II Change for pay phone   |
| II Tweezers  | II Pen or pencil and note pad   |
| II Safety pins   |   |
| II Thermometer   |   |
| II Flashlight with fresh batteries                                   |   |
| II Disposable latex gloves   |   |
| II Three-ounce rubber bulb syringe (to rinse out eyes, wounds, etc.) |   |

\*Can be purchased from American Red Cross; give first aid instructions.

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Appendix C  
American Red Cross Child Care Course  
Infant and Child First Aid

## APPENDIX D

## MEAL PATTERN/PORTION SIZE REQUIREMENTS

If needed, the caregiver should ask for help in planning meals from a nutritionist or dietitian. For homes on the Child and Adult Care Food Program (CACFP), the DHS staff nutritionist is available. The Department of Health, local colleges, and hospitals are also possible resources.

The minimum amounts of food components to be served are as follows:

## BREAKFAST

Food Components	Age 1 and 2	Age 3-5	Age 6-12 <sup>1</sup>
<i>Milk</i> milk, fluid	½ cup <sup>2</sup>	¾ cup	1 cup
<i>Vegetables and Fruits</i> Vegetable(s) and/or fruit(s) or full-strength vegetable or fruit juice or an equivalent quantity or any combination of vegetable(s), fruit(s) and juice	¼ cup ¼ cup	½ cup ½ cup	½ cup ½ cup
<i>Bread and Bread Alternates</i> <sup>3</sup> bread or cornbread, biscuits, rolls, muffins, etc or cold dry cereal <sup>4</sup>  or cooked cereal or cooked pasta or noodle products or an equivalent quantity of any combination of bread/bread alternate	½ slice ½ serving ¼ cup or 1/3 oz. ¼ cup ¼ cup	½ slice ½ serving 1/3 cup or ½ oz. ¼ cup ¼ cup	1 slice 1 serving ¾ cup or 1 oz. ½ cup ½ cup

<sup>1</sup> Children age 12 and up may be served adult-sized portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities for children age 6 to 12.

<sup>2</sup> A cup means a standard 8 ounce measuring cup.

<sup>3</sup> Bread, pasta or noodle products, and cereal grains shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain or enriched or fortified.

<sup>4</sup> Either volume (cup) or weight (oz.), whichever is less.

(Rule 1240-04-01-Appendix D, continued)

**LUNCH OR SUPPER**

Food Components	Age 1 and 2	Age 3-5	Age 6-12
<i>Milk</i> milk, fluid	½ cup	½ cup	1 cup
<i>Vegetables and Fruits</i> Vegetable(s) and/or fruit(s) <sup>1</sup>	¼ cup total	½ cup total	¾ cup total
<i>Bread and Bread Alternates</i> bread or cornbread, biscuits, rolls, muffins, etc. or cooked pasta or noodle products or cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate	½ slice ½ serving ¼ cup ¼ cup	½ slice ½ serving ¼ cup ¼ cup	1 slice 1 serving ½ cup ½ cup
<i>Meat and Meat Alternates</i> lean meat or poultry or fish <sup>2</sup> or cheese or eggs or cooked dry beans or peas or peanut butter, or other nut or seed butters or peanuts or soy nuts <sup>3</sup> or an equivalent quantity of any combination of meat/meat alternate	1 oz. 1 oz. 1 egg ¼ cup 2 Tbsp. ½ oz. = 50%	1 ½ oz. 1 ½ oz. 1 egg ¾ cup 3 Tbsp. ¾ oz. = 50%	2 oz. 2 oz. 1 egg ½ cup 4 Tbsp. 1 oz. = 50%

(See footnotes from breakfast pattern.)

<sup>1</sup> Serve 2 or more kinds of vegetable(s) and/or fruit(s). Full-strength vegetable or fruit juice may be counted to meet not more than ½ of this requirement.

<sup>2</sup> Edible portion as served.

<sup>3</sup> No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purposes of determining combinations, 1 ounce of nuts or seeds is equal to 1 ounce of cooked lean meat, poultry, or fish.

(Rule 1240-04-01-Appendix D, continued)

**SUPPLEMENTAL FOOD (SNACKS)**

Select two of the following four components. Juice may not be served when milk is served as the only other component. Milk and yogurt are too similar in nutritional value to be used together in the same supplement.

Food Components	Age 1 and 2	Age 3-5	Age 6-12 <sup>1</sup>
<i>Milk</i> milk, fluid	½ cup	½ cup	1 cup
<i>Vegetables and Fruits</i> Vegetable(s) and/or fruit(s) or full-strength vegetable or fruit juice or an equivalent quantity or any combination of vegetable(s), fruit(s) and juice	½ cup ½ cup	½ cup ½ cup	¾ cup ¾ cup
<i>Bread and Bread Alternates</i> bread or cornbread, biscuits, rolls, muffins, etc. or cold dry cereal  or cooked cereal or cooked pasta or noodle products or an equivalent quantity of any combination of bread/bread alternate	½ slice ½ serving ¼ cup or 1/3 oz. ¼ cup ¼ cup	½ slice ½ serving 1/3 cup or ½ oz. ¼ cup ¼ cup	1 slice 1 serving ¾ cup or 1 oz. ½ cup ½ cup
<i>Meat and Meat Alternates</i> lean meat or poultry or fish or cheese or eggs or cooked dry beans or peas or peanut butter, or other nut or seed butters or peanuts or soy nuts or yogurt, plain, or sweetened and flavored <sup>1</sup> or an equivalent quantity of any combination of meat/meat alternate	½ oz. ½ oz. ½ egg 1/8 cup 1 Tbsp. ½ oz. 2 oz. or ¼ cup	½ oz. ½ oz. ½ egg 1/8 cup 1 Tbsp. ½ oz. 2 oz. or ¼ cup	1 oz. 1 oz. ½ egg ¼ cup 1 Tbsp. 1 oz. 4 oz. or ½ cup

(See footnotes from Breakfast and Lunch patterns.)

<sup>1</sup> Yogurt means commercially coagulated milk products obtained by fermentation that meet milk fat or milk solid requirements to which flavoring foods or ingredients may be added. These products are covered by the FDA's standard of identity for yogurt, lowfat yogurt, and nonfat yogurt.

**APPENDIX E****ENVIRONMENTAL STANDARDS FOR GROUP CHILD CARE HOMES****(A) Food Sanitation.**

The following standards shall be met for food sanitation:

1. Food shall be in sound condition, free from spoilage, filth, or other contamination; food shall be obtained from sources that comply with all laws relating to food and food labeling. The use of hermetically sealed containers (home canned food) is prohibited.
2. All milk including dry milk powder shall be from a Grade A pasteurized source.
3. Raw fruits and vegetables shall be washed before use.
4. Stuffings, poultry, and pork products shall be cooked to heat all parts of the food to at least 150°F.
5. If a family style feeding process is used, all leftover food from the eating table shall be discarded. Milk and food used in family style feeding shall not be placed on eating table longer than 15 minutes prior to beginning of meal.
6. Potentially hazardous foods requiring cold storage shall be maintained at 45°F or below, and accurate thermometers shall be kept in the refrigerators. Potentially hazardous food requiring hot storage shall be at an internal temperature of 140°F or above. Frozen foods shall be maintained at a temperature of 0°F or below. Thermometers shall be placed in all freezers.
7. Milk and other potentially hazardous foods shall be kept in the proper temperature ranges and be protected properly, except during necessary periods of preparation.
8. All dry food supplies shall be stored in closed containers and labeled unless its identity is unmistakable. These foods shall be stored in a manner to prevent possible contamination and to allow for proper cleaning of the storage area.
9. All food shall be protected from contamination during storage, preparation, transportation, and serving.
10. No poisonous or toxic materials except those required to maintain sanitary conditions and for sanitation purposes may be used or stored in a food-service area of a facility.
11. Poisonous and toxic materials shall be identified, stored, and used only in such a manner and under such conditions as will not contaminate food or constitute a hazard to the population of a facility.
12. All equipment and utensils including plasticware shall be so designed and fabricated of such material and workmanship as to be smooth, easily cleanable, and durable, under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing.
13. The food-contact surfaces of equipment and utensils shall be easily cleanable, nontoxic, corrosion resistant, and nonabsorbent. Hard maple or equivalently nonabsorbent material may be used for cutting boards, blocks, salad bowls, and baker's tables.

(Rule 1240-04-01-Appendix E, continued)

14. Multi-use equipment shall be constructed and repaired with safe materials, including finishing materials; and they shall be corrosion resistant and nonabsorbent; and they shall be smooth and easily cleanable.
15. Equipment in use at the time of adoption of this standard that does not fully meet all of the design and fabrication requirements shall be deemed acceptable in that establishment if it is in good repair, capable of being maintained in a sanitary condition, and the food contact surfaces are nontoxic.
16. All eating and drinking utensils shall be thoroughly washed, rinsed, and sanitized after each use with the exception of single-service utensils which shall be discarded following use.
17. Single-service articles shall be made from nontoxic materials and shall be stored, handled, and dispensed in a sanitary manner.
18. All utensils and food-contact surfaces or equipment used in the preparation, transportation, service, display, or storage of potentially hazardous food shall be thoroughly washed, rinsed, and sanitized prior to such use.
19. Cooking surfaces of equipment shall be cleaned at least once a day.
20. All kitchenware and food-contact surfaces of equipment, exclusive of cooking surfaces of equipment, used in the preparation or serving of food or drink, and all food-storage utensils, shall be washed, rinsed, and sanitized after each use.
21. Nonfood contact surfaces of equipment shall be cleaned as often as is necessary to keep equipment free of accumulation of dust, dirt, food particles, and other debris.
22. Cleaned and sanitized utensils and equipment shall be stored at least six inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust, and other means.
23. In facilities defined by the Department of Human Services as *existing*, a two-compartment sink can be used for washing and rinsing utensils, provided an additional container or sink is used for sanitation of the utensils. For facilities defined by the Department of Human Services as *new*, a three-compartment sink with two drain boards or easily movable dish tables of adequate size shall be required when manual dishwashing procedures are utilized for washing, rinsing, and sanitation of utensils.

Domestic type dishwashing machines are acceptable provided the temperature at the utensil surface is 160°F after the end of one complete cycle. If 160° is not obtained at the end of one complete cycle, an additional sanitizing rinse for utensils shall be provided in a separate container or sink.

(B) Water Supply.

1. The water supply serving child care facilities shall be provided from a source constructed and operated according to law.
2. There shall be sufficient hot and cold water under pressure to supply the daily needs of a group day care home.
3. Water from a public supply shall be utilized where available.

(Rule 1240-04-01-Appendix E, continued)

4. An approved drinking fountain or individual single service paper cups shall be provided in rooms or adjacent to rooms regularly occupied by the residents.
5. All facilities shall be clean and in good repair.

(C) Sewage Disposal And Plumbing.

1. The facility shall be connected to a public sewage disposal system when such a system is available.
2. The use of a private sewage disposal system shall have the approval of the local health department and it shall be operating satisfactorily.
3. When the private sewage disposal system at an existing facility fails and where a public sewage system is available, the facility shall be connected.
4. Plumbing shall be sized, installed, and maintained according to law. There shall be no cross-connection between the potable water supply and any other water supply.

(D) Solid Waste.

1. There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.
2. Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction, and maintained in good repair.
3. Storage containers, other than bulk, shall be secured properly to prevent spillage.
4. Garbage deposited in outside bulk storage shall be in fly-tight containers (i.e., plastic bags).
5. All garbage shall be removed from the building daily.
6. Garbage and rubbish shall be collected from the premises at least twice weekly.
7. At facilities where twice weekly collection is not provided, all garbage and rubbish shall be disposed of in a manner acceptable to the health authority having jurisdiction (supplement collection by individual hauling, acceptable burying, etc.).
8. Combustible rubbish may be burned, provided such burning meets all local and state laws and regulations relative to incinerators, incineration, and air pollution.

(E) Toilets, Handwashing, And Bathing.

1. One-flush toilet and one handwashing facility for every 12 children shall be provided.
2. All facilities shall be approved and in good repair, and clean.
3. A tightly covered container with plastic liner shall be used for diaper disposal and stored inaccessible to children. This container shall be emptied by closing the liner and disposing of it into an outside garbage receptacle.
4. There shall be soap, hot and cold water under pressure, and individual towels provided wherever a handwashing lavatory is located.

(Rule 1240-04-01-Appendix E, continued)

5. Personnel shall exercise good handwashing practices following diaper changes, the assistance of children in toilet use, and personal toileting.
  6. Proper adult supervision shall be exercised for use of toilet and handwashing facilities.
  7. Toilet tissue shall be provided on tissue holder at each commode.
  8. Tempered water (90°F - 120°F) shall be provided at all handwashing or bathing facilities used by children.
- (F) Buildings.
1. Structure.
    - (a) The building foundation, roof, walls, and window frames shall be free of visible cracks and unsealed openings to prevent entrance of insects and rodents.
    - (b) Buildings shall be kept clean, in good repair, and painted when necessary.
    - (c) Gutters and downspouts shall be kept in good repair.
  2. Floors shall be easily cleanable, clean, and in good repair.
  3. Walls and ceilings shall be kept clean and in good repair.
  4. Doors and Windows.
    - (a) All doors and windows shall be kept clean and in good repair (this includes screens when used).
    - (b) Window space shall be equal to at least 10 percent of the floor area except in rooms which are air-conditioned and which have artificial light amounting to at least 25 foot candles.
    - (c) Windows shall be operable unless the room is air-conditioned.
    - (d) All outside doors and windows used for ventilation shall be screened unless building is air-conditioned.
  5. Bedding.
    - (a) Where provisions are made for staying at a facility overnight, each occupant shall be provided an individual bed with acceptable mattress and waterproof cover, springs, clean linen, and clean cover.
    - (b) Where children are kept at least six hours but not overnight, individual cots or other approved bedding shall be provided and kept clean and in good repair.
    - (c) Spacing between mats or cots shall be adequate to promote freedom of movement (approximately two feet between cots and mats).
  6. Lighting.
    - (a) Natural and/or artificial lighting shall equal at least 25 foot candles in all areas used by children and staff.

(Rule 1240-04-01-Appendix E, continued)

- (b) Fixtures, shades, blinds, etc., shall be clean and in good repair.
7. Heating and Ventilation.
- (a) All rooms used by children shall be heated by a system capable of maintaining a temperature of 68°F.
  - (b) When the outside temperature is 65°F or below, the temperature at child height within the facility shall be no lower than 65°F nor higher than 75°F.
  - (c) Stoves, hot radiators, steam and hot water pipes, or other objects and electrical outlets in rooms used by the children shall be adequately protected by screens, guards, insulation, or any suitable measures that will protect children from coming in contact with them.
  - (d) Heat and ventilation units shall be clean and in good repair.
8. Housekeeping.
- (a) All parts of the building shall be maintained in clean condition.
  - (b) All rooms shall be maintained in an orderly manner.
- (G) Insect And Rodent Control.
- 1. The facility shall be reasonably free from flies, other insects, and breeding sites.
  - 2. Approved screens in good repair shall be provided for all doors and windows used for ventilation purposes.
  - 3. When air-conditioning is used, doors and windows shall be kept closed.
  - 4. The facility shall be free of rodents.
  - 5. There shall be no rodent harborage areas.
  - 6. Proper supervision and caution shall be exercised according to label instructions when applying approved insecticides and rodenticides.
- (H) Safety.
- 1. Pesticides, medicines, polishes, disinfectants, and cleaning compounds shall be stored in a manner approved by the local health authority.
  - 2. Sturdy safety rails shall be provided for ramps and steps where there are three or more risers.
  - 3. Bathtubs, if used, shall be provided with safety strips or mats.
  - 4. Glass in hazardous locations in the facility shall be shielded when safety glass is not used. Broken glass objects shall not be permitted in any part of the building or on grounds.
  - 5. All furniture shall be of durable construction, free of sharp projecting corners or surfaces and kept in good repair.

(Rule 1240-04-01-Appendix E, continued)

6. Grounds shall be kept clean and free of hazards that are likely to cause falls. Grounds shall be kept free of excess growth of grass or weeds.
  7. Buildings and grounds shall be free of any unprotected, abandoned well, cistern, refrigerator, or similar hazards.
  8. Fencing or other acceptable barriers shall be provided for hazardous drainage ditches, cliffs, bluffs, or other similar hazards.
  9. Adequate barriers, such as fencing, shall be provided and supervision exercised to prevent children from running on driveways, streets, or highways where a traffic hazard exists.
  10. Grounds shall have adequate drainage.
- (l) Swimming Pool.
1. Facilities shall comply with state law and regulations for public swimming pools.
  2. Facilities utilizing a swimming pool on-site shall have an approved lifeguard on duty or twice the number of adults required in the home. Facilities using an off-site pool shall be assured of the number of lifeguards required on duty.
  3. A fence four feet high shall surround the pool.

**APPENDIX F**

**FIRE SAFETY INSPECTION REPORT  
 NEW AND EXISTING CHILD DAY CARE CENTERS  
 AND/OR GROUP CHILD CARE HOMES  
 LICENSED BY THE TENNESSEE DEPARTMENT OF HUMAN SERVICES**

Name of Facility \_\_\_\_\_ Director \_\_\_\_\_

Street Address \_\_\_\_\_ Telephone(\_\_\_\_\_) \_\_\_\_\_

City/Route \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

The new life safety code refers to the 1988 Edition while the existing life safety code refers to the 1985 Edition.

	YES	NO	N/A
1. If the building is wood frame construction, is it restricted to two stories in height? NEW LSC 10-7.1.6; EXISTING 11-7.1.6			
2. Does each building used for day care center purposes have access to two out-side exits? NEW LSC 10-7.2.4.1; EXISTING 11-7.2.4.1			

(Rule 1240-04-01-Appendix F, continued)

3. Is the building free of any dead end corridors or spaces (maximum of 20 ft distance or less)? NEW LSC 10-7.2.5.1; EXISTING 11-7.2.6.1 AND 5-5.3.5			
4. If part of the building is used for purposes not under control of the day care operator, are all rooms and spaces used for day care purposes separated from the rest of the building by one-hour fire rated walls and one-hour "B" label door assemblies to include rated steel frames with self-closing units and positive latching devices? NEW LSC 10-7.1.2; EXISTING 11-7.1.2			
5. Is the second floor and/or basement separated from the main floor with one-hour rated construction including at least one-hour "B" label door assemblies (rated frames, closers, and positive latching)? NEW LSC 10-7.3.1; EXISTING 11-7.3.1			
6. Does the facility have an electrically supervised, manually operated fire alarm device which is audible throughout the building? NEW LSC 10-7.3.4, EXISTING 11-7.3.4			
7. If exit doors are located within a required rated enclosure, do the doors swing in the direction of egress? NEW LSC 5-2.1.4.1; EXISTING 5-2.1.4.1			
8. Are smoke detectors installed in accordance with Section 7-6 of the			

(Rule 1240-04-01-Appendix F, continued)

Life Safety Code? NEW LSC 10-7.3.4.5; EXISTING 11-7.3.4.5			
9. Are all fuel burning space heaters, floor furnaces or wall type electrical heaters provided with a protective screen and anchored securely (portable space heaters are not acceptable)? NEW LSC 10-7.5.2; EXISTING 11-7.5.2			
10. Is the building free of any unvented fuel burning heaters? NEW LSC 10-7.5.2.2; EXISTING 11-7.5.2			
11. Are all hallways and other means of exits kept adequately lighted at all times when the building is occupied? NEW LSC 10-7.2.8; EXISTING 11-7.2.8			
12. Are all corridor doors at least 20 minute rated with 20 minute rated frames? (If all classrooms have a door directly to the outside, this requirement may be omitted.) NEW LSC 10-3.6.1; EXISTING 11-3.6.1			
13. Are approved exit lights installed where applicable? (Over stairwell doors, in corridors, exit doors, gym, auditorium, etc.) NEW LSC 10-7.2.10; EXISTING 11-7.2.10			
14. Unless classroom doors open directly to the outside, are corridors one			

(Rule 1240-04-01-Appendix F, continued)

hour rated? NEW LSC 10-3.6.1; EXISTING 11-3.6.1			
15. Does each classroom or any other room used for sleeping purposes have a window which can be opened to provide for emergency evacuation? (Not applicable if room has a door directly to the outside) NEW LSC 10-7.2.11.4; EXISTING 11-7.2.11.4, except in the 1985 LSC 101			
16. Are all doors to hazardous areas separated with 45 minute "C" label fire door assemblies? (Storage rooms, furnace rooms, etc.) NEW LSC 10-7.3.2; EXISTING 11-7.3.2			
17. Does the hot water heater have a safety relief valve installed? SMC of SBCCI 304.3.3			
18. Is the garage, storage room or basement area free of flammable or combustible liquids? NEW AND EXISTING LSC 31-1.5			
19. Does this facility have an unannounced fire drill monthly? NEW AND EXISTING LSC 31-3.4			
20. Are all employees informed of their duties for fire drills NEW AND EXISTING LSC 31-3.4.1			
21. Does interior finish have the required flamespread rating? NEW LSC			

(Rule 1240-04-01-Appendix F, continued)

10-7.3.3.1; EXISTING 11-7.3.3.1			
22. Is the building safe from any electrical hazards such as overloaded electrical panel, excessive cords, or frayed wiring? NEW LSC 11-7.5.1.1; EXISTING 11-7.5.1.1			
23. Are all ceilings, regardless of type, constructed with noncombustible material?			
24. Are hazardous areas properly protected? NEW LSC 10-7.3.2; EXISTING 11-7.3.2			
25. Do commercial type cooking appliances have approved fire extinguishing systems installed as required by NFPA 96? NEW LSC 10-7.3.2.1; EXISTING 11-7.3.2			
26. Is emergency lighting provided throughout egress passageways? NEW LSC 10-7.2.9; EXISTING 11-7.2.9			
27. Are closet door latches designed so that children can open the door from inside the closet? NEW LSC 10-7.2.11.1; EXISTING 11-7.2.11.1			
28. Are bathroom door locks designed to permit opening of the locked door from the outside in an emergency? Are the opening devices			

(Rule 1240-04-01-Appendix F, continued)

readily accessible to the staff? NEW LSC 10-7.2.11.2; EXISTING 11-7.2.11.2			
29. Are special protective receptacle covers installed in wall receptacles in areas occupied by children under 5 years of age? NEW LSC 10-7.5.1.2; EXISTING 11-7.5.1.2			

Inspector shall check either item (a) or (b) below:

- (a) Facility acceptable. ....  
 .... \_\_\_\_\_
- (b) Facility not acceptable. ....  
 .... \_\_\_\_\_
- (c) If facility is not acceptable, list all deficiencies on a Part 11 Inspection Report form to accompany this report. State at the bottom of the Part II Report that the facility will not be approved or occupied until all deficiencies have been corrected.

\_\_\_\_\_  
SIGNATURE OF INSPECTOR

\_\_\_\_\_  
TITLE OF INSPECTOR

(Rule 1240-04-01-Appendix F, continued)

\_\_\_\_\_  
DATE OF INSPECTION

\_\_\_\_\_  
AGENCY OR FIRE DEPARTMENT

**RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN SERVICES  
ADULT AND FAMILY SERVICES DIVISION**

**CHAPTER 1240-04-02  
LICENSURE RULES FOR DROP-IN CHILD CARE CENTERS**

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**1240-04-02-.01 PURPOSE, SCOPE OF SERVICES AND GENERAL LICENSING REQUIREMENTS.**

- (1) Scope of Services. These rules are applicable to "drop-in centers" as defined in T.C.A. §71-3-501, et. seq. and these rules.
- (2) Purpose of Licensing. The purpose of licensing is the protection of children. These minimum requirements are intended to help promote the adequate health, safety, and supervision of children while in a group care setting.
- (3) Basis For Approval of a License.
  - (a) The approval and continuance of a license for a drop-in center is based upon the following criteria:
    1. The safety, welfare and best interests of the children in care;
    2. The capability, training and character of the persons providing or supervising the care of children; and the use of such judgment by a caregiver in the performance of any of the caregiver's duties as would be reasonably necessary to prevent injury, harm or the threat of harm to any child in care;
    3. Evidence:
      - (i) That the expected performance of the caregivers, supervisors or management of the child care agency seeking initial licensure or renewal of licensure will be such as to protect children in care from injury, harm or the threat of injury or harm; or
      - (ii) During licensure, that the actual performance of any of the duties of the caregivers, supervisors or management of a licensed child care agency demonstrates or has demonstrated a level of judgment that a reasonable person would exercise or would have exercised, under existing or under reasonably foreseeable circumstances, that would prevent or would have prevented injury, harm, or the threat of injury or harm, to any child in care;
    4. The quality of the methods of care and instruction provided for the children;
    5. The suitability of the facilities provided for the care of the children; and

(Rule 1240-04-02-.01, continued)

6. The adequacy of the methods of administration, the management of the child care agency, and the agency's personnel policies, as they relate to the care of children.

(b) General Requirements.

1. The license applies only to the entity to which it is issued. The license is not transferable.
2. The license applies only to the physical location approved for the operation of the drop-in center. A change in the location of the drop-in center automatically voids the license.
3. Compliance with Other Legal Requirements.
  - (i) In addition to these requirements, it is the responsibility of the applicant/licensee to comply with all applicable local ordinances, including zoning, fire, and environmental ordinances.
  - (ii) The Department will not intervene on behalf of the child care agency with other Federal, State or local agencies having regulatory control over any other aspects of compliance by the child care agency with laws, regulations or ordinances that may be necessary to become licensed by the Department. The child care agency shall have full responsibility for resolving all issues necessary to obtain approvals of such agencies necessary for the child care agency to receive a license from the Department.
4. Issuance and maintenance of a license is based upon achievement in meeting and maintaining compliance with all requirements set forth in these rules.
5. It is the responsibility of the applicant/licensee to obtain and maintain compliance with all applicable requirements contained in these regulations. Parents/guardians may not waive compliance with any rule, or otherwise authorize the applicant/licensee to not comply with any rule, unless specifically provided for within the provisions of the rule.

- (c) Falsification of any information, records or other documents and/or an intentional failure to provide any information, records or other documents required for a license, for participation in, or regulation by, any State or Federal child care services program, shall be the basis for civil penalties, probation, and/or the denial, suspension, or revocation of a license, as appropriate, in accordance with the provisions of T.C.A. §§ 71-3-501 et seq., this Chapter and Chapter 1240-4-5.

(d) Specifications of the License.

1. All programs shall operate at the address stated on the license, and within the licensed capacity set by the Department.
2. All programs shall operate within any restrictions stated on the license or pursuant to any orders of the Department or the Child Care Agency Board of Review.

**Authority:** T.C.A. §§4-5-202, 71-3-501 et seq., 71-3-501(8), 71-3-502(a)(2) and (3), and 71-3-509.

**Administrative History:** Chapter 1240-04-02 assigned a new control number, removed and renumbered

(Rule 1240-04-02-.01, continued)

to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005.

**1240-04-02-.02 DEFINITIONS.**

- (1) **Age Appropriate:** Materials and practices which are designed to provide safe, appropriate care in accordance with the biological needs and the developmental age of the child.
- (2) **Annual License.** An annual permit issued by the Department to a child care agency, authorizing the licensee to provide child care in accordance with provisions of the license, the law, and the rules and policies of the Department. Issuance of a license is not an endorsement of child care methods or of an agency's operational philosophy. A license is not transferable from one location to another or from one licensee/operator to another. The license may be revoked at any time upon thirty (30) days notice to the licensee; provided, however, if the health, safety, or welfare of the children in care imperatively requires it, the license may be suspended immediately.
- (3) **Approval.** Child care agencies operated by a public entity receive an approval rather than a license. For purposes of these rules, a "public entity" includes the State of Tennessee or any of its political subdivisions or any agency of the Federal government. An approved agency shall meet the same requirements and is evaluated in the same manner as a licensed agency.
- (4) **Auxiliary Staff.** Full and part-time employees of the agency who do not provide caregiving services to the children enrolled in the agency.
- (5) **Caregiver.** Any individual, including the primary caregiver, responsible, or who at any time may become responsible, for meeting the supervision, protection, and basic needs of the child.
- (6) **Casual Care.** Consists of places or facilities operated by any person or entity that provide child care, at the same time, for a minimum of five (5) children, but less than fifteen (15) children, who are not related to the primary caregiver, during short periods of time that do not exceed ten (10) hours per week or six (6) hours per day for any individual child while the parents or other custodians of the children are engaged in short-term activities, not including employment of the parent or other custodian of the child.
- (7) **Child or Children.** A person or persons under eighteen (18) years of age.
- (8) **Child Care.** As defined by T.C.A. § 71-3-501, the provision of supervision, protection and, at a minimum, meeting the basic needs of children who are not related to the licensee, for three (3) or more hours a day, but less than twenty-four (24) hours a day.
- (9) **"Child care agency" or "agency"**
  - (a) 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", as those terms are defined in T.C.A. § 71-3-501.
  - (b) The reference to "child care agency" or "agency" in this Chapter shall be deemed to reference a "drop-in center" as defined in T.C.A. 71-3-501(8), unless specifically stated otherwise, or unless the context requires otherwise.
  - (c) A "drop-in center" differs from "casual care" in that fifteen (15) or more children are cared for at the same time in a "drop-in center" as defined in 1240-04-02-.02(15), while

(Rule 1240-04-02-.02, continued)

"casual care" refers to the care of fewer than fifteen (15) children who are cared for at the same time as defined in paragraph 1240-04-02-.02(6).

- (d) A "drop-in center" differs from a "family child care home," a "group child care home," and a "child care center," in that a "drop-in center" is designed to provide short-term child care, not to exceed the limitations specified in paragraph (15) below. Child care provided in the other three (3) specified categories of child care agencies is not subject to the limitations of paragraph (15).
  - (e) Reference to a "child care agency" or "agency" in these rules also applies to places or entities of an agency seeking or having received an approval under paragraph (3).
- (10) Child Care System. The existence of any drop-in centers approved or licensed and used by a licensed and incorporated by any child care agency in its work; or the existence of two (2) or more facilities used for child care purposes which facilities are under the ownership, administration or control of any individual(s), corporation, partnership, cooperative, or other public or private entity of any kind. Each individual agency within such child care system must be individually licensed in accordance with T.C.A. § 71-3-501 et seq.
- (11) Commissioner. The chief administrative officer in charge of the Department of Human Services.
- (12) Day Care. Synonymous with the definition of "child care."
- (13) Department (DHS). The Tennessee Department of Human Services and its authorized representatives.
- (14) Director. The person with overall responsibility for the licensed drop-in child care program.
- (15) Drop-In Child Care Center.
- (a) A place or facility operated by any person or entity providing child care for fifteen (15) or more children at the same time, none of whom are related to the primary caregiver, for short periods of time as follows:
    - 1. Workweek Care.
      - (i) Provided during regular working hours, Monday through Friday, 6:00 a.m. to 6:00 p.m.
      - (ii) No individual child may be in child care for more than seven (7) hours per day or fourteen (14) hours per week, exclusive of snow days.
    - 2. Evening and Weekend Care.
      - (i) Provided weekday evenings after 6:00 p.m. and weekends beginning on Friday at 6:00 p.m. and ending on Sunday at 10:00 p.m.
      - (ii) An individual child may receive care in excess of seven (7) hours per day, but may not receive care in excess of a total of twenty (20) hours per week, exclusive of snow days.
    - 3. Exception for Snow Days. Drop-in care for school age children may exceed the maximum hours listed in parts 1 and 2, above, during snow days.

(Rule 1240-04-02-.02, continued)

- (b) Notwithstanding any other provision of this chapter to the contrary, drop-in centers operated by not-for-profit organizations that provide child care without compensation for no more than two (2) hours per day with a maximum of ten (10) hours per week, while the parent or other custodian is engaged in short-term activities on the premises of the organization, shall register as providing "casual care" and shall not be deemed to be, or regulated as, a drop-in center.
- (16) Enrollment. The process of accepting children for care and meeting rules applicable to enrollment.
- (17) Group. A specific number of children within a defined age range, assigned to specific staff in an assigned space, which is divided from the space of other groups by a recognizable barrier to define limits and to reduce distraction.
- (18) Infant. A child who is six (6) weeks through fifteen (15) months of age. No unrelated child of the licensee who is under six (6) weeks of age shall be accepted into care. Children related to the licensee who are under six (6) weeks of age must be kept in a separate space from children enrolled in the child care agency.
- (19) Illegal Operator. An individual or entity who is operating a child care agency without a license or approval pursuant to the provisions of T.C.A. §71-3-501 et seq. or these rules.
- (20) Licensee. The person, agency, group or entity to whom a license to operate a child care center is issued and who shall assume ultimate legal and administrative responsibility for the child care center. References to a licensee in the requirements also apply to operators of an agency seeking or having received an approval.
- (21) Licensed capacity. The designated maximum number of children permitted in a facility at any one period of time as determined by the Department based upon available space, age of children, adult: child ratios, and group size. Licensed capacity and ages served shall be designated on the license.
- (22) Owner. The individual(s), corporation, partnership, cooperative, or other private or public entity of any kind, or any combination thereof, who or which, through their authorized representative(s), assumes, or is legally required to assume, ultimate responsibility for the control of a child care agency.
- (23) Parent. A biological, adoptive or foster parent, guardian, legal custodian or relative caregiver who has primary responsibility for a child.
- (24) Pre-school Child. A child who is six (6) weeks through five (5) years of age, not in kindergarten. No child unrelated to the licensee who is under six (6) weeks of age shall be accepted into care.
- (25) Related Children. The biological or adoptive children of the licensee, step-children, grandchildren, step-grandchildren, siblings of the whole or half-blood, step-siblings, nieces, nephews or foster children of the primary caregiver.
- (26) School-Age Child. A child who is five (5) years of age and enrolled in kindergarten or a higher grade.
- (27) Snow Day. For purposes of this chapter, a "snow day" is defined as a day when the affected child's school is officially closed by the school system due to weather, teacher in-service, etc.
- (28) Staff. Full and part-time caregivers and other employees of any type.

(Rule 1240-04-02-.02, continued)

- (29) Substitute. Paid or unpaid persons who are temporary replacements for regular staff.
- (30) Supervision. When children are not within the direct sight and sound of an adult, the term "supervision" includes the following requirements:
  - (a) Children six (6) weeks of age through nine (9) years of age: The adult must be able to hear the child at all times, must be able to see the child with a quick glance, and must be able to physically respond immediately.
  - (b) Exception during mealtime: An adult must be in the direct sight and sound of children ages six (6) weeks through five (5) years, not in kindergarten, while the child is eating.
  - (c) Children ten (10) years of age and older: The adult shall know the whereabouts and activities of the children at all times and must be able to physically respond immediately.
  - (d) Helper devices such as mirrors, electronic sound monitors, etc. may be used as appropriate to meet these requirements.
- (31) Temporary License. A permit issued by the Department to a new child care agency authorizing the licensee to begin child care operations. It is valid, unless suspended, for one-hundred and twenty (120) days or until the application for an annual license is finally determined, and is issued upon application by the operator only if the staff and facility do not present any apparent hazards to children, and if the applicant meets the requirements of 1240-04-02-.03(7) and if the facility has received fire safety and environmental sanitation approval. If, at the end of the one-hundred and twenty (120) day period, evidence is provided by the applicant/licensee that such child care agency is suitable and properly managed, that the agency is in compliance with these rules and has the apparent ability to maintain compliance, the Department will issue an annual license to the child care agency.
- (32) Toddler. A child who is twelve (12) months of age through thirty (30) months of age.
- (33) Volunteer. A person who provides services for the licensee without payment and who is used to supplement, rather than substitute for, the regular staff or substitutes.

**Authority:** T.C.A. §§4-5-202, 71-3-501 et seq., 71-3-501(8), 71-3-502(a)(2), and 71-3-503.  
**Administrative History:** Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005. Amendment filed November 14, 2006; effective January 28, 2007

#### 1240-04-02-.03 APPLICATION PROCEDURES.

- (1) Applications for a license are obtained through the local county office of the Tennessee Department of Human Services.
- (2) Pre-Licensure Orientation Training: The Department will require pre-application training as set forth in 1240-04-02-.05(4)(b) for both the owner and director. In the case of a program that is governed by a board of directors or trustees or is controlled by another public or private entity, this training shall be attended by a designee who is responsible, in addition to the on-site director, for the day-to-day management of the program.
- (3) A complete application for a license must be submitted to the Department and signed by the prospective licensee.

(Rule 1240-04-02-.03, continued)

- (4) The owner or prospective licensee must provide a federal tax identification number to identify the child care agency. The Department shall not accept individual social security numbers for such purposes.
- (5) Application Fees. The application fees for drop-in child care centers are as follows:
  - (a) Annual Fee: \$200.00
  - (b) Biennial Fee: \$250.00
  - (c) Triennial Fee: \$300.00
- (6) Receipt of an application begins the evaluation process, which is completed with the issuance or denial of an annual license. This process includes:
  - (a) At least two (2) visits by a Department Program Evaluator to the drop-in child care center, one of which shall be unannounced;
  - (b) Review of agency records; and
  - (c) Requests for information related to licensure requirements.
- (7) Upon satisfaction of the following minimum requirements, a temporary license may be issued if:
  - (a) The Director's qualifications meet the requirements of Chapter 1240-04-02-.05(4);
  - (b) Three (3) satisfactory references for the Director are verified;
  - (c) Physical facilities receive fire safety and environmental approval;
  - (d) The applicant has demonstrated that the applicant and the personnel who will care for the children are capable in all substantial respects to provide appropriate group care for children;
  - (e) The applicant has reasonably demonstrated that the applicant has the ability and intent to comply and maintain compliance with the licensing law and regulations; and
  - (f) The Department has determined, after appropriate inspection, that the site is suitable for child care activities and does not endanger the welfare or safety of children.
  - (g) No temporary or annual license shall issue unless and until the Department determines, in accordance with the provisions of this Chapter and Department policy that the applicant has complied with the provisions of this paragraph (7) and any other applicable provisions of the law or this Chapter.
- (8) Right of Inspection.
  - (a) Receipt of an application and/or acceptance of a license constitutes agreement to allow the Department:
    1. The right of entry, without notice, into the child care agency for the purpose of inspection for compliance with these rules; and

(Rule 1240-04-02-.03, continued)

2. The right to observe and account for all children enrolled or present in the drop-in child care center, to determine the status of their health, safety and welfare, and the right to inspect and copy all records related to compliance with these rules.
  - (b) Refusal to allow entry and/or refusal to allow the Department to inspect the premises or relevant records for compliance with these rules or to observe and account for all children enrolled or present in the drop-in center, to determine the status of their health, safety and welfare, is a basis, by itself, for the summary suspension, revocation, and/or denial of the license and any additional remedies set forth in T.C.A. § 71-3-508.
- (9) Upon issuance of an annual license, the licensee shall maintain compliance with the requirements of this Chapter throughout the licensing period.
- (10) Re-evaluation.
  - (a) The Department shall notify the licensee of the re-evaluation of the agency for a renewal of its license before the expiration of the current license.
  - (b) Application for renewal of the license must be made before the expiration of the existing license, or the existing license will expire upon the expiration date of the licensing period established by the license.
  - (c) Applicants for the renewal of a license are evaluated in the same manner and must comply with the same requirements as applicants for a new license.
- (11) Immediately upon receipt of the license, the licensee shall post near the main entrance and in a conspicuous location:
  - (a) The current license;
  - (b) The Department of Human Services' toll-free Child Care Complaint Hotline phone number; and
  - (c) Any other documents as directed by the Department.
- (12) The licensing procedures for a drop-in center are also subject to the requirements of Chapter 1240-4-5, Procedures Affecting Licenses of Child Care Agencies.

**Authority:** T.C.A. §§4-5-202, 71-3-501 et seq., 71-3-501(8), and 71-3-502(a)(2). **Administrative History:** Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005.

#### 1240-04-02-.04 OWNERSHIP, ORGANIZATION AND ADMINISTRATION.

- (1) Statement of Purpose.
  - (a) An applicant for a license to operate a child care agency shall submit a written statement to the Department of Human Services governing the following areas:
    1. A description of all services to be offered to children and parents;
    2. Ages of children to be served;
    3. Hours of operation;
    4. Number and type of meals and snacks to be served, if applicable;

(Rule 1240-04-02-.04, continued)

5. Admission requirements and enrollment procedures; and
  6. Provisions for providing or obtaining emergency medical care.
- (b) If, after being licensed, a licensee wishes to change the scope or type of service offered to children and families, an amended statement shall be filed with the Department for approval prior to implementation.
- (2) Organizational Structure.
- (a) The organization of every drop-in child care center shall be such that legal and administrative responsibility is clearly defined, and the licensee must provide any and all documentation reasonably required by the Department to validate such legal and administrative responsibility.
  - (b) Every drop-in child care center shall have an on site director.  
  
Exception: Following the issuance of an annual license, a drop-in child care center may operate without an on-site director, as deemed appropriate by the Department and within any restrictions that may be established by the Department, for a period of no more than sixty (60) days total within the licensing year.
- (3) Liability and Medical Payment Insurance Coverage.
- (a) General liability and medical payment insurance coverage shall be maintained on the operations of the child care agency's facilities.
  - (b) General liability coverage on the operations of the child care agency's facilities shall be maintained in a minimum amount of Five Hundred Thousand Dollars (\$500,000) per occurrence and Five Hundred Thousand Dollars (\$500,000) general aggregate coverage.
  - (c) Medical payment coverage shall be maintained in the minimum amount of Five Thousand Dollars (\$5,000) for injuries to children resulting from the operation of the child care agency.
  - (d) The requirements of this paragraph shall not apply to an agency that is under the direct management of a self-insured administrative department of the state, a county or a municipality or any combination of those three (3) or that has, or whose parent entity has, a self-insurance program that provides, as determined by the Department, the coverage and the liability limits required by these rules.
  - (e) Documentation that the necessary insurance is in effect, or that the administrative department or other entity is self-insured, shall be maintained in the records of the child care agency and shall be available for review and copying by the Department's licensing staff.
- (4) Records and Reports.

The following records shall be maintained in an organized manner at the drop-in center and made available to the Department upon request:

~~(a) Children's Records.~~

- ~~1. Each child shall have a record containing the following information:~~

(Rule 1240-04-02-.04, continued)

- ~~(i) A current information form which includes the child's name, date of birth, name of parent(s), child's and parents' home address(es), emergency contact numbers (e.g., home, work, cell phone, pager, etc., as applicable), and the name and address (home and business or school) of a responsible person to contact in an emergency if the parent(s) cannot be located promptly;~~
- ~~(ii) Name, address, and telephone number of a physician to call in case of an emergency;~~
- ~~(iii) Written consent of parent(s) regarding emergency medical care;~~
- ~~(iv) A child release plan stating to whom the child shall be released and a clear policy concerning the release of child(ren) to anyone whose behavior may place the child(ren) in immediate risk;~~
- ~~(v) A signed statement from the parent or guardian verifying that the child or children are in good health and current with immunizations; and~~
- ~~(vi) Daily attendance records for each child.~~

- ~~2. A child's records shall be kept by the drop-in center for one (1) year following the child's being disenrolled from the center.~~

[(a) Children's Records.

- 1. Each child shall have a record containing the following information:
  - (i) A current information form which includes the child's name, date of birth, name of parent(s), child's and parents' home address(es), emergency contact numbers (e.g., home, work, cell phone, pager, etc., as applicable), and the name and address (home and business or school) of a responsible person to contact in an emergency if the parent(s) cannot be located promptly;
  - (ii) Name, address, and telephone number of a physician to call in case of an emergency;
  - (iii) Written consent of parent(s) regarding emergency medical care;
  - (iv) A child release plan stating to whom the child shall be released and a clear policy concerning the release of child(ren) to anyone whose behavior may place the child(ren) in immediate risk;
  - (v) A signed statement from the parent or guardian verifying that the child or children are in good health and current with immunizations; and
  - (vi) Daily attendance records for each child.
- 2. A child's records shall be maintained in a central location within the agency and shall be kept by the drop-in center for one (1) year following the child's being disenrolled from the center. Exception: The health record shall be returned to the parent/guardian upon request when the child leaves the agency.

(Rule 1240-04-02-.04, continued)

3. All children, including related children younger than age nine (9), shall have required records on file before care is provided. Exception: After an initial eligibility determination, children of homeless families and/or children in state custody may receive care prior to providing required documentation as determined by the Department.]

(b) Staff Records.

1. The following information shall be secured when employing staff, maintained in each employee's record, updated as changes occur, and shall be maintained in the individual employment record for at least one (1) year following the separation of the employee from the agency:
  - (i) Name, birth date, social security number, address, and telephone number of all staff members, including volunteers, and a contact for each staff member in an emergency;
  - (ii) Educational background and educational experiences, including dates and places of diplomas received, and conferences, courses, and workshops attended in the preceding year;
  - (iii) Health records as directed under subchapter 1240-04-02-.08(11), Health and Safety;
  - (iv) At least three (3) written references, with documented interviews of each reference, on each new staff member;
  - (v) Written, verified record of employment;
  - (vi) Date of employment and date of separation from the agency; and
  - (vii) Daily attendance (including time in/out) of staff members.
  - (viii) Verification of the status check on the Department of Health's Vulnerable Persons Registry required by Rule 1240-04-02-.05(e)4.
2. Professional credentials of staff shall be available to parents.

(5) Right to Privacy/Confidentiality.

The licensee and agency staff shall not disclose or knowingly permit the use by other persons of any information concerning a child or family except as required by law or regulation or as may be necessary to be disclosed to public authorities in the performance of their duties and which may be necessary for the health, safety, or welfare of any child enrolled at the center or his or her family.

(6) Admission of Children and Communication with Parents.

- ~~(a) Before accepting a child for care, the parent or guardian shall register the child by providing:~~
  - ~~1. All the information in paragraph (4)(a) above; and~~
  - ~~2. A statement regarding the estimated amount of time that the parent anticipates that the child will be in attendance at the drop-in center.~~

(Rule 1240-04-02-.04, continued)

- [(a) Before accepting a child for care, the parent or guardian shall register the child by providing:
    - 1. The agency shall not admit a child into care until the parent/guardian has supplied the agency with a completed application, a signed statement from the parent or guardian verifying that the child or children are in good health and current with immunizations, and a health history. Exception: After an initial eligibility determination, children who are homeless and/or children in state custody may receive care prior to providing all required documentation as determined by the Department. Care without documentation of immunizations shall not exceed thirty days.
    - 2. A statement regarding the estimated amount of time that the parent anticipates that the child will be in attendance at the drop-in center.]
  - (b) A child shall be at least six (6) weeks old before being accepted in a drop-in center.
  - (c) No child shall be accepted into child care in excess of the maximum allowable hours as set forth in paragraph 1240-04-02-.02(15). The drop-in center shall maintain and make available to the Department attendance records verifying that no child receives care in excess of the maximum allowable hours.
  - (d) The drop-in center shall make the licensure rules for drop-in care available to parents of children enrolled.
  - (e) During normal operating hours, parents shall be permitted immediate access to their children, and ready access to all areas of the child care facility shall be granted Department representatives and inspection authorities (i.e., fire safety, sanitation, and health).
  - (f) Parents shall be informed in advance of the child's removal from the premises except in cases of emergencies or removal by the Department of Children's Services or a law enforcement agency pursuant to law.
- (7) Care of School-Age Children on Snow Days.
- (a) A drop-in center may not accept any school-age child for care unless:
    - 1. The Department has previously determined that the center is an appropriate and safe location for school-age children on snow days.
    - 2. The drop-in center applied for, and was granted, a license which specifically authorizes the licensee to provide such care. Any such authorization to provide such care shall be noted on the license.
  - (b) The Department shall set a limit on the number of school-age children that a center may accept at any given time based upon the amount of space that the center has available.
  - (c) No child thirteen (13) years of age or older may be cared for by a drop-in center on a snow day.
  - (d) In order to assure that the center is capable of providing safe care to the additional numbers of children needing care during school closings, the center shall annually provide the Department with an updated list of trained caregivers and staff available for emergency call duty.

(Rule 1240-04-02-.04, continued)

(8) Transportation.

Transportation that is under the direction or control of the drop-in center, including contracted transportation services, is prohibited.

[(9) Data Reporting. Agencies shall submit data as requested by the Department quarterly on topics such as but not limited to: active enrollment, homeless children, non-traditional hours, deaths/serious injuries, child abuse, English as a Second Language/dual language learners, and children with disabilities.]

[(10) The agency's policies shall include/address, at a minimum:

- (a) Criteria for the disenrollment of children [see expulsion policy requirements in 1240-04-02-.04(10)(l)];
- (b) Specific criteria concerning the release of children; includes responsibility until signed out;
- (c) Written parental permission for observation of children by non-child care agency staff;
- (d) Behavior management techniques;
- (e) Hours of operation;
- (f) Late fees;
- (g) Rates;
- (h) Inclement weather;
- (i) Emergency policy;
- (j) Whether the environment is smoke free;
- (k) Meal Service policy; and
- (l) Expulsion of a child, which policy shall be:
  - 1. Clearly articulated to staff and parents;
  - 2. Developmentally appropriate and consistent;
  - 3. Non-discriminatory;
  - 4. Other options shall be considered prior to expulsion, such as but not limited to reducing the number of days or amount of time the child may attend, or if applicable, referrals to the Center on the Social and Emotional Foundations for Early Learning (CSEFEL), Early Intervention System, Individuals with Disabilities Education Act (IDEA);
  - 5. Aggregate data that includes reasons for expulsions shall be maintained and reported to the Department annually.]

**Authority:** T.C.A. §§4-5-202, 71-3-501 et seq., and 71-3-502(a)(2). **Administrative History:** Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective

(Rule 1240-04-02-.04, continued)

March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005. Amendment filed November 14, 2006; effective January 28, 2007.

#### 1240-04-02-.05 STAFF REQUIREMENTS.

- (1) Responsibility for Staff.
  - (a) The applicant/licensee shall be responsible for selecting individuals of suitable character to work with children.
  - (b) The director shall be responsible for the daily supervision of the staff and program.
  - (c) An appropriate staff member meeting the qualifications for a "caregiver" at the drop-in center shall be designated to be in charge in the absence of the director.
  - (d) The applicant/licensee and the director shall be responsible for ensuring that the behavior of staff reflects knowledge and understanding of the special needs, growth, and developmental patterns of young children, as well as an understanding of appropriate activities. Such behavior shall be evaluated in staff's performance evaluations.
  - ~~(e) Criminal History Background Review and Abuse Registry Requirements; Exclusions from Contact with Children; Waivers from Exclusions; Appeals of Waiver Denials.
    1. Individuals Requiring a Fingerprint Criminal History Background Review and Abuse (Vulnerable Persons) Registry Check:
      - (i) Any individual applying to work as a paid employee, director or manager of the child care agency in a position that will require or allow the individual to have contact with children at any time;
      - (ii) Any individual applying to work as a new substitute and who is expected to offer, or who provides, at least thirty-six (36) hours of substitute services to the agency in any calendar year;
      - (iii) Any individual applying for a license to operate a child care agency that is not the renewal of an existing license, or any individual who otherwise seeks to be an operator, as defined by the rules of the Department, of a child care agency, as defined in T.C.A. § 71-3-501, and who will, in the course of their role as licensee, have significant contact, as determined by the Department, with the children in care. For purposes of this paragraph, "operator" shall be an individual who is an owner or administrator of a child care agency or child care system;
      - (iv) Residents of a New Agency. Any individual who is a resident of the child care agency and who is fifteen (15) years of age or older upon the date the agency receives its initial temporary license or, if the agency has been issued an annual license, then upon the date the agency received its annual license; and
      - (v) New Residents of an Existing Agency. Any individual who is fifteen (15) years of age or older upon moving into a licensed/approved child care agency.
    2. Pending outcome of the criminal history background review as described in this paragraph, and the outcome of the review of the individual's status on the~~

(Rule 1240-04-02-.05, continued)

~~Department of Health's Vulnerable Persons Registry, the applicant for employment or a substitute or volunteer position, or for a license to operate, shall be conditional and shall be dependent upon the results of these background checks.~~

~~3. Requirements for Submission of a Fingerprint Sample.~~

~~(i) Criminal History Disclosure Form. Individuals identified in subparagraph (a) shall complete and sign the Criminal History Disclosure Form provided by the Department.~~

~~(I) The failure to properly complete all sections of the Criminal History Disclosure Form shall result in the individual being prohibited from working, substituting, residing in or acting as a licensee for the child care agency.~~

~~(II) The failure to disclose all criminal history information may result in the individual being:~~

~~I. Excluded from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and~~

~~II. Referred for criminal prosecution pursuant to the provisions of state law.~~

~~(ii) Fingerprint Sample. The child care agency shall be responsible for obtaining and submitting the fingerprint sample of any person required by this Chapter in the form and manner directed by the Department:~~

~~(I) Within ten (10) calendar days of the first day of beginning employment or substitute status;~~

~~(II) Within ten (10) calendar days of the license application or seeking operator status;~~

~~(III) Within ten (10) calendar days of the application for an initial license for a facility in which the person resides; or~~

~~(IV) Within ten (10) calendar days after the resident moves into the child care facility.~~

~~(iii) Unless otherwise notified by the Department, the child care agency shall be responsible for all costs associated with obtaining the fingerprint sample, and the Department will pay for the costs of the criminal background check by the Tennessee Bureau of Investigation.~~

~~4. Vulnerable Persons Registry. The child care agency shall be responsible for determining, within the same time periods as set forth in subpart (e)3(ii) above, the status on the Department of Health's Vulnerable Persons Registry of any individual who is required by part 1 above to undergo a criminal history background review. Verification of such status check shall be maintained in the employee's record pursuant to the requirements set forth in 1240-04-02-.04(4)(b).~~

[(e) Criminal Background Check and State Registry/Records Review Procedures.

(Rule 1240-04-02-.05, continued)

1. Criminal Background and Abuse Registry Disclosures and Reviews; Fingerprinting Requirements.
  - (i) The following persons are required to have a background check no more than ninety (90) days before having access to any child care agency:
    - (I) Any person who owns or operates a child care agency and will have significant contact with children;
    - (II) Any person who applies to work in a child care agency as an employee, director or manager;
    - (III) Any person who will provide substitute services to a child care agency for more than thirty-six (36) hours in a calendar year and who is counted in the adult: child ratio; and
    - (IV) Any person who is fifteen (15) years of age or older who will reside in a child care agency.
  - (ii) New background checks are required for all staff and residents when an agency moves from one class of care to another, such as when a family home becomes a group home or when an agency is sold and staff remain employed by the new owner or any time an agency is issued a license that is not the renewal of an existing license. Exception: Does not apply to background checks completed within the last ninety (90) days.
  - (iii) Background checks are required for all staff at least every five (5) years.
  - (iv) Requirements for Disclosure of Criminal/Juvenile and State Register History and Fingerprinting.
    - (I) The individuals identified in subparagraph (1)(a) above shall:
      - I. Complete a criminal/juvenile/administrative findings history disclosure form;
      - II. Submit fingerprint samples for a criminal and juvenile records background check; and
      - III. Complete a criminal, juvenile background check/state review consisting of:
        - A. An investigation of a person's criminal background history by the Tennessee Bureau of Investigation (TBI) and through the Federal Bureau of Investigation's (FBI) national database;
        - B. An investigation of a person's juvenile records history that is available to the TBI;
        - C. A review of any available juvenile court records, if determined necessary by DHS;
        - D. A search of the vulnerable persons registry (VPR), maintained by the Tennessee Department of Health;

(Rule 1240-04-02-.05, continued)

- E. A search of the TN sexual offender registry (SOR), maintained by the TBI; and
  - F. A search of the DCS registry of indicated perpetrators of abuse or neglect of children.
  - G. A search of any state or federal registries required by the Child Care and Development Block Grant Act.
2. Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Children Prior to Completion of Criminal History Review.
- (i) A child care agency, substitute pool, or staffing agency shall be responsible for registration of persons required to have a background check. The responsible entity shall ensure that the process is completed prior to employment.
  - (ii) A child care agency may not permit any person who is required to have a background check to assume any role or to have access to children until the agency receives written verification from the Department that the person is cleared to work/reside in the agency.
  - (iii) Failure to Complete or Disclose Information on Criminal Disclosure Form.
    - (I) Failure to properly complete all sections of the Criminal/Administrative History Disclosure Form shall result in the individual being prohibited from assuming any position for which a background review is required.
    - (II) Failure to disclose all criminal and administrative history information may result in the person being:
      - I. Excluded by the Department from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and
      - II. Referred to the appropriate district attorney for criminal prosecution.
  - (iv) The Department will pay for the costs of performing one background check per person per agency per year.
  - (v) The child care agency shall be responsible for costs associated with the background check if:
    - (I) The fingerprint sample is rejected and the fingerprint sample must be resubmitted;
    - (II) The agency submits a second fingerprint sample for an individual when the initial background check has not been completed; or
    - (III) The agency submits a fingerprint sample for a purpose unrelated to obtaining approval for a prospective employee, volunteer, etc. to have access to child care.

(Rule 1240-04-02-.05, continued)

3. Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Children.
  - (i) No person shall be employed, be a licensee or operator or, provide substitute services, reside, or have any access to children in a child care agency if the criminal background check identifies an excludable criminal offense for which the person has:
    - (I) Been convicted of, pled guilty or no contest to (or to a lesser included offense);
    - (II) Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or
    - (III) Been named in a pending warrant, indictment, presentment, or petition.
  - (ii) An excludable criminal offense involves:
    - (I) The physical, sexual or emotional abuse or neglect of a child;
    - (II) A crime of violence against a child, or any person;
    - (III) Any offense, including a lesser included offense, involving the manufacture, sale, distribution or possession of any drug; or
    - (IV) Any offense that presents a threat to the health, safety or welfare of children.
    - (V) The criminal offenses for which a person will be excluded from a child care agency include but are not limited to the following offenses as well as their lesser included offenses (even if not listed here):
      - I. Aggravated arson (T.C.A. § 39-14-302);
      - II. Aggravated assault (T.C.A. § 39-13-102);
      - III. Aggravated child abuse (T.C.A. § 39-15-402);
      - IV. Aggravated child neglect (T.C.A. § 39-15-402);
      - V. Aggravated cruelty to animals (T.C.A. § 39-14-212);
      - VI. Aggravated kidnapping (T.C.A. § 39-13-304);
      - VII. Aggravated rape (T.C.A. § 39-13-502);
      - VIII. Aggravated rape of a child (T.C.A. § 39-13-531);
      - IX. Aggravated robbery (T.C.A. § 39-13-402);
      - X. Aggravated sexual battery (T.C.A. § 39-13-504);

(Rule 1240-04-02-.05, continued)

- XI. Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);
- XII. Aggravated vehicular homicide (T.C.A. § 39-13-218);
- XIII. Arson (T.C.A. § 39-14-301);
- XIV. Assault (T.C.A. § 39-13-101);
- XV. Carjacking (T.C.A. § 39-13-404);
- XVI. Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);
- XVII. Criminal attempt, under T.C.A. § 39-12-101, to commit any criminal offense that requires exclusion from child care;
- XVIII. Criminal exposure to HIV (T.C.A. § 39-13-109);
- XIX. Criminal homicide (T.C.A. § 39-13-201);
- XX. Criminally negligent homicide (T.C.A. § 39-13-212);
- XXI. Cruelty to Animals (T.C.A. § 39-14-202);
- XXII. Custodial interference (T.C.A. § 39-13-306);
- XXIII. Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);
- XXIV. Domestic assault (T.C.A. § 39-13-111);
- XXV. Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);
- XXVI. Especially aggravated burglary (T.C.A. § 39-14-404);
- XXVII. Especially aggravated kidnapping (T.C.A. § 39-13-305);
- XXVIII. Especially aggravated robbery (T.C.A. § 39-13-403);
- XXIX. Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);
- XXX. Exploitation of a minor by electronic means (T.C.A. § 39-13-529);
- XXXI. False imprisonment (T.C.A. § 39-13-302);
- XXXII. First degree murder (T.C.A. § 39-13-202);
- XXXIII. Incest (T.C.A. § 39-13-302);
- XXXIV. Indecent exposure (T.C.A. § 39-13-511);

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- XXXV. Involuntary labor servitude (T.C.A. § 39-13-307);
- XXXVI. Kidnapping (T.C.A. § 39-13-105);
- XXXVII. Rape (T.C.A. § 39-13-503);
- XXXVIII. Rape of a child (T.C.A. § 39-13-522);
- XXXIX. Reckless endangerment (T.C.A. § 39-13-103);
- XL. Reckless homicide (T.C.A. § 39-13-215);
- XLI. Robbery (T.C.A. § 39-13-401);
- XLII. Second degree murder (T.C.A. § 39-13-210);
- XLIII. Sexual battery (T.C.A. § 39-13-505);
- XLIV. Sexual battery by an authority figure (T.C.A. § 39-13-527);
- XLV. Sexual exploitation of a minor (T.C.A. § 39-17-1003);
- XLVI. Solicitation of a minor (T.C.A. § 39-13-528);
- XLVII. Stalking (T.C.A. § 39-17-315);
- XLVIII. Statutory rape (T.C.A. § 39-13-506);
- XLIX. Statutory rape by an authority figure (T.C.A. § 39-13-532);
- L. Trafficking a person for sexual servitude (T.C.A. § 39-13-309);
- LI. Vehicular assault (T.C.A. § 39-13-106);
- LII. Vehicular assault while intoxicated (T.C.A. § 39-13-106);
- LIII. Vehicular homicide (T.C.A. § 39-13-213);
- LIV. Voluntary manslaughter (T.C.A. § 39-13-211); and
- LV. Weapons offenses (unlawful possession, carrying, use, etc.).

(iii) No person may be employed as a driver or serve as a driver for a child care agency if the person:

- (I) Is currently charged with; or
- (II) Has been convicted of, or pled guilty, within the last five (5) years to any of the following criminal offenses:
  - I. Vehicular homicide;

(Rule 1240-04-02-.05, continued)

- II. Accidents involving death or personal injury;
  - III. Accidents involving damage to a vehicle;
  - IV. Driving under the influence of an intoxicant, drug or drug producing stimulant; or
  - V. Any felony involving the use of a motor vehicle while under the use of any intoxicant.
4. Exclusion from access to child care based on a listing on a state registry.
    - (i) No person shall be employed, be a licensee or operator, provide substitute services, reside, or have any access to children in a child care agency if the results of the state registry review identify the person as being:
      - (I) Listed on the Vulnerable Persons Registry;
      - (II) Listed on the Sexual Offender Registry; or
      - (III) Indicated in the records of the Department of Children's Services as a perpetrator of abuse or neglect of a child.
  5. Supplemental Background Checks Subsequent to Licensing, Employment or Residence in a Child Care Agency.
    - (i) The Department may, at any time, require a new background check of any individual with access to children in a child care agency.
      - (I) For an individual who was not subject to a background check prior to assuming a role, the individual's existing status in their role shall be conditional upon the satisfactory outcome of any requested background check.
  6. Any person who is excluded shall remain excluded pending the outcome of any appeals or waiver review or any determination that the basis for exclusion no longer exists.
  7. An individual will also be excluded if a criminal or juvenile proceeding, registry or administrative background review requiring exclusion or any other provision of law is discovered and verified in any manner.
  8. If a child care agency, substitute pool or staffing agency receives information from a source other than the Department that requires them to exclude an employee, substitute, volunteer, or resident they shall immediately exclude the person from any access to children and notify the Department on the same business day by calling the child and adult care complaint hotline.
  9. The exclusion of such persons from access to child care shall be conducted pursuant to T.C.A. § 71-3-507 and this rule.
  10. Failure of a child care agency to perform the required background check before allowing a person access to child care or to immediately exclude individuals with a criminal history or state registry review status that requires exclusion, shall be the basis for the immediate suspension, denial or revocation of the child care agency's license.]

(Rule 1240-04-02-.05, continued)

- (f) Exclusion of Persons from Contact with Children.
1. Prohibited Criminal or Abuse or Neglect History.
    - (i) No individual with a prohibited criminal history as defined below, regardless of whether such individual is required by these rules to undergo a criminal history background review, may work, substitute or volunteer in a child care agency, or be a resident, licensee, director or manager of a child care agency who has access to children, or be an operator who has significant contact with children or otherwise have unrestricted access to children in any manner whatsoever.
    - (ii) An individual shall be immediately and automatically excluded from child care or any contact whatsoever with children, as described above, if the individual's criminal history includes:
      - (I) A criminal conviction or a no-contest or guilty plea; or any pending criminal action, including individuals subject to any warrant, indictment, presentment, etc.; or placement in a pretrial diversion; or,
      - (II) A pending juvenile action or previous juvenile adjudication, which, if an adult, would constitute a criminal offense; and
      - (III) Any of the circumstances in items (I) or (II) above involves any of the following criminal offenses:
        - I. Any offense (including a lesser included offense) involving the physical, sexual or emotional abuse or gross neglect of a child, or involving a threat to the health, safety or welfare of a child;
        - II. Any offense (including a lesser included offense) involving violence or the threat of violence against another person; and/or
        - III. Any offense (including a lesser included offense) involving the manufacture, sale, distribution or possession of any drug.
    - (iii) An individual shall also be immediately and automatically excluded from child care or from access in any manner whatsoever to the children in the care of the agency, if the individual:
      - (I) Reveals a prohibited or potentially prohibited criminal history on the Criminal History Disclosure Form; or
      - (II) Is listed on the Department of Health's Vulnerable Persons Registry; and/or
      - (III) Is known to the management or licensee of a child care agency as a perpetrator of child abuse or child sexual abuse or to have a prohibited criminal history, or who is identified to the child care agency's management or licensee by the Department of Human Services or by the Department of Children's Services as a validated perpetrator of abuse of a child based upon an investigation conducted by the Department of Children's Services or by the child protective services agency of any other state; or, who at anytime is

(Rule 1240-04-02-.05, continued)

identified by any person or entity to the child care agency's management or licensee and is confirmed by the Department of Human Services as having a prohibited criminal history.

- (iv) Exclusion from driving duties. An individual with a prohibited history as set forth below shall be immediately and automatically excluded from providing driving duties on behalf of the child care agency if the individual:
    - (I) Has a pending criminal action (including warrants, indictments, presentments, etc.), is completing a pretrial diversion, or has been convicted of or pled guilty to any offense involving the use of a motor vehicle while under the influence of any intoxicant, which constitutes a violation of T.C.A. §§ 39-13-213; 55-10-101; 55-10-102 or 55-10-401; or
    - (II) Has been convicted of or pled guilty to any felony involving the use of a motor vehicle while under the influence of any intoxicant. In such case, the individual shall not be employed or otherwise serve as a driver for a child care agency for a period of five (5) years from the date of the conviction or guilty plea.
  - (v) Exclusions for Child Neglect. An individual who has been identified by the Department of Children's Services as having neglected a child based on an investigation conducted by that Department or any child protective services agency of any state, and who has not been criminally charged or convicted or pled guilty or no-contest as stated above, shall be supervised by another adult while providing care for children.
2. The child care agency shall immediately, upon receipt, review the results of the criminal history background review and Vulnerable Persons Registry and shall immediately exclude any individual with a prohibited history as directed by the Department.
  3. Failure to exclude individuals with a criminal history or abuse or neglect finding.  
Failure to immediately exclude any individual subject to exclusion or supervision pursuant to this subchapter and T.C.A. § 71-3-507, as directed by the Department, may result in the immediate suspension, denial or revocation of the child care agency's license.
- (g) Waivers from Exclusions Due to Criminal or Abuse or Neglect History.
1. Any person who is excluded or whose license is denied based upon the results of the criminal history background review, or based upon any other determination, may request in writing to the Department's Director of Licensing within ten (10) calendar days of receiving notice of such exclusion or denial a waiver from these automatic exclusion requirements.
  2. Excluded individuals, prior to receiving official notice of the exclusion or denial from the Department, may also make a written request for a waiver by letter or directly on the Department's Criminal History Disclosure Form.
  3. Requests for a waiver shall state the basis for the request, including any extenuating or mitigating circumstances that would, in the person's opinion, clearly warrant an exemption from the exclusion. Any documentary evidence may also be submitted with the request.

(Rule 1240-04-02-.05, continued)

4. Requests for waivers shall be heard by an advisory committee and reviewed by the Department in accordance with the provisions of T.C.A. § 71-3-507.
5. Any person who is excluded from providing care or services to children under any provisions of this subchapter shall remain excluded pending the outcome of any exemption review and appeals.

(h) Supplemental Background Checks.

1. The Department may, at anytime, request that the criminal background or status on the Department of Health's Vulnerable Persons Registry of any individuals having access to children under any of the circumstances set forth in this subchapter be reviewed using the processes described above or in T.C.A. § 71-3-507. All other provisions applicable to any pre-employment or post-employment, residential or access status of any individual shall apply to any background review conducted pursuant to this subparagraph (h).
2. The employment status of persons for whom a post-employment criminal history background review was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a child care agency for whom a criminal history background review was conducted after license approval or after employment or assuming duties as a volunteer or substitute, and who were not otherwise subject to a pre-status applicant background check and to the exclusionary provisions provided in this subchapter, shall be governed by the provisions of this subchapter and T.C.A. § 71-3-507.

(2) Staff Qualifications.

- (a) Every staff person, including volunteers, practicum students, and substitutes, shall be physically, mentally, and emotionally capable of performing his/her duties satisfactorily.
  1. The Department may require, in its sole discretion, any individual, whether a pending or current employee, volunteer or any other person, who has contact with children in the care of the agency to undergo a mental health examination, physical health examination, or drug screening test when, in the Department's sole determination, there is reasonable cause to believe that such individual may have an impairment that potentially poses a risk of harm to children in the care of the agency. An individual requested to undergo such examinations or screenings may refuse to do so, but will not be permitted to have any further contact with children in the care of the child care agency until completion of the examination and satisfactory evidence is provided to the Department that the person does not represent a risk of harm to the children in the agency's care.
  2. Safety Plans.
    - (i) Pending the outcome of such testing, the Department may require, in its sole discretion, the child care agency to enter into a safety plan approved by the Department that prohibits or limits such individual's contact with children in the care of the child care agency.
    - (ii) The Department may otherwise require, in its sole discretion, that the child care agency enter into a long-term or permanent safety plan that prohibits or limits an impaired individual's contact with children in the care of the agency.

(Rule 1240-04-02-.05, continued)

- (iii) Failure to adhere to the safety plan shall be grounds for action by the Department against the child care agency's license as permitted by T.C.A. § 71-3-508(c).
  - (iv) The child care agency or any individual whose employment status is directly and adversely impacted by a safety plan or by refusal to undergo an examination as directed by the Department, may, at any time during the existence of the plan or during the pendency of the directive for an examination, request, in writing, that the Director of Licensing conduct an intradepartmental review of a safety plan. Such review shall be conducted by the Director or the Director's designee within five (5) business days of the written request.
  - (v) Any individual whose employment status is directly and adversely impacted by a safety plan that has been in effect for more than ten (10) business days or by their refusal to undergo an examination as directed by the Department, and who has requested an intradepartmental review pursuant to subpart (iv), may appeal the plan's application to such individual or the directive to undergo testing to the Department by filing a written request for an administrative hearing before the Department's Appeals Division within ten (10) days of the Director's decision. The hearing shall be held by the Division within twenty (20) business days of the receipt of the request for an administrative hearing.
  - (vi) Any safety plan that exceeds ninety (90) days when proposed or that continues for more than ninety (90) days may be appealed by the child care agency to the Child Care Agency Board of Review.
- (b) A person who has a physical, mental, or emotional condition which is in any way potentially harmful to children shall not be present with the children.
  - (c) Each new employee must be provided a copy of these rules.
  - (d) Each new employee shall serve a probationary period of three (3) to six (6) months, during which close supervision is provided. Staff performance shall be reviewed prior to the end of the probationary period. All employees shall have annual reviews. Discussion of evaluations with staff shall be documented.
  - (e) Contents of Employee Records
    - 1. The agency's records shall contain verification that, prior to assuming duties, each new employee has received orientation in, and is able to explain:
      - (i) Child care philosophy;
      - (ii) Job description;
      - (iii) Personnel policies;
      - (iv) Emergency procedures;
      - (v) Discipline policies, and
      - (vi) Policies for receiving and dismissing children.

(Rule 1240-04-02-.05, continued)

2. Within the first two (2) weeks of employment, each employee shall receive instruction in disease control and health promotion. Such training shall be documented in the agency's records.
3. Within the first thirty (30) days of employment, each employee shall receive instruction in parent-center communication, and an overview of licensing requirements. Such training shall be documented in the agency's records.

(f) Training.

1. Notwithstanding any other requirements of Title 71, Chapter 3, Part 5 of the Tennessee Code Annotated, training requirements for the staff of any Drop-In Child Care Center shall be limited to basic health and safety precautions as well as the detection and reporting of child abuse and neglect for children in the center's care.
2. Within the first thirty (30) days of employment, all staff working with children shall receive training in the detection, reporting, and prevention of child abuse. Such training shall be documented in the agency's records.

[(f) Training of New Employees

1. Prior to assuming duties, each new employee shall receive documented instruction in and have a working knowledge of:
  - (i) Program philosophy and policies;
  - (ii) Job description;
  - (iii) Emergency health and safety procedures;
  - (iv) Behavior management procedures;
  - (v) Detection, reporting, and prevention of child abuse;
  - (vi) Procedures for receiving and releasing children;
  - (vii) Safe sleep procedures;
  - (viii) Shaken baby syndrome/abusive head trauma;
  - (ix) Meal service and safe food preparation policies;
  - (x) Supervision during high risk activities such as eating and outdoor play;
  - (xi) Food allergies;
  - (xii) Expectations for communications with parent/guardian;
  - (xiii) Disease control and health promotion;
  - (xiv) An overview of licensing requirements;
  - (xv) Information on risks of Cytomegalovirus (CMV) to female employees of childbearing age;

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(xvi) A minimum of two (2) hours pre-service training as recognized by the Department; and

(xvii) Documentation of the requirements in this subparagraph (f) shall be maintained in the staff file.]

[(g) Ongoing Training Requirements – any ongoing training required for employees shall include health and safety topics, such as but not limited to:

1. Prevention and control of infectious diseases (including immunization);
2. Prevention of sudden infant death syndrome and use of safe sleeping practices;
3. Administration of medication, consistent with standards for parental consent;
4. Prevention of and response to emergencies due to food and allergic reactions;
5. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
6. Prevention of shaken baby syndrome and abusive head trauma;
7. Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);
8. Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;
9. Precautions in transporting children (if applicable); and
10. First aid and pediatric cardiopulmonary resuscitation.]

(3) **Substitutes.**

- (a) The names, addresses, telephone numbers and dates of service shall be recorded for all substitutes in the staff personnel records of the drop-in center.
- (b) Substitutes shall comply with the orientation requirements of 1240-04-02-.05(2)(e).
- (c) Substitutes acting as caregivers shall meet the training requirements of 1240-04-02-.05(5)(c) if they have acted as caregivers for two hundred (200) or more hours in the previous calendar year.
- (d) Substitutes providing services for thirty-six (36) hours or more in a calendar year are required to have a criminal background check pursuant to 1240-04-02-.05(1)(e), and shall meet the same requirements as regular staff for physical examinations as required by 1240-04-02-.08(11)(a); provided, however, that persons serving temporarily as caregivers in field service placements as part of an educational course of study or

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other curriculum requirement shall not be considered as substitutes for purposes of this rule.

(4) Director of a Drop-in Child Care Center.

- (a) The drop-in center shall have an on-site director [except as otherwise permitted pursuant to 1240-4-.04(2) above]. The director shall have earned a high school diploma or its equivalent and one (1) year of full time documented work experience with young children in a group setting.
- (b) Prior to issuance of the first annual license, the licensee and director shall complete a child care orientation course offered through or recognized by the Department. New directors of child care agencies currently licensed shall complete the orientation course within (3) months of assuming the position.
- (c) The director shall have evidence of completing at least six (6) clock hours annually of Department-recognized training. At least three (3) of these hours shall be in administration, management or supervisory training.
- (d) The director shall complete four (4) hours of pre-employment training, which is offered or recognized by the Department, that includes, but is not limited to, training in interviewing and evaluating caregivers for service in an agency and in working effectively with parents. If the Department determines that the director has received specific training meeting the requirements of this part within three (3) years prior to employment, the requirement of this part may be waived by the Department.

(5) Caregivers.

- (a) Each caregiver who is used to meet the minimum required adult:child ratio must be at least eighteen (18) years of age.
- (b) At least one (1) caregiver who is present in the agency shall be able to read and write English.
- (c) Caregivers shall have evidence of receiving at least three (3) clock hours annually in Department-recognized training.
- (d) New caregivers shall complete two (2) clock hours of pre-service orientation training offered or recognized by the Department. For purposes of this rule, "pre-service" orientation shall mean that such orientation occurs within the first thirty (30) days of employment with the agency. Pending completion of the orientation training, the caregiver's status is conditional. Failure of the caregiver to complete the required two (2) hours of pre-service orientation shall require that the employee be removed from caregiver duties for children until completion of the training.
- (e) Auxiliary Staff.
  - 1. Any auxiliary staff persons (e.g., maintenance staff, kitchen staff, etc.) shall be physically and mentally capable of performing satisfactorily in their respective positions.
  - 2. Any auxiliary staff directly employed by the center shall receive orientation to their position within the first two (2) weeks of employment. This training shall include:
    - (i) Personnel policies;

(Rule 1240-04-02-.05, continued)

- (ii) Job responsibilities;
- (iii) Parent communication;
- (iv) Daily schedule and routine;
- (v) Center policies regarding discipline;
- (vi) Detection and reporting of child abuse; and
- (vii) Emergency procedures.

**Authority:** T.C.A. §§4-5-202,71-1-105(5) and (12), 71-3-501 et seq., 71-3-501(8), and 71-3-502(a)(2).  
**Administrative History:** Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005. Amendment filed November 14, 2006; effective January 28, 2007.

#### 1240-04-02-.06 EQUIPMENT FOR CHILDREN.

(1) General.

- (a) All indoor and outdoor equipment shall be safe for use with the applicable age group and shall be properly maintained to avoid any potential risk to children.
- (b) Equipment shall not contain any dangerous angles, sharp edges, splinters, nails sticking out, open S-hooks or pinch points that are within children's reach.
- (c) Damaged equipment shall be repaired or removed immediately.
- (d) Equipment shall be kept clean by washing frequently.
- (e) There shall be age appropriate equipment and furnishings for each age group in attendance.
- (f) In infant/toddler areas, equipment and space shall be provided for climbing, crawling, and pulling without the restraint of playpens or cribs.

(2) Indoor Play Equipment.

- (a) Any equipment which may present a fall hazard, such as television sets, bookcases, appliances, etc. shall be secured or supported so that they will not fall or tip over.
- (b) Indoor equipment, materials, and toys shall be available to allow children to make choices among different active play activities and among different quiet play activities.
- (c) Toys, educational, and play materials shall be organized and displayed within children's reach to allow children to select and return items independently.
- (d) No materials that contain small parts that can be inhaled or swallowed which may present a potential choking hazard shall be accessible to children under three (3) years of age.

(3) Outdoor Play Equipment.

- (a) If outdoor play equipment is provided, it shall be age appropriate.

(Rule 1240-04-02-.06, continued)

- (b) The Consumer Products Safety Commission's "Handbook on Public Playground Safety" or similar authority shall be used for guidance on playground construction and maintenance.
  - (c) All outdoor play equipment shall be placed to avoid injury. Fall zones shall extend at least six (6) feet away from the perimeter of equipment and away from retainer structures, fences, and other equipment and out of children's traffic paths.
  - (d) Resilient surfacing material shall cover fall zones in the manner and depth directed by the Department in accordance with the recommendations set forth in subparagraph 3(b) above.
  - (e) Supports for climbers, swings, and other heavy equipment that could cause injury if toppled shall be securely anchored to the ground, even if the equipment is designed to be portable.
- (4) Naptime and Sleeping Equipment.
- (a) There shall be equipment for napping or sleeping.
  - (b) All nap/sleep equipment shall be properly maintained and comply with the following requirements:
    1. Individual cots or two-inch mats shall be provided for mature toddlers and for children through age five (5).
    2. Individual beds or cots shall be provided for children sleeping for extended periods of more than two and one half (2-1/2) hours, such as during nighttime care.
    3. A clean sheet or towel shall be used to cover whatever the child sleeps on.
    4. A clean coverlet shall be available to each child.
    5. Each infant shall have an individual crib (at least twenty-two inches (22") x thirty-six inches (36") with an open top. Mattresses and foam pads shall be covered with safe, waterproof material. Soiled sheets and coverlets shall be replaced immediately.

**Authority:** T.C.A. §§4-5-202, 71-3-501 et seq., and 71-3-502(a)(2). **Administrative History:** Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005.

**1240-04-02-.07 PROGRAM.**

- (1) Schedule and Routines.
  - (a) Rest for the children shall occur as needed.
  - (b) A child shall not be left in a crib or on a cot for an unreasonable length of time.
  - (c) Agencies providing nighttime care shall provide calming activities preceding bedtime, including listening to a story or soft music, etc., and individual/adult attention shall be provided as needed.

(Rule 1240-04-02-.07, continued)

- (d) Children shall not be forced to sit on the potty or toilet for more than five (5) minutes.
- (2) Television, Videos, and Computers.
- (a) All television, computer/video games, programs/movies shown shall be designed for children's education and/or enjoyment. Programs/movies/games with violent or adult content (including "soap operas") shall not be permitted in children's presence. Programs/movies shall be age appropriate for the viewers.
  - (b) All programs, videos, and movies must be previewed by staff for content.
  - (c) Parents shall be informed of movie showings and ratings of the movies to be shown.
  - (d) Other activities shall be available to children during television/movie viewing or computer/video game use.
  - (e) Computer/video game use must be monitored by staff.
- (3) Behavior Management and Guidance.
- (a) Attention spans and skills of children shall be considered so that caregivers do not require behaviors of children which are developmentally inappropriate.
  - (b) Discipline shall be reasonable, appropriate, and in terms the children can understand.
  - (c) Punishment that is shaming, humiliating, frightening, verbally abusive, or injurious to children shall not be used.
  - (d) Punishment shall not be related to food, rest, or toileting.
  - (e) Spanking or any other type of corporal punishment is prohibited. ("Corporal punishment" is the infliction of bodily pain as a penalty for behavior of which the punisher disapproves.)
  - (f) Caregivers shall not focus solely upon unacceptable behavior.
  - (g) Praise and encouragement of good behavior shall be used.
  - (h) When a child is engaging in unacceptable behavior the caregiver shall, prior to using punishment, attempt to distract the child's attention and substitute a desirable activity.
  - (i) Time Out.
    - 1. Use of time-outs shall be reasonable and age appropriate.
    - 2. A time-out shall take place in an appropriate location based upon the development of the child.
    - 3. The length of each time-out session shall be based on the age of the child and shall not exceed one (1) minute per each year of the child's age.
- (4) Age-Appropriate Activities.
- (a) Age-appropriate activities shall be available for all ages of children the center is licensed to serve.

(Rule 1240-04-02-.07, continued)

- (b) Interaction by staff with infants/toddlers should stimulate the development of language, gross motor, fine motor, social/personal, cognitive, and self-help skills. Examples of such activities include music, dramatic play, story time, free activity periods, outdoor play, and the opportunity to explore many materials, situations, and roles.
- (5) Swimming. Swimming is prohibited.
- (6) Personal Safety Curriculum.
  - (a) For ages three (3) through school-age, a curriculum shall be offered that shall include instruction, at least once a year, in personal safety.
  - (b) Personal Safety Curriculum Components and Guidelines.
    - 1. The personal safety curriculum shall include a Department-recognized component for the prevention of child abuse, including, for children four (4) years of age and older, a child sexual abuse prevention component.
    - 2. The curriculum shall be based upon curriculum guidelines provided by the Department to the child care provider in any suitable format. The child care provider may choose terminology and instructional methods for this curriculum with a goal of providing clear, effective and appropriate instruction to the children in personal safety, including the prevention of all forms of child abuse.
  - (c) Personal Safety Instruction Requirements for School-Age Children.
    - 1. For school-age children, the curriculum shall include instruction for reporting physical, sexual or verbal abuse.
    - 2. Children of school-age shall not be required to receive personal safety instruction from the child care agency if they annually receive personal safety instruction as required by this paragraph (6) in the curriculum of their local public education agency, or, if they receive such instruction in any other educational setting, as approved, in either circumstance, by the Department.
    - 3. Documentation of Personal Safety Instruction in Educational Settings.
      - (i) Written documentation, in a form and manner approved by the Department, verifying that annual personal safety instruction as required by this paragraph (6) is being provided in a public educational setting to each child enrolled in the child care agency, shall be maintained on file with the Department.
      - (ii) For children who do not attend public schools, the child care provider shall secure and maintain documentation, in a form and manner approved by the Department, verifying that each school-age child enrolled in the child care agency is receiving annual personal safety instruction as required by this paragraph (6).
  - (d) Beginning October 1, 2008, the personal safety curriculum used by a child care agency shall be made available by the child care agency to parents and legal guardians for review. The child care agency shall use a standard notification form developed by the Department that will be provided to the parents or legal guardians by the child care agency to confirm that the parents/guardians have been notified of the curriculum to be used and of their opportunity to review the personal safety curriculum.

(Rule 1240-04-02-.07, continued)

- (e) The record of each enrolled child shall include a copy of the signed notification form acknowledging that parents/legal guardians have been provided an opportunity to review the agency's personal safety curriculum, and have been notified of the sexual abuse/personal safety curriculum for their child.
- (f) If parents/legal guardians have questions regarding the personal safety curriculum, a representative of the child care agency shall meet with the parents/legal guardians to discuss the curriculum.

**Authority:** T.C.A. §§4-5-202, 4-5-209, 71-3-501 et seq., 71-3-502, 71-3-502(a)(2), 71-3-502(l) and 2008 Tenn. Pub. Acts 1032. **Administrative History:** Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005. Public necessity rule filed October 1, 2008; effective through March 15, 2009. Amendment filed December 29, 2008; effective March 14, 2009.

**1240-04-02-.08 HEALTH AND SAFETY.**

(1) Supervision and Grouping of Children.

- (a) The management of the center shall maintain a system that allows personnel to know the whereabouts of each child in their care. This system shall include a mandatory visual inspection of all areas of the building and grounds immediately prior to closing the center for the day in order to ensure that no children have been unintentionally left.
- (b) Children must have adult supervision at all times as defined in section 1240-04-02-.02 (29).
- (c) No child (ren) shall be left unattended for any reason.
- (d) Caregivers shall not leave the group until replacement(s) have arrived.
- (e) Arrangements shall be made so that in an emergency, a caregiver, without having to leave the group, can call by phone or voice for a second adult to help.
- (f) Age Categories and Adult: Child Ratios.

1. Children shall be placed in age-appropriate groups and with adequate adult supervision as established in parts 2-5 below.

2. Single-age Grouping

Age	Adult:Child Ratio
Infant (6 weeks to 12 months)	1:4
Toddler (12 months to 24 months)	1:10
2 years	1:12
3 years	1:15
4 years	1:18
5 years (not in Kindergarten)	1:20
K & Above	1:22

3. Multi-Age Grouping.

- (i) The adult:child ratio of a multi-age grouping shall be determined by the age of the majority of the children in the group; provided, however:

(Rule 1240-04-02-.08, continued)

- (I) No majority age: If the ages of the children are evenly divided, and thus there is not a majority age, the adult:child ratio shall be determined by the age of the youngest child in the group.
- (II) Infants: The adult: child ratio of any group containing an infant shall be determined solely by the number of infants in the group as set forth in subparagraphs (ii) and (iii) below.
  - (ii) The adult: child ratio for any multi-age grouping containing three (3) or more infants is 1:4.
  - (iii) The adult: child ratio for a multi-age group containing one (1) or two (2) infants is as follows:

Majority Age	One Infant	Two Infants
Toddlers (12 to 24 months)	1:8	1:6
2 Years	1:10	1:8
3 Years	1:12	1:10
4 Years	1:15	1:12
5 Years (not in Kindergarten)	1:17	1:13
K & Above	1:19	1:15

- 4. When more than fourteen (14) children are present, children under two (2) years of age must have their own designated area.
- 5. The Federal Americans with Disabilities Act guidelines shall be consulted to determine the appropriate adult: child ratios for children with special needs.

(2) Sudden Infant Death Syndrome.

- (a) Infants under six (6) months of age:
  - 1. Shall be positioned on their backs or sides when placed in a crib for sleeping;
  - 2. Shall not be wrapped tightly in blankets; and
  - 3. Shall be checked by a caregiver every thirty (30) minutes by touching them.
  - 4. Infants who have been identified to the center as suffering from gastric reflux, or who the center should reasonably know are experiencing excessive spitting-up and/or sinus or respiratory congestion, shall be checked by a caregiver every fifteen (15) minutes by touching them.
- (b) Bedding for Infants under six (6) months of age:
  - 1. Soft bedding is prohibited.
  - 2. Pillows are prohibited.
  - 3. Bottles shall never be propped, nor otherwise be placed on or near the child's bedding.
- (c) If a child appears to not be breathing, emergency medical assistance shall be immediately provided.

(Rule 1240-04-02-.08, continued)

- (d) The failure to comply with the requirements of this paragraph (2) by themselves, shall be a basis for the denial, revocation, or suspension of all or part of the center's license.
- (3) Children's Health Records.
- (a) Before a child older than eight (8) weeks is accepted for care, a written statement signed by the parents that includes a list of allergies, medical conditions, and age appropriate shots shall be on file. If a child who was accepted for care at six (6) weeks of age continues in care at eight (8) weeks, the written statement described in the preceding sentence shall be in the child's record before care for that child may continue.
  - (b) If children with mental, physical or other impairment or with a medical disorder are enrolled and special care is needed, their health records shall include a statement identifying the condition and giving any and all special instructions for the child's care.
- (4) Children's Health.
- (a) Children shall be checked upon arrival and observed for signs of communicable disease during the day. Symptomatic children shall not be admitted. Every sign of illness shall be reported to the parent as soon as possible, but no later than the end of the day in which it occurred.
  - (b) Accidents and injuries to children shall be documented, including date and time occurred, description of circumstances, and action taken by caregivers. Injuries of more than a minor nature shall be reported as soon as possible to parents, but no later than the end of the day in which they occurred.
- (5) Nutritional Needs.
- (a) A meal or a supplement shall be available every three (3) hours according to a normal feeding pattern as follows:
    - 1. Three (3) to five (5) hours: One (1) feeding; and
    - 2. Five (5) to six (6) hours: Two (2) feedings.
  - (b) Special-needs diets shall be served as prescribed by a parent or physician. Such feeding instructions must be in writing and signed by the parent/guardian or physician.
  - (c) Food shall not be forced on, or withheld, from children. Foods served as part of the meal/supplement pattern shall not be used as reward, nor shall food be used or withheld as punishment.
  - (d) Meals or supplements prepared outside the center (e.g., sack lunches or catered food) shall be monitored by center staff.
  - (e) The feeding schedule for infants shall be in accordance with the child's needs rather than according to the hour.
- (6) Meal Service.
- (a) Children shall be supervised during mealtime as set forth in 1240-04-02-.08(1). The failure to properly supervise children during mealtime may, in itself, result in the

(Rule 1240-04-02-.08, continued)

immediate suspension of all or part of the center's authority to operate under its license.

- (b) Sanitation.
    - 1. Caregivers and children shall wash their hands according to prescribed handwashing techniques (see subparagraph (11)(c) below).
    - 2. Furniture and cabinets where food is prepared or served shall be washed with soap and water and sanitized before and after snacks and meals.
    - 3. Sanitizing agents shall comply with the requirements set by the Department of Health and/or the local jurisdiction environmental inspector.
    - 4. The floors under areas where food is served shall be swept and/or vacuumed after each meal and cleaned as needed.
  - (c) Solid foods (including cereal) shall never be mixed with liquid foods, nor shall they otherwise be provided in a bottle or infant feeder unless authorized by the written and signed instructions of a licensed physician. Failure to comply with this rule may, in itself, immediately result in the suspension of all or part of the center's license to operate.
  - (d) Individual napkins, utensils and dishes shall be provided for children who feed themselves, as appropriate for the type of feeding. Routine food service dishes, utensils, and bottles shall be break-resistant and shall not be glass.
  - (e) All formulas and food brought from home shall be labeled with the child's name. Milk shall be in an insulated container and stored with the child's individual ice pack or placed immediately in the refrigerator. Once milk has been warmed, it shall not be re-warmed or returned to the refrigerator. For optimum digestion, formula is to be served at body temperature.
  - (f) Microwave ovens shall not be accessible to pre-school children.
  - (g) School-age children shall use microwaves only under direct supervision.
  - (h) Bottled breast milk, infant bottles, and formula shall not be heated in a microwave oven. Other bottle warming devices shall be used safely, according to directions and shall not be accessible to children.
  - (i) In order to reduce the risk of splash or burn, children shall not be held, nor otherwise allowed in close proximity to the adult removing a bottle from a crockpot or other bottle-warming device.
  - (j) An adult must test, and allow cooling, as needed, all heated food prior to serving.
  - (k) Previously opened baby food jars shall not be accepted in the center. If food is fed directly from the jar by the caregiver, the jar shall be used for only one feeding.
  - (l) Infants shall be held while being fed as long as they are unable to sit in a high chair, an infant seat, or at the table. Bottles shall not be propped, and a child shall not be given a bottle while lying flat.
- (7) Medication.

(Rule 1240-04-02-.08, continued)

- (a) The center shall not administer any medication, internal or external, except upon written authorization signed by a licensed physician, licensed physician's assistant, or licensed nurse clinician.
  - (b) Authorized medications shall be labeled with the child's name and the specific instructions for their administration.
  - (c) Administration of medications and noticeable side effects shall be charted and reported to parents.
  - (d) Medication shall not be accessible by, or otherwise handled by, children.
    - 1. Exception: Children may self-administer medication with the written authorization of a physician.
    - 2. Staff shall monitor the child's self-administration and shall document the date and time of the self-administration in the child's file.
  - (e) Medications shall be made inaccessible to children by storing them in locked compartment or container.
    - 1. Exceptions:
      - (i) Emergency medications requiring immediate administration, including, but not limited to, injections for anaphylactic allergic reactions, asthma treatments, etc., may be stored in unlocked containers that are clearly inaccessible to children.
      - (ii) Self-administered medication shall be stored in a locked container unless prescribed for the child to self-administer "as needed". Medication that is self-administered as needed shall be held by the caregiver or shall otherwise be stored in such a manner as to allow immediate access while insuring that the medication remains inaccessible to other children.
      - (iii) Medication requiring refrigeration that is kept in a refrigerator used for food storage shall be put in a leak-proof locked container. Keys for these compartments shall be inaccessible to children.
- (8) Prohibited practices and products
- (a) Smoking is prohibited inside the drop-in center and in the presence of children. No smoking signs shall be posted conspicuously within the facility.
  - (b) The use of alcoholic beverages is prohibited during the hours of operation of the center.
  - (c) Firearms are prohibited in the drop-in center and are otherwise prohibited in the presence of children enrolled at the drop-in center.
  - (d) Any activities on the premises or property which may place children at risk are prohibited.
- (9) Diapering
- (a) Children shall immediately be diapered/changed and cleaned when wet or soiled.

(Rule 1240-04-02-.08, continued)

- (b) The diapering area shall be off the floor, have a washable surface, be located near a handwashing lavatory and shall not be in a food preparation/service area. Exception: school-age special needs children may be placed on a non-absorbent mat which protects the floor from contamination.
  - (c) All diapering surfaces must be nonporous and shall be sanitized after use with each child by using solutions described or otherwise permitted in paragraph (10) below.
- (10) Cleaning Solutions for General Cleaning and Sanitizing Purposes.
- (a) For general cleaning and sanitizing purposes, a fresh solution of one quarter (1/4) cup chlorine bleach to one (1) gallon of water (or one [1] tablespoon bleach to one [1] quart of water) shall be made daily.
  - (b) Substitutions for the bleach solution required in subparagraph (a) that are approved for the child care setting by the Department of Health are permissible.
- (11) Staff Health.
- (a) Within thirty (30) days after beginning to work, all staff members shall have on file written evidence of a physical examination within the last three (3) years and a statement that their general physical and mental condition will permit them to direct and actively participate in the activities of a group of young children with reasonable accommodation, if necessary. The form or statement shall have the signature or stamp of a licensed physician, a certified nurse practitioner, or a certified physician's assistant.
  - (b) An updated statement of each staff member's physical health shall be obtained every third year or more often if deemed necessary by the Department.
  - (c) For the protection of children and adults, the Centers for Disease Control guidelines for handwashing and diapering procedures shall be followed.
  - (d) For the protection of children and adults, when blood is to be handled (e.g., resulting from injury to a child or adult, from nosebleed, or from spillage), vinyl or latex gloves shall be used and properly disposed of following use with/by one individual. Following blood spillage, surfaces shall be cleaned and sanitized.
- (12) Safety.
- (a) At least one staff member who has current certification or equivalent in infant/child Cardiopulmonary Resuscitation (CPR) shall be on duty at all times.
  - (b) When school age children are present, at least one staff member who has current certification or the equivalent in adult CPR shall be on duty at all times.
  - (c) At least one staff member who has current certification or the equivalent, as recognized by the Department, in infant/child first aid shall be on duty at all times.
  - (d) Current and comprehensive first aid information shall be available to all staff who interact with children and they shall be familiar with such information.
  - (e) A standard first aid kit (such as one approved by the American Red Cross) shall be available to the staff.

(Rule 1240-04-02-.08, continued)

- (f) Kitchen knives and other potentially dangerous utensils or tools shall be secured so that they are not accessible to children.
  - (g) The drop-in center, in consultation with appropriate local authorities, shall develop a written plan to protect children in the event of disaster such as, but not limited to, fire, tornado, earthquake, chemical spills, floods, terrorist attacks, etc.
  - (h) The center's disaster plan referenced in subparagraph (g), above, must be reviewed with new staff within ten (10) days of beginning employment. All staff must review the plan a minimum of every six (6) months.
  - (i) Emergency telephone numbers shall be posted next to the telephone and readily available to any staff member as follows:
    - 1. Fire department;
    - 2. Police department/sheriff;
    - 3. Hospital;
    - 4. Child abuse hotline;
    - 5. Local emergency management agency, if available in the community;
    - 6. Rescue squad, if available in the community;
    - 7. Ambulance, if available in the community;
    - 8. Poison control center telephone numbers shall also be posted, if available in the community;
    - 9. If a generic number (such as, but not limited to, 911) is operable in the community, it shall be posted in addition to the above numbers; and
    - 10. Numbers where parents can be reached shall be readily available to all staff.
- (13) Duty to Report Child Abuse and Neglect.
- (a) Duty to Report.
    - 1. Every operator, owner, licensee, director, or staff member of, or substitute staff member or volunteer in a child care agency licensed by the Department of Human Services is individually responsible, and is required by T.C.A. §§ 37-1-403 and 37-1-605, to immediately report any reasonable suspicion of child abuse or neglect to the Department of Children's Services, local law enforcement or the judge of the juvenile court in the county of the child's residence.
    - 2. Determining Suspicion of Abuse/Neglect.
      - (i) Due to both the immediate risk to children's safety, as well as to the extreme risk of destroying or losing critical evidence, the agency and/or individual staff shall not delay reporting possible abuse or neglect in an attempt to conduct an investigation to verify the abuse/neglect allegations.
      - (ii) In determining a reasonable suspicion for purposes of reporting, the agency shall limit questioning of the child and may make only the most

(Rule 1240-04-02-.08, continued)

basic inquiries necessary to determine if any reasonable possibility of abuse or neglect exists.

- (iii) The agency does not have to, and shall not attempt to, validate (or "prove") the allegation prior to making a report as required by this paragraph (13). A final determination of the validity of the report of abuse or neglect shall be made exclusively by the Department of Children's Services and/or by law enforcement based upon the report by the child care agency's staff.
  3. Each center shall develop procedures, approved by the Department of Human Services in conformity with DCS policy, for staff to follow to report suspected abuse and neglect.
  4. Any statement from a child reasonably indicating abuse/neglect of that child or another child or any evidence of abuse/neglect observed on a child shall be immediately reported by staff to the Department of Children's Services in a manner specified by that department, to local law enforcement or to the judge of the juvenile court in the county of the child's residence.
- (b) The telephone numbers of the Department of Children's Services, the local law enforcement or the juvenile judge of the county of the child's residence for staff to call to report suspected abuse and neglect shall be posted in a conspicuous location by each telephone.
- (c) Prohibited Procedures for Reporting Suspected Child Abuse/Neglect/Penalties.
  1. The agency shall not develop or implement a policy that inhibits, interferes with or otherwise affects the duty of any staff, including substitutes and volunteers, to report suspected abuse or neglect of a child as required by subparagraph (a) above and T.C.A. §§ 37-1-403 and 605, and shall not otherwise directly or indirectly require staff to report to the agency management or seek the approval of agency management prior to any individual staff member reporting the suspected abuse or neglect.
  2. A report of suspected child abuse or neglect of a child enrolled in the child care agency by the operator, owner, licensee, director or staff member of, or substitute staff member or volunteer in, a child care agency shall not be made to any other entities or persons, including, but not limited to, hospitals, physicians, or educational institutions as an alternative to or substitute for the reporting requirements to the persons or entities specifically listed in subparagraph (a) above.
  3. The operator, owner, licensee, director, or staff member of, or substitute staff member or volunteer in, the child care agency shall not suggest to, advise or direct a parent or caretaker of a child enrolled in the child care agency to make a report of suspected child abuse or neglect regarding that parent's or caretaker's own child who is enrolled in the child care agency as a means of fulfilling the duty of the operator, owner, licensee, director, or staff member of, or substitute staff member or volunteer in, the child care agency to report child abuse or neglect as required by T.C.A. §§ 37-1-403 and 37-1-605.
  4. Because the statutory requirements of T.C.A. §§ 37-1-403 and 37-1-605 do not authorize the prohibited procedures described in parts 1-3 of this subparagraph (c) to fulfill the statutory duty of any person, and especially the duty of those licensed by the State of Tennessee to care for and protect vulnerable children, to make timely and effective reports of child abuse and neglect to appropriate

(Rule 1240-04-02-.08, continued)

investigative agencies, and because the prohibited procedures described in parts 1-3 of this subparagraph (c) are completely unreliable procedures to ensure that the appropriate authorities are able to timely and satisfactorily investigate suspected child abuse or neglect, any action that does not comply in all respects with subparagraph (a) above will not fulfill the statutory duty to report child abuse or neglect and the licensing requirements of this Chapter.

5. Failure to Report Properly Is Grounds for Suspension, Denial or Revocation of the Agency License.
  - (i) Failure to make the reports required by subparagraph (a) above or the use of the prohibited methods described in parts 1-3 of this subparagraph (c) as an attempt to fulfill the duty to report suspected child abuse or neglect, for children in the care of the child care agency are, by themselves, grounds for suspension, denial or revocation of the agency's license.
  - (ii) If the facts establish by a preponderance of the evidence that there has not been strict compliance with the requirements of subparagraph (a) above or that the prohibited procedures described in parts 1-3 of this subparagraph (c) have been utilized as an alternative means of fulfilling the requirements of subparagraph (a) above, these circumstances shall create a rebuttable presumption for the Administrative Law Judge and the Child Care Agency Board of Review that the duty to report child abuse or neglect has not been fulfilled, and this ground for suspension, denial, or revocation of the agency's license by the Department of Human Services shall be sustained unless such presumption is rebutted by a preponderance of the evidence.
- (d) Agency Duties During Investigations of Child Abuse and Neglect; Custodial Authority of Children.
  1. Every operator, owner, licensee, director, or staff member of, or substitute staff member or volunteer in, a child care agency licensed by the Department of Human Services shall fully cooperate with all agencies involved in the investigation of child abuse or neglect, and with the Department of Human Services in efforts to provide protection for children enrolled in the child care agency.
  2. The agency shall provide access to records of children and staff.
  3. The agency shall allow appropriate investigators to interview children and staff.
  4. The agency shall not interfere with a child abuse and neglect investigation.
  5. The agency shall protect the child by requesting the investigator's identification.
  6. The agency shall maintain confidentiality of the investigation and shall not disclose the investigation or details of the investigation except as required to carry out procedures for the protection of children or as otherwise directed by the Department of Children's Services, law enforcement or the Department of Human Services.
- (e) Upon notification of a pending abuse/neglect investigation of any agency staff member or resident of a home-based center, the agency shall enter into a Safety Plan with the Department regarding the individual's access to the agency and to children in the care of the agency.

(Rule 1240-04-02-.08, continued)

- (f) All agency staff, including non-caregiving staff, shall receive training every six (6) months regarding procedures to report child abuse and neglect.

**Authority:** T.C.A. §§4-5-202, 37-1-101 et seq., 37-1-113, 37-1-401 et seq., 37-1-601 et seq., 71-3-501 et seq., and 71-3-502(a)(2), **Administrative History:** Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005. Amendment filed November 14, 2006; effective January 28, 2007

#### 1240-04-02-.09 PHYSICAL FACILITIES.

- (1) Inspections.
  - (a) Facilities that have been unlicensed, relocated, and/or renovated, and new construction, major renovations, additions to existing facilities, and /or changes in occupancy shall comply with the standards of the fire prevention division of the Tennessee Department of Commerce and Insurance and of the Division of Food and General Sanitation of the Department of Health.
  - (b) Fire safety requirements and environmental standards shall be met before a license can be issued.
  - (c) Requests for inspections are made by the Department, but it is the responsibility of the applicant to obtain verification of the inspections and the approvals. The Department of Human Services will not intervene with Federal, State or local agencies on behalf of an applicant/licensee in any effort to obtain the approvals required by this Chapter.
- (2) Plans. Plans for new construction must be drawn by a registered architect or engineer and submitted to the fire prevention division of the Department of Commerce and Insurance and to the local health department when required by such departments and in accordance with the respective departments' procedures.
- (3) Continuing compliance.
  - (a) Physical facilities shall at all times meet all requirements and codes applicable to child care as set forth by the fire safety section of the Department of Commerce and Insurance and the Food and General Sanitation section of the Department of Health, as well as any updated fire safety or environmental standards for child care adopted by these departments.
  - (b) Failure to maintain such approved inspections may, in itself, result in the immediate suspension of all or part of the drop-in center's license.
- (4) Annual inspection. All facilities shall be inspected and approved annually by either state codes enforcement officers or authorized local fire safety inspectors and environmentalists.
- (5) The drop-in center shall not be located in a building used for purposes that are or may potentially be hazardous to children.
- (6) There shall be a working telephone in the center. If answering machines/voice mail must be used, they shall be monitored at thirty (30) minute intervals (except when staff and children are off premises) so that emergency messages can be received. Parents shall be informed that answering machines/voice mails are used.
- (7) Facilities shall provide at least thirty (30) square feet of useable indoor play space per child, not including restrooms, halls, kitchen, or office space. Each nap room must also contain thirty (30) square feet of floor space per child.

(Rule 1240-04-02-.09, continued)

- (8) Outdoor play areas shall contain a minimum of fifty (50) square feet of useable play space for each child using the area at one time.
- (9) The areas where children play or are cared for shall be properly maintained. These areas shall be free of hazardous items or materials unless adequately protected by storage, inaccessibility, proper supervision, or other safety procedures. These areas shall present no conditions which may be hazardous to children. All such areas shall be free of all animal wastes.
- (10) Trampolines are prohibited.

**Authority:** T.C.A. §§4-5-202, 71-3-501 et seq., and 71-3-502(a)(2).. **Administrative History:** Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005.

#### **1240-04-02-.10 CARE OF CHILDREN WITH SPECIAL NEEDS.**

- (1) In addition to the preceding rules, if children with disabilities are cared for in the center, the requirements of paragraphs (2) and (3) below shall be met.
- (2) When children with disabilities are enrolled, all reasonable and appropriate efforts shall be made to provide those children with equal opportunities to participate in the same program activities as their peers.
- (3) The drop-in center shall have written emergency plans for children with disabilities where more assistance would be needed in case of an emergency. Examples: non-ambulatory children, or children with a hearing or visual impairment.

**Authority:** T.C.A. §§4-5-202, 71-3-501 et seq., and 71-3-502(a)(2). **Administrative History:** Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005.

**RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN SERVICES  
ADULT AND FAMILY SERVICES DIVISION**

**CHAPTER 1240-04-03  
LICENSURE RULES FOR CHILD CARE CENTERS**

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**1240-04-03-.01 SCOPE AND PURPOSE.**

- (1) Scope of Rules. These rules are applicable to the licensing of child care centers that care for thirteen (13) or more children, ages six (6) weeks - seventeen (17) years of age for less than twenty-four (24) hours per day as defined by T.C.A. §§ 71-3-501 et seq. Any conflict between this Chapter and any other rules of the Department concerning the licensing procedures and regulations governing child care center standards and licensing and appeal procedures for child care centers shall be resolved by reference to these rules.
- (2) Purpose of Licensing. The primary purpose of licensing is the protection of children. These minimum requirements seek to maintain the adequate health, safety, and supervision of children while in a group care setting. The secondary purpose of licensing is to promote developmentally appropriate child care.

**Authority:** T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2). **Administrative History:** Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed April 22, 1992; effective June 6, 1992. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Repeal and new rule filed June 20, 2006; effective September 3, 2006.

**1240-04-03-.02 DEFINITIONS.**

For purposes of this Chapter, the following definitions are applicable:

- (1) Administrative Hearing. A fair hearing that is held under the Administrative Procedures Act rather than in a court of law. The purpose of the hearing is to allow an agency the opportunity to challenge licensing enforcement actions taken by the Department.
- (2) Annual License. An annual permit issued by the Department to a child agency, authorizing the licensee to provide child care in accordance with provisions of the license, the law, and requirements (rules) of the Department.
- (3) Applicant. The owner or owner's authorized representative who is required, pursuant to the provisions of these rules, to sign the application for a license.

(Rule 1240-04-03-.02, continued)

- (4) Auxiliary staff. Full and part-time employees of the agency who provide non-caregiving services.
- (5) Capacity. The maximum number of children who can be physically located in the child care space at any given point in time. See also, "Licensed Capacity".
- (6) Caregiver. An individual, whether paid or unpaid, including the Primary Caregiver, who is responsible for meeting the supervision, protection, and basic needs of the child, and who is used to meet the adult:child ratios required by these rules.
- (7) C.C.P. Certified Childcare Professional. An early childhood educational credential granted by the National Child Care Association.
- (8) C.D.A. Child Development Associate. An early childhood educational credential granted by the National Council for Professional Recognition.
- (9) Child or Children. A person or persons under eighteen (18) years of age.
- (10) Child Care. As defined by T.C.A. § 71-3-501, the provision of supervision and protection, and, at a minimum, meeting the basic needs, of a child or children for less than twenty-four (24) hours a day.
- (11) Child Care Center. "Child care center" means any place or facility operated by any person or entity that provides child care for three (3) or more hours per day for at least thirteen (13) children who are not related to the primary caregiver; provided, that a child care agency shall not be classified as a "child care center" that operates as a "group child care home" and keeps three (3) additional school-age children as permitted in subdivision (27); provided, further, that all children, related or unrelated shall be counted in the adult-to-child supervision ratios and group sizes applicable to child care centers; with the exception, that if the child care center is operated in the occupied residence of the primary caregiver, children nine (9) years of age or older who are related to the primary caregiver will not be counted in determining the adult-to-child supervision ratios or group sizes applicable to child care centers if such children are provided a separate space from that occupied by the child care center. The Department may permit children in the separate space to interact with the children in the licensed child care center in such manner as it may determine is appropriate.
- (12) Child Care Agency. "Child care agency" or "agency" means, and only where the context requires in any other provision of law:
  - (a) 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", as those terms are defined in this part; or
  - (b) A place or facility that provides child care for three (3) or more hours per day for five (5) or more children who are not related to the primary caregiver.
- (13) Child Care System. The existence of two (2) or more facilities used for child care purposes which are under the ownership, administration, or control of any individual(s), corporation, partnership, cooperative, or other public or private entity of any kind.
- (14) Commissioner. The executive head of the Department of Human Services, appointed by the Governor.
- (15) Conventional Care. Child care services provided between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday.

(Rule 1240-04-03-.02, continued)

- (16) Day Care. Synonymous with definition of "child care", above.
- (17) Department (DHS). The Tennessee Department of Human Services and its authorized representatives.
- (18) Developmentally Appropriate. Practices which use a knowledge of child development to identify the range of appropriate behaviors, activities, and materials for a specific age group. This knowledge is used in conjunction with an understanding about individual children's growth patterns, strengths, interests, and experiences to design the most appropriate learning environment. A developmentally appropriate curriculum provides for all areas of a child's development, physical, emotional, social, and cognitive, through an integrated approach.
- (19) Director. The on-site manager for the agency who has overall responsibility for the daily oversight of all staff and direct child care services.
- (20) Drop-In Child Care Center. A place or facility operated by any person or entity providing child care, at the same time, for fifteen (15) or more children, who are not related to the primary caregiver, for short periods of time, not to exceed fourteen (14) hours per week and for not more than seven (7) hours per day for any individual child during regular working hours, Monday - Friday 6:00 a.m. to 6:00 p.m.; provided, however, that a drop-in center may provide such child care during evenings after 6:00 p.m. and weekends, Friday, 6:00 p.m. - Sunday, 10:00 p.m., so long as the drop-in center provides no more than a total of twenty (20) hours per week, exclusive of snow days, defined as days when the school of the affected child is closed; provided, further, that drop-in centers may provide such care during snow days; provided, however, that, notwithstanding any other requirements of this part, training requirements for the staff of this class of child care agency shall be limited to basic health and safety precautions and the detection and reporting of child abuse and neglect for children in care; provided, further, that, notwithstanding any other provision of this chapter to the contrary, drop-in centers operated by not-for-profit organizations that provide child care for no more than two (2) hours per day with a maximum of ten (10) hours per week without compensation, while the parent or other custodian is engaged in short-term activities on the premises of the organization, shall register as providing casual care and shall not be deemed to be a drop-in center or regulated as a drop-in center.
- (21) Exemption. A finding by the Department that, pursuant to the provisions of T.C.A. § 71-3-503, a program involving children is not required to be licensed by the Department of Human Services.
- (22) Extended Care. Child care services offered between the hours of 6:00 p.m. and 6:00 a.m., Monday through Friday, and weekend child care.
- (23) Family Child Care Home. Any place or facility that is operated by any person or entity that provides child care for three (3) or more hours per day for at least five (5) children but not more than seven (7) children who are not related to the primary caregiver; provided, that the maximum number of children present in the family child care home, including related children of the primary caregiver shall not exceed twelve (12), with the exception that, if the family child care home is operated in the occupied residence of the primary caregiver, children related to the primary caregiver nine (9) years of age or older will not be counted in determining the maximum number of children permitted to be present in a "family child care home" if those children are provided a separate space from that occupied by the family child care home. The Department may permit children in the separate space to interact with the children in the licensed family child care home in such manner as it may determine is appropriate.

(Rule 1240-04-03-.02, continued)

- (24) **Field Trip.** Any off-site activity that is not a part of the regular curriculum of the child care agency and which occurs away from the general premises of the child care agency's licensed facility and beyond reasonable walking distance.
- (a) In order to meet the requirement that the trip not be a part of the regular curriculum, the trip must be an occasional activity that does not represent a regular, ongoing service or program of the agency.
- (b) Regularly-scheduled trips (for example, weekly trips) do not meet the definition of a field trip, regardless of whether the regularly-scheduled trips are to different destinations.
- (25) **Foster Home.** A home approved by the Department of Children's Services or a licensed child-placing agency for the residential care of children. Any other agency type that may place children with surrogate families is not considered a "Foster Home" for the purposes of these Rules.
- (26) **Group.** A specific number of children comprising a specific age range and assigned to specific staff in an assigned space that is divided from the space of other groups by a recognizable barrier.
- (27) **Group Child Care Home.** Any place or facility operated by any person or entity that provides child care for three (3) or more hours per day for at least eight (8) children who are not related to the primary caregiver; provided, however, that the maximum number of children present in a group child care home, including those related to the primary caregiver, shall not exceed twelve (12) children, with the exception that, if the group child care home is operated in the occupied residence of the primary caregiver, children related to the primary caregiver nine (9) years of age or older will not be counted in determining the maximum number of children permitted to be present in a group child care home, if those children are provided a separate space from that occupied by the group child care home; and, provided, further, that up to three (3) additional school-age children, related or unrelated to the primary caregiver, may be received for child care before and after school, on school holidays, on school snow days and during summer vacation. The Department may permit children in the separate space to interact with the children in the licensed group child care home in such manner as it may determine is appropriate.
- (28) **Home School.** For the purposes of these rules home schooling is defined as the provision of full-time educational services, as recognized by the Department of Education, to a child by the child's parent in the child's primary residence.
- (29) **Infant.** A child who is six (6) weeks through fifteen (15) months of age.
- (30) **Law.** Statutory or regulatory provisions affecting the operation of a child care agency including, but not limited to, the licensing law as contained in T.C.A. §§ 71-3-501 through 71-3-513, Chapter 1240-4-5, and these rules.
- (31) **Licensee.** The owner, as defined by these rules, to whom a license to operate a child care facility is issued.
- (32) **Licensed Capacity.** The designated maximum number of children permitted in a facility as determined by the Department based upon available space, age of children, adult:child ratios, and group size. Licensed capacity shall be designated on the license.
- (33) **Meal.** Meat or meat substitute, vegetable and/or fruit, bread or bread product, and fluid milk

(Rule 1240-04-03-.02, continued)

- (34) Off-Site Activity. Any activity which occurs away from the general premises of the child care agency's licensed facility and beyond reasonable walking distance.
- (35) Operator. The individual who is an owner or administrator of a child care agency or child care system.
- (36) Owner. The individual(s), corporation, partnership, cooperative, or other private or public entity of any kind, or any combination thereof, who or which, either individually or through their authorized representatives, assume, or is legally required to assume, ultimate legal and administrative responsibility for the management and control of a child care agency.
- (37) Parent. A biological, legal, or adoptive parent, and includes, for purposes of this Chapter, a guardian, legal or physical custodian or other caretaker of a child, any of whom has primary responsibility for a child.
- (38) Physical Restraint. As used in these rules, a therapeutic safe-hold method of temporarily restraining a child who is at imminent risk of serious self-inflicted injury which is performed by trained personnel after all other methods of alleviating the danger to the child have failed.
  - (a) The term "safe-hold" includes any technique through which an adult attempts to immobilize a violent child by wrapping their limbs around the child. The term does not include holds administered for the sole purpose of providing comfort or security to a distressed child.
  - (b) The term "serious self-inflicted injury" includes, but is not limited to, violent outbursts in which a child throws himself/herself against a wall, is hitting or cutting himself/herself, etc.
- (39) Preschool Child. A general term for any child who is six (6) weeks through five (5) years of age and not in kindergarten, including children who are more specifically defined under this subchapter as an "Infant" or a "Toddler".
- (40) Related. As used in this Chapter, any children of the following relationships by marriage, blood, or adoption: children, step-children, grandchildren, siblings, step-siblings, nieces, and nephews of the primary caregiver. The term related includes any "grand" or "great" relationship (e.g., great niece, great grandchild, etc.) within the relationships indicated.
- (41) School-age Child. A child who is five (5) years of age and enrolled in kindergarten through seventeen (17) years of age. A five (5) year-old may be classified as a school-age child in the summer immediately preceding the child's fall entry into kindergarten.
- (42) Sick Child Care. The provision, for three (3) or more hours per day and less than twenty-four (24) hours per day, of the supervision, protection, and meeting the basic needs of children who have short term illness, symptoms of illness, or who have a medical or technological dependency that requires continuous nursing intervention.
- (43) Snack. A fluid drink and two (2) of the following components, provided, however, that a fluid drink shall not be required if a fluid drink is chosen as one of these components:
  - (a) Vegetables or fruits;
  - (b) Bread or bread alternates;
  - (c) Meat or meat alternates; or
  - (d) Fluid milk.

(Rule 1240-04-03-.02, continued)

- (44) Staff. Full and part-time caregivers, employees, or unpaid volunteers of the agency.
- (45) Substitute. Paid or unpaid persons who are replacements for regular staff.
- (46) Supervision. For the purposes of this Chapter, when children are not within the direct sight and sound of an adult, the term "supervision" means the following requirements:
  - (a) Children six (6) weeks of age through nine (9) years of age:
    - 1. The adult must be able to hear the child at all times, must be able to see the child with a quick glance, and must be able to physically respond immediately.
    - 2. Exception during mealtime: An adult must be in the direct sight and sound of children ages six (6) weeks through five (5) years, not in kindergarten, while the child is eating.
  - (b) Children ten (10) years of age and older:
    - 1. The adult shall know the whereabouts and activities of the children at all times and must be able to physically respond immediately.
    - 2. Each child shall be greeted and received by the specific caregiver assigned who will have ultimate responsibility and accountability for their supervision, oversight and care.
  - (c) Mixed-age Groups. When children ages ten (10) years or above are grouped with children under ten (10) years of age, the minimum supervision requirements for children ages six (6) weeks through nine (9) years, as set forth in subparagraph (a) above, shall be followed.
  - (d) Helper devices such as mirrors, electronic sound monitors, etc. may be used as appropriate to meet these requirements.
- (47) Temporary License. A permit issued by the Department to a new child care agency allowing and authorizing the temporary licensee to begin child care operations while the agency attempts to attain full compliance with all other applicable regulations. The temporary license is valid, unless suspended, for one hundred twenty (120) days or until the Department grants or denies the application for an annual license.
- (48) Toddler. A child who is twelve (12) months through thirty (30) months of age.
- (49) Vehicle for Child Care. Any vehicle that is under the direction or control of the child care agency or which is utilized by the child care agency through contract or other agreement, and which is used to provide transportation for children enrolled in the agency, including all vehicles owned or operated by the agency, by a contractor for the agency, or by any other third party providing services to or on behalf of the agency.
- (50) Volunteer. A person who provides services for a child care agency without payment and who is used to supplement the regular staff or substitutes, but who is not used to meet the required adult:child ratios; provided, however, that volunteers can be used to meet the required adult:child ratios at the field trip destination.
- (51) Youth. A person who is ten (10) years of age through seventeen (17) years of age.

(Rule 1240-04-03-.02, continued)

**Authority:** T.C.A. §§4-5-202; 71-1-105(5); 71-3-501 et seq.; 71-3-502(a)(2). **Administrative History:** Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed January 7, 1987; effective April 29, 1987. Amendment filed April 22, 1992; effective June 6, 1992. Amendment filed July 1, 1993; effective September 14, 1993. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Amendment filed September 29, 2000; effective December 13, 2000. Amendment filed October 17, 2001; effective December 31, 2001. Repeal and new rule filed June 20, 2006; effective September 3, 2006.

**1240-04-03-.03 BASIS FOR ISSUANCE OF A LICENSE.**

- (1) Annual License.
  - (a) All child care agencies are required by Tennessee law to be licensed annually by the Department, unless determined by the Department to be exempt from licensing pursuant to the provisions of T.C.A. § 71-3-503.
  - (b) Issuance of a license is not an endorsement of child care methods or of an agency's operational philosophy. A license is not transferable from one location to another or from one licensee/operator to another.
  - (c) All or any part of the license may be revoked at any time upon thirty (30) days notice to the licensee; or if the health, safety, or welfare of the children in care imperatively requires, the license, or any part of the license, may be suspended immediately.
- (2) Exemption from Licensure.
  - (a) A child care agency claiming an exemption pursuant to T.C.A. § 71-3-503 shall submit to the Department's licensing director, or designee, a sworn, written request for exemption in such manner and form as the Department may require. The request shall provide a detailed description of the operation of the program or activity, the program's or activity's purpose and the applicant's basis for claiming an exemption. The Department shall provide a written response to the exemption request stating the reasons the exemption was granted or denied.
  - (b) Recognition of exemption from licensure by the Department does not exempt the child care agency from compliance with any other local, state, or federal requirements applicable to its operation.
- (3) Issuance of the license is based upon the following criteria:
  - (a) The safety, welfare and best interests of the children in the care of the agency;
  - (b) The capability, training and character of the persons providing or supervising the care to the children and the use of such judgment by a caregiver in the performance of any of the caregiver's duties as would be reasonably necessary to prevent injury, harm or the threat of harm to any child in care;
  - (c) The quality of the methods of care and instruction provided for the children;
  - (d) The suitability of the facilities provided for the care of the children; and
  - (e) The adequacy of the methods of administration and the management of the child care agency, the agency's personnel policies, and the financing of the agency.

(Rule 1240-04-03-.03, continued)

- (4) The licensee must maintain compliance with the licensing criteria listed in paragraph (3) above and any other licensing criteria throughout the licensing year.
- (5) Foster Homes may not receive a license to operate a child care facility within the foster home. The Department may, in its discretion, waive this requirement if circumstances clearly warrant such an exemption. The request for a waiver shall be submitted in writing to the Department's Licensing Director.
- (6) Falsification of Information. Includes but is not limited to falsified or forged records, documents, and/or concealment of services or children from monitoring by the Department. Falsification of any information required for licensure shall be grounds for suspension, denial, or revocation of the license.
- (7) Scope of Licensed or Exempt Operation.
  - (a) Licensed capacity shall be designated on the license. All programs shall operate within the licensed capacity or exemption criteria, the hours of operation, the specific age ranges, services offered, and at the address designated on the license or at which the operation was exempted.
  - (b) All programs shall operate within any restrictions stated on the license.

**Authority:** T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2) and (3), and 71-3-503(a)(6),(8), and (9). **Administrative History:** Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed January 7, 1987; effective April 29, 1987. Amendment filed April 22, 1992; effective June 6, 1992. Amendment filed July 1, 1993; effective September 14, 1993. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Withdrawal of repeal of 1240-04-03-.03(4)(f) and (1) filed August 31, 1998. Amendment filed September 29, 2000; effective December 13, 2000. Repeal and new rule filed June 20, 2006; effective September 3, 2006.

#### 1240-04-03-.04 PROCEDURES FOR OBTAINING A LICENSE.

- (1) Licensing Procedures.
  - (a) The procedures for licensing, administrative actions, probation, civil penalties, and suspension, denial, revocation of licenses and appeals of licensing actions taken by the Department are contained in Chapters 1240-4-5, 1240-5-13 and this Chapter.
  - (b) The Department may initiate administrative licensing action and/or judicial action against the licensee pursuant to any provisions of T.C.A. § 71-3-501 et seq. and Chapters 1240-4-5, 1240-5-13, this Chapter or any other provisions of the law.
  - (c) Any conflict between the definitions and procedures contained in Chapters 1240-4-5 and 1240-5-13 and this Chapter shall be resolved by reference to the provisions of this Chapter.
- (2) When an individual or group is giving consideration to opening a child care service/business, the local county office of the Tennessee Department of Human Services must be contacted to obtain an application.

(Rule 1240-04-03-.04, continued)

- (3) The applicant shall attend one pre-application training session as provided by the Department. In the case of a program that is governed by a board of directors or trustees, this training shall be attended by the applicant. If the applicant is not responsible for the day-to-day management of the program, this training shall be attended by both the applicant and the individual responsible for the day-to-day management.
- (4) In addition to the training required in paragraph (3) above, new directors/managers shall attend a pre-service orientation training as provided by the Department and which is at least four (4) hours in length. In the case of a program that is governed by a board of directors or trustees, this training shall be attended by an individual who is responsible for the day-to-day management of the program.
- (5) A completed application form shall be signed by the owner or the owner's authorized representative and shall be submitted to the Department in the form and manner directed by the Department.
  - (a) The failure to fully complete all application forms and/or submit all required supporting documentation as directed by the Department shall void the application for a license.
  - (b) Application fees must be submitted by certified check or money order prior to the issuance of a license; provided, however, that government agencies may submit checks drawn on government accounts.
- (6) Issuance of a Temporary License to New Child Care Agencies shall require:
  - (a) Submission of all required application documentation and the license fee;
  - (b) Verification that the administrative structure of the agency, as required by subchapter 1240-04-03-.05, appropriately identifies and provides structures and procedures for the full-time management of the center;
  - (c) Verification that the qualifications for management positions fully comply with the requirements in Chapter 1240-04-03-.07 and subparagraph (j) below;
  - (d) Verification of three (3) satisfactory written references for the director/management;
  - (e) Verification that the physical facilities have received fire safety and environmental approval;
  - (f) Verification that the on-site director/manager has successfully completed a criminal background check and has a negative criminal history as required by T.C.A. § 71-3-507 and this Chapter;
  - (g) Verification that the applicant and the personnel who will care for the children are capable in all substantial respects to care for the children;
  - (h) Verification that the applicant has the apparent ability and intent to comply with the licensing law and regulations;
  - (i) Verification by the Department, after appropriate on-site inspection, that the site is suitable for child care activities and does not endanger the welfare or safety of children;
  - (j) Verification that the applicant, owner, director or an employee of the agency has not previously been associated in an ownership or management capacity with any child care agency that has been cited by the Department for violations of this part or the Department's regulations, including the agency for which the application is pending,

(Rule 1240-04-03-.04, continued)

unless the Department determines that a reasonable basis exists to conclude that such individual is otherwise qualified to provide child care; and

- (k) Verification that the criteria in 1240-04-03-.03(3) support the issuance of a restricted or unrestricted license.
- (7) Denial or Restriction of Temporary License.
- (a) If the Department determines that any of the requirements set forth in this Chapter has not been, or cannot be, satisfactorily met, then it may deny the application for a temporary license.
  - (b) If the Department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted temporary license that permits operation of a child care agency, but limits the agency's authority in one (1) or more areas of operation.
  - (c) Appeals of the denial or restriction of a license are governed by Chapters 1240-4-5 and 1240-5-13.
- (8) Terms of the Temporary Licensure Period.
- (a) The temporary license shall remain in effect, unless suspended, for a period of one hundred and twenty (120) days, or until such time as the Department grants or denies the application for an annual license, whichever is later.
  - (b) During the temporary licensure period the licensee must attain and maintain compliance with all applicable licensing regulations. The failure to obtain and maintain such compliance during this period may result in the denial of the application for an annual license.
- (9) Evaluation Process for Annual License During the Temporary Licensing Period.
- (a) The temporary license is issued to authorize the temporary licensee to begin child care operations while the agency attempts to attain full compliance with all other applicable regulations.
  - (b) The Department shall perform a minimum of two (2) visits to the child care center during the temporary licensing period, at least one (1) of which shall be unannounced.
  - (c) The Department shall perform at least one (1) observation of the caregivers' interaction with children during the temporary licensing period.
  - (d) During the temporary licensing period, the applicant must provide verification, including any required supporting documentation as directed by the Department, of compliance with all applicable licensing regulations and further, that the applicant otherwise meets, or has continued to meet, all the requirements set forth in paragraph (6) above.
  - (e) During the temporary licensure period the Department shall determine whether an annual or restricted annual license shall be issued to the applicant.
  - (f) If the Department determines that any of the requirements set forth in this Chapter has not been, or cannot be, satisfactorily met then it may deny the application for an annual license.

(Rule 1240-04-03-.04, continued)

- (g) If the Department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted temporary license that permits operation of a child care agency, but limits the agency's authority in one (1) or more areas of operation.
- (h) Issuance of an Annual License. The Department shall issue an annual license if the Department determines that the applicant:
  - 1. Has fully complied with all laws and regulations governing the specific classification of child care agency for which the application was made; and
  - 2. Has demonstrated a reasonable probability that the applicant can maintain compliance with all licensing regulations during the annual license period.
  - 3. Upon issuance of an annual license, the licensee must maintain compliance with all applicable licensing regulations and restrictions on the license, if any, throughout the licensing period.
- (10) Re-Licensure Evaluation Process.
  - (a) Agencies currently licensed by the Department must submit an application for re-licensure prior to the expiration of the existing license. The failure to submit a complete application prior to the expiration of the current license shall result in the automatic termination of the annual license upon the expiration date, and a new application for a temporary license will be required.
  - (b) In addition to the evaluation requirements set forth in paragraphs (6) and (9) above, applicants for re-licensure shall be evaluated for the Report Card and Star-Quality Child Care Program as set forth in Chapter 1240-4-7.
  - (c) Upon demonstration of compliance with all laws and regulations governing the specific classification of child care agency for which the application was made; and, if the applicant has demonstrated a reasonable probability that the applicant can maintain compliance with all licensing regulations during the annual license period, the Department shall issue a new annual license.
  - (d) If the Department determines that any of the requirements set forth in this Chapter has not been, or cannot be, satisfactorily met, then it may deny the application for an annual license.
  - (e) If the Department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted annual license that permits operation of a child care agency, but limits the agency's authority in one (1) or more areas of operation.
- (11) Upon receipt of an application for a license, and throughout the temporary licensing period and during the annual licensing period, immediate access to all areas of the child care facility shall be granted to all Department representatives and other inspection authorities (i.e., fire safety, sanitation, health, Department of Children's Services, etc.) during operating hours.
- (12) If the Department determines, as a result of its inspections or investigations or those of other local, state or federal agencies or officials, or through any other means, that a plan is necessary to insure the safety of the children in the care of the child care center the Department may require the center to implement such safety plan.

(Rule 1240-04-03-.04, continued)

**Authority:** T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), and 71-3-508(c).  
**Administrative History:** Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed April 22, 1992; effective June 6, 1992. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Repeal and new rule filed June 20, 2006; effective September 3, 2006.

**1240-04-03-.05 OWNERSHIP, ORGANIZATION, AND ADMINISTRATION.**

- (1) Required Written Statement of Agency's Purpose.
  - (a) An applicant for a license to operate a child care agency shall submit a written statement in the form and manner directed by the Department which provides the following information:
    1. A description of all services to be offered to children and parents;
    2. Ages of children to be served;
    3. Planned hours of operation;
    4. Meal service plan, including the number and type of meals and snacks to be served, as applicable;
    5. Admission requirements and enrollment procedures; and
    6. Plans for the provision for emergency medical care.
  - (b) If, after being licensed, a licensee wishes to change the scope or type of service offered to children and families, an amended statement shall be filed with the Department for approval prior to implementation of the changes.
- (2) Organizational Structure.
  - (a) The organization of every child care center shall be such that legal and administrative responsibility is clearly defined in writing, in the form and manner directed by the Department, with such writing accompanying the application for a license.
  - (b) Every child care center shall have an on-site director.
  - (c) Following the issuance of an annual license a child care center may operate without an on-site director for a period of no more than sixty (60) days total within the licensing year. A qualified person, as determined by the Department, shall be in charge in the interim.
- (3) Finances and Legal and Regulatory Status.
  - (a) In order to ensure the appropriate continuity of care for children the applicant must provide a reasonable plan with a proposed budget for the financial support of a center. The proposal must demonstrate adequate funding for both preliminary and ongoing costs associated with staffing, equipment and safe operation. Adequate financing of the center's operation shall be maintained throughout the licensing year.

(Rule 1240-04-03-.05, continued)

- (b) Proposed budgets and other relevant financial records shall be immediately available to the Department upon request.
  - (c) If any child care agency is the subject of any bankruptcy or receivership petition or order, or any other action that may affect the financial status or operational status of the child care agency, including but not limited to foreclosure notices, liens, etc., or, if any child care agency is the subject of any local, state or federal regulatory action, such as, but not limited to, the fire safety, health, environmental zoning or local, state or federal program compliance status or tax enforcement proceedings, the agency's management shall immediately notify the Department and shall provide current documentation of the status of the agency, including copies of necessary administrative and/or court legal documents applicable to that status.
- (4) Insurance.
- (a) General liability, automobile liability and medical payment insurance coverage shall be maintained on the operations of the child care agency's facilities and on the vehicles owned, operated or leased by the child care agency and as follows:
    - 1. General liability coverage on the operations of the child care agency facilities shall be maintained in a minimum amount of five hundred thousand dollars (\$500,000) per occurrence and five hundred thousand dollars (\$500,000) general aggregate coverage.
    - 2. Medical payment coverage shall be maintained in the minimum amount of five thousand dollars (\$5,000) for injuries to children resulting from the operation of the child care agency.
    - 3. Automobile coverage for agencies that transport children:
      - (i) Automobile liability coverage shall be maintained in a minimum amount of five hundred thousand dollars (\$500,000) combined single limit of liability.
      - (ii) Medical payment coverage shall be maintained in the minimum amount of five thousand dollars (\$5,000) for injuries to children being transported in vehicles owned, operated or leased by the child care agency.
  - (b) The requirements of this paragraph shall not apply to an agency that is under the direct management of a self-insured administrative department of the state, a county or a municipality, or any combination of those three (3), or that has, or whose parent entity has, a self-insurance program that provides, as determined by the Department, the coverages and the liability limits required by these rules.
  - (c) Documentation that the necessary insurance is in effect, or that the administrative department or other entity is self-insured, shall be maintained in the records of the child care agency and shall be available for review by the Department.
- (5) Enrollment Restrictions.
- (a) Enrollment of children under six (6) weeks of age is prohibited.
  - (b) Children shall not be in care for more than twelve (12) hours in a twenty-four (24) hour period except in special circumstances (e.g., acute illness of or injury to parents, severe weather conditions, natural disaster, and unusual work hours). In such cases every effort shall be made to minimize the amount of time spent in the child care

(Rule 1240-04-03-.05, continued)

agency by exploring and documenting alternatives (i.e., part time care, care with a relative, etc).

- (c) Individualized plans for the care of a child in excess of twelve (12) hours due to special circumstances shall be signed by the parent and the director and must be approved by the Department. Plans shall be updated annually.

~~(d) The agency shall not admit a child into care until the parent has supplied the agency with a completed application, immunizations record (for children over two (2) months of age), and a health history.~~

[(d) The agency shall not admit a child into care until the parent/guardian has supplied the agency with a completed application, valid Tennessee Department of Health Official Immunization Certificates record (for children over two (2) months of age), and a health history. Exception: After an initial eligibility determination, children who are homeless and/or children in state custody may receive care prior to providing all required documentation as determined by the Department. Care without documentation of immunizations shall not exceed thirty days.]

- (e) All children physically present in the facility shall be counted in the adult:child ratio and group size, and shall have all required records on file before care is provided.

~~(f) The agency shall maintain written documentation that the parent performed an on-site visit to the agency to review the agency's facility and child care policies and practices prior to the child being enrolled into care.~~

[(f) The agency shall maintain written documentation that the parent/guardian performed an on-site visit to the agency prior to the child being enrolled into care and that the agency provided and reviewed parent engagement strategies recognized by the Department with the parent during the required pre-placement visit. Exception: A pre-placement visit is not required for children of homeless families.]

(6) Requirements for Communication with Parents.

- (a) A copy of the agency's policies, procedures, and the Department's Summary of Licensing Requirements shall be supplied to the parent/ upon admission of the child. The agency's policies shall include:

~~1. Criteria for the disenrollment of children; and~~

~~2. Specific criteria concerning the release of children to anyone whose behavior may place the children at immediate risk.~~

[1. Criteria for the disenrollment of children [see expulsion policy requirements in 1240-04-03-.05(13)];

2. Specific criteria concerning the release of children to anyone whose behavior may place the children at immediate risk;

3. Written parental permission for observation of children by non-child care agency staff;

4. Behavior management techniques;

5. Hours of operation;

(Rule 1240-04-03-.05, continued)

6. Late fees;
  7. Rates;
  8. Inclement weather;
  9. Emergency policy;
  10. Whether the environment is smoke free; and
  11. Meal Service policy.]
- (b) The agency shall require the parent to sign for receipt of the policies and Licensing Summary, and the signed receipt shall be maintained by the agency in the child's file.
- (c) Parents shall be permitted to see the professional credential(s) of staff upon request.
- (d) The agency shall implement a plan for regular and ongoing communication with parents. This plan shall include but not be limited to communication concerning curriculum, changes in personnel, or planned changes affecting children's routine care. Documentation shall be maintained for the most recent quarter.
- (e) During operating hours, parents shall be permitted immediate access to their children.
1. The agency shall grant access to noncustodial parents if the noncustodial parent provides the agency with a valid court order granting the noncustodial parent access to the child during agency operating hours; provided, however, that such access is not otherwise restricted or prohibited by an Order of Protection or other legal document.
  2. The custodial parent may not prohibit or restrict, or require the agency to prohibit or restrict, the noncustodial parent's access to the child while in the care of the agency if the noncustodial parent meets the provisions of part (e)1 above.
  3. The agency may place reasonable restrictions on access by any parent as needed to limit disruption of the children's routines, e.g., limiting the number of days each week the parent may visit, the duration of the visit, etc. Any such limitations or restrictions must be clearly stated in the agency policy provided to the parent upon enrollment of the child, or at any subsequent time if the agency's policy is changed.
- (f) Parents shall give written permission in advance of the child's removal from the premises, including prior notification and consent for each off-site activity, except in cases of emergencies or investigative procedures conducted pursuant to the child protective service laws or other applicable laws.
- (g) Children shall be signed in and out of the center by the custodial parent or other person specifically authorized by the parent or the appropriate staff person. Center staff shall verify parental authorization and the identity of any person to whom a child is released.
- (h) An abuse prevention awareness program for parents shall be offered at least once a year. The program shall include a child abuse prevention component, as recognized by the Department with information on the detection, reporting, and prevention of child abuse in child care agencies and in the home.
- (i) Notifying Parents of Licensing Violations.

(Rule 1240-04-03-.05, continued)

1. Within the licensing year, after issuing two (2) formal notices of licensing violations, a notice of Probation, or after issuing any type of legal enforcement order, the Department may, in its discretion, require the agency to notify parents and funding sources of the circumstances. Such notification shall be a letter prepared by the Department to be provided to each parent or posted in the center with parents' signatures indicating that they have seen the letter.
2. The Department may, in its discretion, notify parents and funding sources of any decision affecting the child care agency rendered by the Child Care Agency Board of Review pursuant to Chapter 1240-5-13 or by any court.

(7) General Record Requirements.

- (a) All records required by this Chapter shall be maintained in an organized manner on-site at the agency and shall be immediately available to the Department upon request.
- (b) A child's records shall be kept for one (1) year following the child's leaving the agency; provided, however, that the health record shall be returned to the child's parent upon request when the child leaves the agency.
- (c) Staff records shall be maintained for at least one (1) year following the separation of the staff from the agency.
- [(d) All children, including related children younger than age nine (9), shall have required records on file before care is provided. Exception: After an initial eligibility determination, children of homeless families and/or children in state custody may receive care prior to providing required documentation as determined by the Department.]

(8) Children's Records.

- (a) General Requirements for Children's Records shall include:
  1. A current information form, which shall be updated annually and as changes occur, and which shall include:
    - (i) The child's name and date of birth;
    - (ii) Name of parent(s);
    - (iii) Child's and parents' home addresses and phone numbers;
    - (iv) Parents' business addresses, phone numbers and work hours;
    - (v) Any special needs or relevant history of the child or the child's family; and
    - (vi) The name and address (home and business or school) of a responsible person to contact in an emergency if parents cannot be located promptly.
  2. Name, address, and telephone number of a physician to call in case of an emergency.
  3. Written consent of parent regarding emergency medical care.
  4. A written plan stating to whom the child shall be released.

(Rule 1240-04-03-.05, continued)

5. Written transportation agreement between parent and the center regarding daily transportation between the home and the center and the center and the school. If parents have a third-party transportation arrangement, verification and details of the arrangement shall be maintained in the child's file.
6. A copy of the child's health history provided by the child's parent or other caretaker, which need not be signed or certified by a health care provider, shall be on file in the center and shall be available to appropriate staff.
7. Daily attendance records that include the time in and time out for each child.
8. Prior written permission of parent for each off-site activity.
9. Immunization Record.
  - (i) The agency shall maintain a written record in the child's file, as set forth in subparagraphs (b) and (c) below, verifying that the child has been immunized according to current Department of Health guidelines.
  - (ii) Exceptions to this immunization record requirement may be made only if:
    - (I) The child's physician or the health department provides a signed and dated statement, giving a medical reason why the child should not be given a specified immunization; or
    - (II) The child's parent provides a signed written statement that such immunizations conflict with his/her religious tenets and practices.
    - [(III) Care for children of homeless families and/or children in state custody is needed before documentation of immunizations can be confirmed. Care without documentation of immunizations for such children shall not exceed thirty days.]
10. Reports of Incidents, Accidents, Injuries and Fatalities.
  - (i) Incidents, accidents and injuries shall be reported to the parent as soon as possible, but no later than the child's release to the parent or authorized representative.
  - (ii) Incidents, accidents and injuries to children shall be documented immediately as follows:
    - (I) Date and time of occurrence;
    - (II) Description of circumstances; and
    - (III) Action(s) taken by the agency.
  - (iii) Documentation of incidents, accidents and injuries to children shall be filed in the child's record no later than one (1) business day immediately following the occurrence.
  - (iv) The Department shall be notified of any child fatality at the agency no later than one (1) calendar day immediately following the death.

(Rule 1240-04-03-.05, continued)

(b) Preschool Children's Record Requirements.

1. Additional information for infants, toddlers and all non-verbal children shall be recorded and shared with parents daily as follows: the time and amount of feeding, any incidence of excessive spitting up, toileting and/or times of diaper changes, sleep patterns, and developmental progress.
2. Before a child under the age of thirty (30) months of age is accepted for care, the parent shall provide proof of a physical examination within three (3) months prior to admission, signed or stamped by a physician or health care provider. This record must be kept on file at the agency.
3. A copy of each preschool child's immunization record, signed or stamped by a certified health care provider, shall be on file in the child care center and shall be available to the appropriate staff.

(c) School-age Children's Record Requirements.

1. The information form for school-age children shall list the name, address, and phone number of the school the child attends.
2. Before a school-age child is accepted for care, the center shall have on file a statement from the parent (or the school) that the child's immunizations are current and that his/her health record is on file at the specified school which the child attends.
3. The records of any child who is five (5) years old in an agency which lacks approved kindergarten status for purposes of T.C.A. § 49-6-201 shall include a signed acknowledgment by the child's parents that recognizes that the child's attendance does not satisfy the mandatory kindergarten prerequisite for the child's enrollment in first grade. The statement of acknowledgment shall be signed by the parent and maintained in the child's file.

- (d) Record Requirements for Children with Special Needs. A daily activity record that consists of a daily accounting of anything and everything the child did that day for children with special needs must be maintained.

(9) Staff Record Requirements Shall Include:

- (a) Name, birth date, the social security number used by the employer for Federal/State tax purposes, address, and telephone number of all staff members, including volunteers, and a contact for each staff member in an emergency;
- (b) Educational background and educational experiences, including dates and places of diplomas received, and conferences, courses, and workshops attended in the preceding year;
- (c) Documentation, signed by the examining licensed physician, licensed psychologist, licensed clinician, Nurse Practitioner or Physician's Assistant, verifying that the staff person is physically, mentally and emotionally capable of safely and appropriately providing care for children in a group setting. The documentation shall be on file within ten (10) calendar days of employment or starting to work;
- (d) An updated statement of each staff member's physical health shall be obtained every third (3<sup>rd</sup>) year, or more often if deemed necessary by the Department;

(Rule 1240-04-03-.05, continued)

- (e) At least three (3) references from non-relatives, either written or with documented interviews of each reference, on each new staff member;
  - (f) Written, verified record of employment history;
  - (g) Documentation of annual performance reviews;
  - (h) Date of employment and date of separation from the agency;
  - (i) Daily attendance (including time in/out) of staff;
  - (j) Signed and completed criminal history disclosure form;
  - (k) Verification of criminal background check results;
  - (l) Verification of Vulnerable Persons Registry results;
  - (m) Driver records shall additionally contain:
    - 1. Copy of driver's license showing proper endorsement;
    - 2. Verification of a passed drug screen; and
    - 3. Verification of Cardiopulmonary Resuscitation (CPR) and First Aid certifications; and
  - (n) Volunteer Records. Records of volunteers shall be maintained on-site at the agency and must include the names, addresses, telephone numbers and dates of service for all volunteers.
- (10) Right to Privacy/Confidentiality.
- The licensee and agency staff shall not disclose or knowingly permit the use by other persons of any information concerning a child or family except as required by law, regulation or court order, or as may be necessary to be disclosed to public authorities in the performance of their duties and which may be necessary for the health, safety, or welfare of any child enrolled at the center or of the child's family.
- (11) Posting of License, Report Card, and Other Required Documentation.
- (a) During the hours of operation, the current license to operate the child care center shall be posted near the main entrance in a conspicuous location.
  - (b) During the hours of operation, the agency Report Card shall be posted near the main entrance in a conspicuous location.
  - (c) The Department's toll-free child care complaint number shall be posted in a conspicuous location.
  - (d) The Department of Children's Services' child abuse reporting number shall be posted near the main entrance in a conspicuous location and at each telephone.
  - (e) A copy of all current applicable Department licensing rules shall be maintained in a central space and available to all staff and parents.

(Rule 1240-04-03-.05, continued)

- (f) No smoking signs shall be posted in a conspicuous manner; provided, however, that such signs are not required in child care agencies which are operated within private residences.
- (g) The agency shall post any other materials as directed by the Department.

(12) Release of Children.

- (a) Children shall only be released to a responsible designated person in accordance with the child release plan required by these rules. The agency shall verify the identity of the authorized person by requiring presentation of a photo identification.
- (b) The person to whom the child is released must sign the child out of the agency.
- (c) Children shall not be released to anyone whose behavior may, as deemed by a reasonable person, place the child in imminent risk; provided, however, that if the agency reasonably believes that refusal to release the child could place staff or other children in imminent risk the agency may release the child, but must immediately call 911 or other local emergency services number.

[(13) The agency shall have a written expulsion policy.

- (a) The policy shall be:
  - 1. Clearly articulated to staff and parents;
  - 2. Developmentally appropriate and consistent; and
  - 3. Non-discriminatory.
- (b) Other options shall be considered prior to expulsion, such as but not limited to reducing the number of days or amount of time the child may attend, or if applicable, referrals to the Center on the Social and Emotional Foundations for Early Learning (CSEFEL), Early Intervention System, Individuals with Disabilities Education Act (IDEA).
- (c) Procedures shall be developed to allow for a planned transition of a child to another program if expulsion must occur.
- (d) Aggregate data that includes reasons for expulsions shall be maintained and reported to the Department annually.]

[(14) Data Reporting. Agencies shall submit data as requested by the Department quarterly on topics such as but not limited to: active enrollment, homeless children, non-traditional hours, deaths/serious injuries, child abuse, English as a Second Language/dual language learners, and children with disabilities.]

**Authority:** T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2). **Administrative History:** Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed April 22, 1992; effective June 6, 1992. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Repeal and new rule filed June 20, 2006; effective September 3, 2006.

**1240-04-03-.06 SUPERVISION.**

(1) Supervision Procedures.

(a) Agency Responsibility for the Children's Supervision.

1. The management of the agency shall maintain a system that enables all children in the agency's care to receive a level of supervision of their status and activities that is appropriate to their age and their developmental, physical and mental status so as ensure their health and safety and that allows agency personnel to know the whereabouts of each child in their care.
2. This system shall include a mandatory visual inspection of all areas of the building and grounds immediately prior to closing the agency for the day in order to ensure that no children have been unintentionally left in any part of the agency's facilities or in any vehicles that the agency uses to transport children.

(b) Children six (6) weeks of age through nine (9) years of age:

1. The adult must be able to hear the child at all times, must be able to see the child with a quick glance, and must be able to physically respond immediately.
2. Exception during mealtime: An adult must be in the direct sight and sound of children ages six (6) weeks through five (5) years, not in kindergarten, while the child is eating.

(c) Children ten (10) years of age and older:

1. The adult shall know the whereabouts and activities of the children at all times and must be able to physically respond immediately.
2. Each child shall be greeted and received by the specific caregiver assigned who will have ultimate responsibility and accountability for their supervision, oversight and care.
3. When children, age ten (10) and above, are permitted to leave one caregiver's assigned area and go to another, the center shall implement a system to track the whereabouts of each child and recognize the transfer of responsibility from one caregiver to another.

(d) Mixed-age Groups. When children ages ten (10) years or above are grouped with children under ten (10) years of age, the minimum supervision requirements for children ages six (6) weeks through nine (9) years, as set forth in subparagraph (b) above, shall be followed.

(e) Helper devices such as mirrors, electronic sound monitors, etc. may be used as appropriate to meet these requirements.

(f) Caregivers shall monitor children's toileting and be aware of their activities while respecting the privacy needs of the child.

(g) When more than twelve (12) children are present on the premises, but a second (2<sup>nd</sup>) adult is not required by the adult:child ratio rules contained in this Chapter, a second (2<sup>nd</sup>) adult must be physically available on the premises.

(h) The agency shall maintain a plan, approved by the Department, that enables a caregiver in an emergency situation to call a second (2<sup>nd</sup>) adult who can respond

(Rule 1240-04-03-.06, continued)

quickly while maintaining as much supervision of the children in care as is possible under the circumstances.

- (i) If children with special needs are enrolled, Section 504 of the federal Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) guidelines shall be consulted regarding the number of caregivers that a reasonable accommodation of a child's disability may require.
  - (j) All children for whom care is provided at any one time shall be included in the agency's enrollment, square footage allowance, and licensed capacity.
  - (k) Auxiliary staff may be used as emergency substitutes if their qualifications permit, but not while performing other duties.
  - (l) If meals are served, any person responsible for preparing meals and washing the dishes shall not be included in the adult:child ratio while preparing these meals or washing dishes.
  - (m) When more than twelve (12) children in first grade and above are present, a separate group, a separate space, and a separate program shall be provided for them.
- (2) Assignment of Children to Groups.
- (a) Each child must be on roll in a defined group and assigned to that group with a specific caregiver(s).
  - (b) Maximum group size requirements shall be maintained at all times with the exception of meals served in common dining rooms, napping in common nap rooms, or outdoors on the playground.
  - (c) When infants are cared for in a center with older children, they shall not be grouped with children older than thirty (30) months of age, and a separate area shall be provided for them.
  - (d) Extended Care. Children age thirteen (13) months and older may be grouped together while sleeping in overnight care.
  - (e) In order to assure the continuity of care for children and their caregivers, the children shall be kept with the same group throughout the day and shall not be moved, shuffled, or promoted to a new group until required based upon the developmental needs of the child; provided, however, that:
    - 1. Groups, excluding infants and toddlers, may be combined for short periods for a special activity, e.g., special assembly, visiting performers or community helpers, etc., of no more than thirty (30) minutes duration per day as long as adult:child ratios are met.
    - 2. Groups, excluding infants and toddlers, may be combined, for up to one (1) hour at the beginning of the day and for up to one (1) hour at the end of the day as set forth in Adult:Child Ratio Chart 3 in part (3)(d)3 below.
  - (f) Each group must have a "home base" with enough space for the entire group.
- (3) Required Adult:Child Ratios.

(Rule 1240-04-03-.06, continued)

- (a) The adult:child ratios shall be maintained by the child care agency while the children are indoors and on the playground.
- (b) Adult:child ratios and group sizes may exceed the required limit by up to ten percent (10%), rounded to the nearest whole number, for no more frequently than three (3) days per week; provided, however:
  - 1. Infant and toddler groups may never exceed the required ratios and group sizes;
  - 2. The licensed capacity of the classroom may not be exceeded; and
  - 3. The Department may modify or terminate this 10% variance in individual cases according to the provisions for issuance of a restricted license pursuant to T.C.A. § 71-3-502(d)(7)(B).
- (c) Any number of children in excess of the adult:child ratios requires a second qualified adult caregiver; provider, however, that the maximum group size shall not be exceeded.
- (d) Adult:Child Ratio Charts
  - 1. Chart 1 – Single Age Grouping & Adult:Child Ratio Chart.

Single-Age Grouping	8	12	14	16	18	20	No Max
Infants: Six (6) wks.– Fifteen (15) mos.	1:4						
Toddlers (Twelve (12) mos.–Thirty (30) mos.)		1:6					
Two (2) years (Twenty-Four (24) mos.– Thirty-Five (35) mos.)			1:7				
Three (3) years					1:9		
Four (4) years						1:13	
Five (5) years						1:16	
School-Age (K and above)							1:20

- 2. Chart 2 – Multi-Age Grouping & Adult:Child Ratio Chart.

Multi-Age Grouping	10	16	18	20	22	24	No Max
Infants/Toddlers: Six (6) wks.–Thirty (30) mos.	1:5						
Two (2)-Four (4) years		1:8					
Two and One-Half (2½)– Three (3) years (Thirty (30)–Forty-Seven(47) mos.)			1:9				
Two and One-Half (2½)– Five (5) years				1:11			
Two and One-Half (2½)– Twelve (12) years	1:10						

(Rule 1240-04-03-.06, continued)

Three (3)–Five (5) years (includes Three (3)–Four (4) years)					1:13		
Four (4)–Five (5) years						1:16	
Five (5)–Twelve (12) years							1:20

3. Chart 3 – Allowable Combined Grouping & Adult:Child Ratio Chart for first/last hour of each day only:

	10	15	20	
2.5–12 years	1:10			
3–12 years		1:15		
4–12 years			1:20	

(4) Naptime Supervision (Requirements for Naptime and Nighttime Care).

- (a) At naptime and during nighttime care, after the children have settled down, adult:child ratios may be relaxed so long as the children are adequately protected and all of the following requirements are met:
  1. At least one (1) adult shall be awake and supervising the children in each nap room/sleeping area;
  2. Infant/toddler ratios shall be maintained; and
  3. The adult:child ratio for children ages thirty-one (31) months and above can be fifty percent (50%) of the required ratio if there are enough adults on the premises so that the adult:child ratio required for children when they are awake shall be met immediately in an emergency.
- (b) Maximum group size limits do not apply as long as the appropriate adult:child ratio is met at the fifty percent (50%) level.
- (c) Sudden Infant Death Syndrome. Because of the possibility of Sudden Infant Death Syndrome:
  1. Infants shall be positioned on their backs when placed in a crib for sleeping.
  2. In order to avoid the risk of smothering, soft bedding for infants is prohibited.
  3. Infants shall not be wrapped tightly or swaddled in blankets for sleeping.
  4. Infants shall be touched by a caregiver every fifteen (15) minutes in order to check breathing and body temperature.
  5. Pillows shall be prohibited for infants.
  6. If a child appears not to be breathing, the agency must immediately begin CPR and call for emergency medical assistance.
  7. Before any caregiver can assume caregiving duties of any type in an infant room they shall be oriented in the foregoing SIDS procedures.

(Rule 1240-04-03-.06, continued)

- (d) Naproom Lighting. The areas where infants sleep shall be lit in a manner which allows the caregiver to quickly, at a glance, verify that the child's head is uncovered, that the child is breathing, and otherwise visually verify the child's condition.
- (5) Playground Supervision.
  - (a) The same adult:child ratios are applicable for the playground as in the classrooms.
  - (b) A playground supervision plan shall be written and implemented which includes:
    - 1. Arrival and departure procedures;
    - 2. Supervision assignments of staff to assure that all areas of the playground can be seen so that all children can remain within sight of the caregivers;
    - 3. Identification of which staff will merely supervise in their assigned zone while other caregivers, if any, interact with children as play facilitators;
    - 4. Emergency plans specific to a variety of circumstances, such as, child injury, weather evacuation, toileting and other personal care needs of children or staff, etc.; and
    - 5. A communication link among playground supervisors and a designated staff person, if available, inside the agency.
- (6) Supervision During Off-Site Activities.
  - (a) Preschool Children. The adult:child ratios in charts 1 and 2 must be doubled during off-site activities.
  - (b) School-age Children.
    - 1. The number of trained caregivers required to be present on off-site activities shall be at a minimum, equivalent to the number that would be required in the classroom; additional adults to meet the following off-site ratios in chart 4 may be caregivers, volunteers or unpaid staff.
    - 2. Chart 4 - Off-Site Activities for School-age Children
 

Number of Children On Activity	Trained Caregivers	Additional Adults	Total Adults Required
1 - 20	1	1	2
21 - 30	2	1	3
31 - 40	2	2	4
41 - 50	3	2	5
  - (c) A minimum of two (2) adults is required for any off-site activity.
  - (d) The center must maintain a system utilizing an off-site attendance roll which tracks the whereabouts of each child while off the center premises.
- (7) Supervision While Swimming. When children are swimming, the adult:child ratios in Chart 5 and the following requirements shall be met:
  - (a) Chart 5 - Swimming Adult:Child Ratio Chart.

(Rule 1240-04-03-.06, continued)

Age Group	Ratio
Infants(Six (6) wks-Twelve (12)months)	1:1
Toddlers/twos (Thirteen (13) –Thirty-Five (35) months)	1:2
Three (3) Year Olds	1:4
Four (4)Year Olds	1:6
Five (5) Year Olds	1:8
School-Age (K And Above)	1:10

- (b) Although group swimming for infants and toddlers is not prohibited, it is not recommended due to the high risk.
  - (c) At least one (1) adult present shall have a current certificate in advanced aquatic lifesaving skills. This person must supervise from above the level of the swimmers, preferably from an elevated lifeguard chair or otherwise from the pool deck.
  - (d) The lifeguard may not be included in the required adult:child ratio while performing lifeguard duties.
  - (e) Remaining caregivers shall supervise children who are both in and out of the water.
- (8) Transportation Supervision. Supervision for transportation of children shall comply with rules in 1240-04-03-.13.

**Authority:** T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2). **Administrative History:** Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Amendment filed June 7, 1982; effective September 30, 1982. Amendment filed June 27, 1985; effective September 13, 1985. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed January 7, 1987; effective April 29, 1987. Amendment filed April 22, 1992; effective June 6, 1992. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Amendment filed November 18, 1999; effective January 31, 2000. Amendment filed September 29, 2000; effective December 13, 2000. Amendment filed August 27, 2001; effective November 10, 2001. Amendment filed November 21, 2002; effective February 4, 2003. Repeal and new rule filed June 20, 2006; effective September 3, 2006.

**1240-04-03-.07 STAFF.**

- (1) Responsibility for Staff.
  - (a) The board, owner, applicant/licensee, or other designated agent of the child care center shall be responsible for selecting qualified individuals of suitable character and ability to work with children.
  - (b) The director, with the guidance of the board or owner of the center, shall be responsible for supervision, training and evaluation of the staff, the program and the day-to-day operation of the center.
  - (c) Each location where children are kept shall have an on-site director.
  - (d) To be designated as such, the on-site director of a center which is in operation up to twelve (12) hours a day shall be physically present in the center daily at least half of the

(Rule 1240-04-03-.07, continued)

total hours of operation. If a program operates more than one (1) shift the on-site director shall be physically present at least one shift.

- (e) To be designated as the director or person in charge (on a daily basis) of a multi-site child care program, he/she shall be employed full-time in that capacity.
  - (f) An assistant director or other staff member shall be designated to be in charge in the absence of the director and all staff shall be notified of this designation.
  - (g) Management shall evaluate all staff in the performance of their duties. Caregivers shall be evaluated for knowledge and understanding of growth and development patterns of children and understanding of appropriate activities for children as well as those with special needs.
- (2) General Staff Qualifications.
- (a) Every staff person, including auxiliary staff, substitutes, volunteers, and practicum students, shall be physically, mentally, and emotionally capable of using the appropriate judgment for the care of children and otherwise performing his/her duties satisfactorily.
  - (b) A person who has a physical, mental, or emotional condition which is in any way potentially harmful to children shall not be present with the children.
  - (c) Every staff person, both paid and unpaid, who are under the age of eighteen (18) years must be supervised by an adult while in the presence of children.
  - (d) At least one (1) adult available on the premises at all times during child care operating hours must be able to read and write English.
  - ~~(e) Prior to assuming duties, each new employee shall receive orientation in, and be able to explain:~~
    - ~~1. Program philosophy;~~
    - ~~2. Job description;~~
    - ~~3. Emergency procedures;~~
    - ~~4. Policies regarding discipline of children;~~
    - ~~5. Policies regarding the reporting of child abuse; and~~
    - ~~6. Policies for receiving and dismissing children.~~
  - [(e) Prior to assuming duties, each new employee shall receive documented instruction in, and have a working knowledge of:
    - 1. Program philosophy and policies;
    - 2. Job description;
    - 3. Emergency health and safety procedures;
    - 4. Behavior management procedures;

(Rule 1240-04-03-.07, continued)

5. Detection, reporting, and prevention of child abuse;
  6. Procedures for receiving and releasing children;
  7. Safe sleep procedures;
  8. Shaken baby syndrome/abusive head trauma;
  9. Meal service and safe food preparation policies;
  10. Supervision during high risk activities such as eating and outdoor play;
  11. Food allergies;
  12. Expectations for communications with parent/guardian;
  13. Disease control and health promotion;
  14. An overview of licensing requirements;
  15. Information on risks of Cytomegalovirus (CMV) to female employees of childbearing age;
  16. A minimum of two (2) hours pre-service training as recognized by the Department; and
  17. Documentation of the requirements in this subparagraph (h) shall be maintained in the staff file.]
- (f) Within the first two (2) weeks on the job, each employee (including auxiliary staff, such as bus driver, cook, etc.) shall receive instruction in:
1. Child abuse detection, reporting, and prevention;
  2. Parent-center communication;
  3. Disease control and health promotion;
  4. An overview of licensing requirements; and
  5. Information on risks of infection to female employees of childbearing age.
- [(g) Ongoing Training Requirements – any ongoing training required for employees shall include health and safety topics, such as but not limited to:
1. Prevention and control of infectious diseases (including immunization);
  2. Prevention of sudden infant death syndrome and use of safe sleeping practices;
  3. Administration of medication, consistent with standards for parental consent;
  4. Prevention of and response to emergencies due to food and allergic reactions;
  5. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(Rule 1240-04-03-.07, continued)

6. Prevention of shaken baby syndrome and abusive head trauma;
7. Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);
8. Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;
9. Precautions in transporting children (if applicable); and
10. First aid and pediatric cardiopulmonary resuscitation.]

(g[h]) All training must be documented in the agency's records and be available for review by the Department's staff at anytime.

(h[i]) The agency must maintain written documentation that each employee has read the full set of all applicable licensure rules. In addition, a copy of such rules shall be maintained in an area that is readily accessible to all staff.

(3) Multi-Site Personnel Qualifications.

(a) Multi-Site Coordinator. The multi-site coordinator must meet the same requirements listed below for a single-site child care center director.

(b) Qualifications of On-Site Director under a Multi-Site Coordinator.

1. At least two (2) years of college training or a Department-recognized credential in addition to at least one (1) year of full-time (paid or unpaid) documented work experience with young children in a group setting; or
2. A high school diploma or equivalent educational credential recognized by the Department in addition to at least two (2) years of full-time (paid or unpaid) documented work experience with young children in a group setting.

(4) Qualifications for Director of a Single-Site Child Care Center.

(a) The director shall meet at least one (1) of the minimum qualifications listed in the chart below:

If Minimum Education Is:	The Minimum Group Care Experience Required Is:
Graduation from an accredited four-year (4-year) college	(1) year of full-time (paid or unpaid) experience in a group setting
Sixty (60) semester hours (two [2] years) of college training, with at least thirty (30) hours of which shall be in business or management, child or youth development, early childhood education or related field	Two (2) years of full-time (paid or unpaid) experience in a group setting
High School Diploma (or Department-recognized equivalent), and Tennessee Early Childhood Training Alliance (TECTA) certificate for completing thirty (30) clock hours of orientation training, or the equivalent as	Four (4) years of full-time (paid or unpaid) experience in a group setting

(Rule 1240-04-03-.07, continued)

recognized by the Department	
Has been continuously employed as an on-site child care director or a child care agency owner since July 1, 2000	Not Applicable

(b) Training Requirements:

1. Prior to issuance of the first annual license. Owners (or a designee thereof who is not the on-site director) and directors shall complete a child care orientation course sponsored by the Department.
2. During the first year of employment a new director shall:
  - (i) Complete an orientation course sponsored by the Department within three (3) months of assuming her position; provided, however, that this course shall not be required if the director has:
    - (I) Received specific training meeting the requirements of this part within three (3) years prior to employment; or
    - (II) Earned a Bachelors degree, an Associates degree in child development or early childhood education, a CDA credential, or a CCP credential;
  - (ii) Have evidence of receiving at least thirty-six (36) hours of Department-recognized, competency-based training, at least six (6) hours of which must be in administration, management or supervisory training; or
  - (iii) Earn credit for the year in one (1) academic course in administration, child development, early childhood education, health/safety or other related field.
3. After the first (1<sup>st</sup>) year of employment, the director shall:
  - (i) Earn credit during the year in one academic course in administration, child development, early childhood education, health/safety or other related field; or
  - (ii) Have evidence of receiving at least eighteen (18) clock hours annually in Department-recognized workshops, competency-based training, or one-to-one consulting sessions:
    - (I) Six (6) hours of training shall be in administration, management or supervisory training; and
    - (II) Four (4) hours of the required eighteen (18) hours may be earned by conducting training.

(5) Assistant Director Qualifications.

- (a) The on-site assistant director shall have at least two (2) years of college training or a Department-recognized credential and one (1) year of full-time (paid or unpaid) documented work experience in a group setting; or

(Rule 1240-04-03-.07, continued)

- (b) The on-site assistant director shall have earned a high school diploma or equivalent educational credential recognized by the Department and two (2) years of full-time (paid or unpaid) documented work experience in a group setting.

(6) Caregiver Qualifications.

- (a) Each caregiver shall be at least eighteen (18) years of age. Exception: Sixteen (16) and seventeen (17) year-old students currently enrolled in a Department-recognized vocational child care program may be counted in the adult-child ratio; provided, however, that they shall always be under the direct supervision of an adult and shall not be left alone with a group of children.

- (b) Each group shall have at least one (1) caregiver present who has a high school diploma or equivalent educational credential as recognized by the Department.

(c) Training for Caregivers During the First (1<sup>st</sup>) Year of Employment.

1. New caregivers shall complete, within the first (1<sup>st</sup>) thirty (30) days of employment with the agency, two (2) clock hours of pre-service orientation training offered or recognized by the Department. Pending completion of the orientation training, the caregiver's employment status as a caregiver with the agency is conditional.
2. New caregivers shall additionally complete sixteen (16) hours of Department-recognized, competency-based training within the first (1<sup>st</sup>) year of employment, six (6) hours of which must be completed within the first six (6) months of employment.
3. Failure of the caregiver to complete the required two (2) hours of pre-service orientation and/or failure to complete the required six (6) hours of training within the first (1<sup>st</sup>) six (6) months of employment shall require that the employee be removed from caregiver duties until completion of the training.
4. Exception. Caregivers who have been employed in child care during the last three (3) years, hold a Bachelors or Associates degree in child development or a related field, or who hold a CDA credential or CCP credential as recognized by the Department shall instead comply with the training requirements for experienced caregivers required in subparagraph (d) below.

(d) Training for Caregivers After the First (1<sup>st</sup>) Year of Employment.

1. Experienced caregivers shall complete at least twelve (12) clock hours annually of Department-recognized, competency-based training.
2. A maximum of two (2) hours training credit annually may be credited for Child and Adult Care Food Program (CACFP) training.
3. At least six (6) hours of the required training must be non-agency based, e.g., obtained outside of the center.
4. Up to four (4) hours training credit annually may be earned by conducting training.
5. Credit for Tennessee Early Childhood Training Alliance Orientation Training. Completion of a thirty (30) hour orientation class through the TECTA program shall satisfy the caregiver's minimum annual training requirements for two (2) years.

(Rule 1240-04-03-.07, continued)

(7) Substitutes.

- (a) The names, addresses, telephone numbers and dates of service shall be recorded for all substitutes in the staff personnel records of the agency.
- (b) Substitutes shall comply with the same orientation requirements of these rules for all agency staff.
- (c) Substitutes who have acted as caregivers for two hundred (200) or more hours in the previous calendar year shall meet the training requirements contained in these requirements for caregivers.
- (d) Substitutes providing services for thirty-six (36) hours or more in a calendar year shall:
  1. Meet the criminal background check requirements contained in these rules; and
  2. Meet the same requirements as regular staff for the physical examination required by these rules.
- (e) Practicum Students. Persons serving temporarily as caregivers in field service placements as part of an educational course of study or other curriculum requirement shall not be considered as substitutes for purposes of this paragraph.

(8) Volunteers.

- (a) Volunteers may be used to provide services and supplement the required caregivers or substitutes without payment, but are not counted to meet the adult:child ratios. If counted in the adult:child ratio, or provide services for more than twenty (20) hours per calendar week, volunteers shall meet the qualifications for substitutes as set forth in paragraph 1240-04-03-.07(7) above.
- (b) Management shall be responsible for and supervise the activities of volunteers to assure safety of the children.
- (c) Records for volunteers shall be maintained as required in 1240-04-03-.05.

~~(9) Criminal Background and Vulnerable Persons Registry Review Requirements.~~

- ~~(a) Individuals Requiring a Fingerprint Criminal Background Review and Abuse (Vulnerable Persons) Registry Check:~~
  - ~~1. Any individual applying to work as a paid employee, director or manager of the child care agency in a position that will require or allow the individual to have contact with children at any time;~~
  - ~~2. Any individual applying to work as a new substitute and who is expected to offer, or who provides, at least thirty (36) hours of substitute services to the agency in any calendar year;~~
  - ~~3. Any individual applying for a license to operate a child care agency that is not the renewal of an existing license, or any individual who otherwise seeks to be an operator, as defined by the rules of the Department, of a child care agency as defined in § 71-3-501, and who will, in the course of their role as licensee, have significant contact, as determined by the Department, with the children in care.~~

## (Rule 1240-04-03-.07, continued)

For purposes of this paragraph, "operator" shall be an individual who is an owner or administrator of a child care agency or child care system;

~~4. Residents of a New Agency. Any individual who is a resident of the child care agency and who is fifteen (15) years of age or older upon the date the agency receives its initial temporary license or, if the agency has been issued an annual license, then upon the date the agency received its annual license; and~~

~~5. New Residents of an Existing Agency. Any individual who is fifteen (15) years of age or older upon moving into a licensed/approved child care agency.~~

~~(b) Pending outcome of the criminal background check as described in this paragraph and the outcome of the review of the individual's status on the Department of Health's Vulnerable Persons Registry, the applicant for employment or a substitute or volunteer position, or for a license to operate shall be conditional and shall be dependent upon the results of these background checks.~~

~~(c) Requirements for Submission of a Fingerprint Sample.~~

~~1. Criminal History Disclosure Form. Individuals identified in subparagraph (a) shall complete and sign the Criminal History Disclosure Form provided by the Department.~~

~~(i) The failure to properly complete all sections of the Criminal History Disclosure Form shall result in the individual being prohibited from working, substituting, residing in or acting as a licensee for the child care agency.~~

~~(ii) The failure to disclose all criminal history information may result in the individual being:~~

~~(I) Excluded from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and~~

~~(II) Referred for criminal prosecution pursuant to the provisions of state law.~~

~~2. Fingerprint Sample. The child care agency shall be responsible for obtaining, and submitting the fingerprint sample of any person required by this Chapter in the form and manner directed by the Department:~~

~~(i) Within ten (10) calendar days of the first day of beginning employment or substitute status;~~

~~(ii) Within ten (10) calendar days of the license application or seeking operator status;~~

~~(iii) Within ten (10) calendar days of the application for an initial license for a facility in which the person resides; or~~

~~(iv) Within ten (10) calendar days after the resident moves into the child care facility.~~

~~3. Vulnerable Persons Registry. The child care agency shall be responsible for determining, within the same time periods as set forth in part (c)2 above, the status on the Department of Health's Vulnerable Persons Registry of any~~

(Rule 1240-04-03-.07, continued)

~~individual who is required by subparagraph (a) above to undergo a criminal history background check. Verification of such status check shall be maintained in the employee's record pursuant to the requirements set forth in 1240-04-03-.05.~~

~~4. Unless otherwise notified by the Department, the child care agency shall be responsible for all costs associated with obtaining the fingerprint sample, and the Department will pay for the costs of the criminal background check by the Tennessee Bureau of Investigation.~~

[(9) Criminal Background Check and State Registry/Records Review Procedures.

(a) Criminal Background and Abuse Registry Disclosures and Reviews; Fingerprinting Requirements.

1. The following persons are required to have a background check no more than ninety (90) days before having access to any child care agency:
  - (i) Any person who owns or operates a child care agency and will have significant contact with children;
  - (ii) Any person who applies to work in a child care agency as an employee, director or manager;
  - (iii) Any person who will provide substitute services to a child care agency for more than thirty-six (36) hours in a calendar year and who is counted in the adult: child ratio; and
  - (iv) Any person who is fifteen (15) years of age or older who will reside in a child care agency.
2. New background checks are required for all staff and residents when an agency moves from one class of care to another, such as when a family home becomes a group home or when an agency is sold and staff remain employed by the new owner or any time an agency is issued a license that is not the renewal of an existing license. Exception: Does not apply to background checks completed within the last ninety (90) days.
3. Background checks are required for all staff at least every five (5) years.
4. Requirements for Disclosure of Criminal/Juvenile and State Register History and Fingerprinting.
  - (i) The individuals identified in subparagraph (1)(a) above shall:
    - (I) Complete a criminal/juvenile/administrative findings history disclosure form;
    - (II) Submit fingerprint samples for a criminal and juvenile records background check; and
    - (III) Complete a criminal, juvenile background check/state review consisting of:

(Rule 1240-04-03-.07, continued)

- I. An investigation of a person’s criminal background history by the Tennessee Bureau of Investigation (TBI) and through the Federal Bureau of Investigation’s (FBI) national database;
- II. An investigation of a person’s juvenile records history that is available to the TBI;
- III. A review of any available juvenile court records, if determined necessary by DHS;
- IV. A search of the vulnerable persons registry (VPR), maintained by the Tennessee Department of Health;
- V. A search of the TN sexual offender registry (SOR), maintained by the TBI;
- VI. A search of the DCS registry of indicated perpetrators of abuse or neglect of children; and
- VII. A search of any state or federal registries required by the Child Care and Development Block Grant Act.

(b) Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Children Prior to Completion of Criminal History Review.

- 1. A child care agency, substitute pool, or staffing agency shall be responsible for registration of persons required to have a background check. The responsible entity shall ensure that the process is completed prior to employment.
- 2. A child care agency may not permit any person who is required to have a background check to assume any role or to have access to children until the agency receives written verification from the Department that the person is cleared to work/reside in the agency.
- 3. Failure to Complete or Disclose Information on Criminal Disclosure Form.
  - (i) Failure to properly complete all sections of the Criminal/Administrative History Disclosure Form shall result in the individual being prohibited from assuming any position for which a background review is required.
  - (ii) Failure to disclose all criminal and administrative history information may result in the person being:
    - (I) Excluded by the Department from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and
    - (II) Referred to the appropriate district attorney for criminal prosecution.
- 4. The Department will pay for the costs of performing one background check per person per agency per year.
- 5. The child care agency shall be responsible for costs associated with the background check if:

(Rule 1240-04-03-.07, continued)

- (i) The fingerprint sample is rejected and the fingerprint sample must be resubmitted;
  - (ii) The agency submits a second fingerprint sample for an individual when the initial background check has not been completed; or
  - (iii) The agency submits a fingerprint sample for a purpose unrelated to obtaining approval for a prospective employee, volunteer, etc. to have access to child care.
- (c) Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Children.
1. No person shall be employed, be a licensee or operator or, provide substitute services, reside, or have any access to children in a child care agency if the criminal background check identifies an excludable criminal offense for which the person has:
    - (i) Been convicted of, pled guilty or no contest to (or to a lesser included offense);
    - (ii) Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or
    - (iii) Been named in a pending warrant, indictment, presentment, or petition.
  2. An excludable criminal offense involves:
    - (i) The physical, sexual or emotional abuse or neglect of a child;
    - (ii) A crime of violence against a child, or any person;
    - (iii) Any offense, including a lesser included offense, involving the manufacture, sale, distribution or possession of any drug; or
    - (iv) Any offense that presents a threat to the health, safety or welfare of children.
    - (v) The criminal offenses for which a person will be excluded from a child care agency include but are not limited to the following offenses as well as their lesser included offenses (even if not listed here):
      - (I) Aggravated arson (T.C.A. § 39-14-302);
      - (II) Aggravated assault (T.C.A. § 39-13-102);
      - (III) Aggravated child abuse (T.C.A. § 39-15-402);
      - (IV) Aggravated child neglect (T.C.A. § 39-15-402);
      - (V) Aggravated cruelty to animals (T.C.A. § 39-14-212);
      - (VI) Aggravated kidnapping (T.C.A. § 39-13-304);
      - (VII) Aggravated rape (T.C.A. § 39-13-502);

(Rule 1240-04-03-.07, continued)

- (VIII) Aggravated rape of a child (T.C.A. § 39-13-531);
- (IX) Aggravated robbery (T.C.A. § 39-13-402);
- (X) Aggravated sexual battery (T.C.A. § 39-13-504);
- (XI) Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);
- (XII) Aggravated vehicular homicide (T.C.A. § 39-13-218);
- (XIII) Arson (T.C.A. § 39-14-301);
- (XIV) Assault (T.C.A. § 39-13-101);
- (XV) Carjacking (T.C.A. § 39-13-404);
- (XVI) Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);
- (XVII) Criminal attempt, under T.C.A. § 39-12-101, to commit any criminal offense that requires exclusion from child care;
- (XVIII) Criminal exposure to HIV (T.C.A. § 39-13-109);
- (XIX) Criminal homicide (T.C.A. § 39-13-201);
- (XX) Criminally negligent homicide (T.C.A. § 39-13-212);
- (XXI) Cruelty to Animals (T.C.A. § 39-14-202);
- (XXII) Custodial interference (T.C.A. § 39-13-306);
- (XXIII) Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);
- (XXIV) Domestic assault (T.C.A. § 39-13-111);
- (XXV) Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);
- (XXVI) Especially aggravated burglary (T.C.A. § 39-14-404);
- (XXVII) Especially aggravated kidnapping (T.C.A. § 39-13-305);
- (XXVIII) Especially aggravated robbery (T.C.A. § 39-13-403);
- (XXIX) Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);
- (XXX) Exploitation of a minor by electronic means (T.C.A. § 39-13-529);
- (XXXI) False imprisonment (T.C.A. § 39-13-302);

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- (XXXII) First degree murder (T.C.A. § 39-13-202);
  - (XXXIII) Incest (T.C.A. § 39-13-302);
  - (XXXIV) Indecent exposure (T.C.A. § 39-13-511);
  - (XXXV) Involuntary labor servitude (T.C.A. § 39-13-307);
  - (XXXVI) Kidnapping (T.C.A. § 39-13-105);
  - (XXXVII) Rape (T.C.A. § 39-13-503);
  - (XXXVIII) Rape of a child (T.C.A. § 39-13-522);
  - (XXXIX) Reckless endangerment (T.C.A. § 39-13-103);
  - (XL) Reckless homicide (T.C.A. § 39-13-215);
  - (XLI) Robbery (T.C.A. § 39-13-401);
  - (XLII) Second degree murder (T.C.A. § 39-13-210);
  - (XLIII) Sexual battery (T.C.A. § 39-13-505);
  - (XLIV) Sexual battery by an authority figure (T.C.A. § 39-13-527);
  - (XLV) Sexual exploitation of a minor (T.C.A. § 39-17-1003);
  - (XLVI) Solicitation of a minor (T.C.A. § 39-13-528);
  - (XLVII) Stalking (T.C.A. § 39-17-315);
  - (XLVIII) Statutory rape (T.C.A. § 39-13-506);
  - (XLIX) Statutory rape by an authority figure (T.C.A. § 39-13-532);
  - (L) Trafficking a person for sexual servitude (T.C.A. § 39-13-309);
  - (LI) Vehicular assault (T.C.A. § 39-13-106);
  - (LII) Vehicular assault while intoxicated (T.C.A. § 39-13-106);
  - (LIII) Vehicular homicide (T.C.A. § 39-13-213);
  - (LIV) Voluntary manslaughter (T.C.A. § 39-13-211); and
  - (LV) Weapons offenses (unlawful possession, carrying, use, etc.).
3. No person may be employed as a driver or serve as a driver for a child care agency if the person:
- (i) Is currently charged with; or
  - (ii) Has been convicted of, or pled guilty, within the last five (5) years to any of the following criminal offenses:

(Rule 1240-04-03-.07, continued)

- (I) Vehicular homicide;
  - (II) Accidents involving death or personal injury;
  - (III) Accidents involving damage to a vehicle;
  - (IV) Driving under the influence of an intoxicant, drug or drug producing stimulant; or
  - (V) Any felony involving the use of a motor vehicle while under the use of any intoxicant.
- (d) Exclusion from access to child care based on a listing on a state registry.
1. No person shall be employed, be a licensee or operator, provide substitute services, reside, or have any access to children in a child care agency if the results of the state registry review identify the person as being:
    - (i) Listed on the Vulnerable Persons Registry;
    - (ii) Listed on the Sexual Offender Registry; or
    - (iii) Indicated in the records of the Department of Children's Services as a perpetrator of abuse or neglect of a child.
- (e) Supplemental Background Checks Subsequent to Licensing, Employment or Residence in a Child Care Agency.
1. The Department may, at any time, require a new background check of any individual with access to children in a child care agency.
    - (i) For an individual who was not subject to a background check prior to assuming a role, the individual's existing status in their role shall be conditional upon the satisfactory outcome of any requested background check.
- (f) Any person who is excluded shall remain excluded pending the outcome of any appeals or waiver review or any determination that the basis for exclusion no longer exists.
- (g) An individual will also be excluded if a criminal or juvenile proceeding, registry or administrative background review requiring exclusion or any other provision of law is discovered and verified in any manner.
- (h) If a child care agency, substitute pool or staffing agency receives information from a source other than the Department that requires them to exclude an employee, substitute, volunteer, or resident they shall immediately exclude the person from any access to children and notify the Department on the same business day by calling the child and adult care complaint hotline.
- (i) The exclusion of such persons from access to child care shall be conducted pursuant to T.C.A. § 71-3-507 and this rule.
- (j) Failure of a child care agency to perform the required background check before allowing a person access to child care or to immediately exclude individuals with a

(Rule 1240-04-03-.07, continued)

criminal history or state registry review status that requires exclusion, shall be the basis for the immediate suspension, denial or revocation of the child care agency's license.]

(10) Exclusion of Persons from Contact with Children.

(a) Prohibited Criminal or Abuse or Neglect History.

1. No individual with a prohibited criminal history as defined below, regardless of whether such individual is required by these rules to undergo a criminal background check, may work, substitute or volunteer in a child care agency, or be a resident, licensee, director or manager of a child care agency who has access to children, or be an operator who has significant contact with children or otherwise have unrestricted access to children in any manner whatsoever.
2. An individual shall be immediately and automatically excluded from child care or any contact whatsoever with children, as described above, if the individual's criminal history includes:
  - (i) A criminal conviction or a no-contest or guilty plea; or any pending criminal action, including individuals subject to any warrant, indictment, presentment, etc.; or placement in a pretrial diversion; or,
  - (ii) A pending juvenile action or previous juvenile adjudication, which, if an adult, would constitute a criminal offense; and
  - (iii) Any of the circumstances in subparts (i) or (ii) above involves any of the following criminal offenses:
    - (I) Any offense (including a lesser included offense) involving the physical, sexual or emotional abuse or gross neglect of a child, or involving a threat to the health, safety or welfare of a child;
    - (II) Any offense (including a lesser included offense) involving violence or the threat of violence against another person; and/or
    - (III) Any offense (including a lesser included offense) involving the manufacture, sale, distribution or possession of any drug.
3. An individual shall also be immediately and automatically excluded from child care or from access in any manner whatsoever to the children in the care of the agency, if the individual:
  - (i) Reveals a prohibited or potentially prohibited criminal history on the Criminal History Disclosure Form; or
  - (ii) Is listed on the Department of Health's Vulnerable Persons Registry; and/or
  - (iii) Is known to the management or licensee of a child care agency as a perpetrator of child abuse or child sexual abuse or to have a prohibited criminal history, or who is identified to the child care agency's management or licensee by the Department of Human Services or by the Department of Children's Services as a validated perpetrator of abuse of a child based upon an investigation conducted by the Department of Children's Services or by the child protective services agency of any other state; or, who at anytime is identified by any person or entity to the child care agency's

(Rule 1240-04-03-.07, continued)

management or licensee and is confirmed by the Department of Human Services as having a prohibited criminal history.

4. Exclusion from driving duties. An individual with a prohibited history as set forth below shall be immediately and automatically excluded from providing driving duties on behalf of the child care agency if the individual:
  - (i) Has a pending criminal action (including warrants, indictments, presentments, etc.), is completing a pretrial diversion, or has been convicted of or pled guilty to any offense involving the use of a motor vehicle while under the influence of any intoxicant, which constitutes a violation of T.C.A. §§ 39-13-213; 55-10-101; 55-10-102 or 55-10-401; or
  - (ii) Has been convicted of or pled guilty to any felony involving the use of a motor vehicle while under the influence of any intoxicant. In such case, the individual shall not be employed or otherwise serve as a driver for a child care agency for a period of five (5) years from the date of the conviction or guilty plea.
5. Exclusions for Child Neglect. An individual who has been identified by the Department of Children's Services as having neglected a child based on an investigation conducted by that Department or any child protective services agency of any state, and who has not been criminally charged or convicted or pled guilty or no-contest as stated above, shall be supervised by another adult while providing care for children.

- (b) The child care agency shall immediately review the results of the criminal background check and Vulnerable Persons Registry review upon receipt and shall immediately exclude any individual with a prohibited history as directed by the Department.
- (c) Failure to exclude individuals with a criminal history or abuse or neglect finding.

Failure to immediately exclude any individual subject to exclusion or supervision pursuant to this subchapter or T.C.A. §71-3-507, as directed by the Department, may result in the immediate suspension, denial or revocation of the child care agency's license.

(11) Waivers from Exclusions Due to Criminal or Abuse or Neglect History.

- (a) Any person who is excluded or whose license is denied based upon the results of the criminal history background review or based upon any other determination may request in writing to the Department's Director of Licensing within ten (10) calendar days of receiving notice of such exclusion or denial, a waiver from these automatic exclusion requirements.
- (b) Excluded individuals, prior to receiving official notice of the exclusion or denial from the Department, may also make a written request for a waiver by letter or directly on the Department's Criminal History Disclosure Form.
- (c) Requests for a waiver shall state the basis for the request, including any extenuating or mitigating circumstances that would, in the person's opinion, clearly warrant an exemption from the exclusion. Any documentary evidence may also be submitted with the request.
- (d) Requests for waivers shall be heard by an advisory committee and reviewed by the Department in accordance with the provisions of T.C.A. §71-3-507.

(Rule 1240-04-03-.07, continued)

- (e) Any person who is excluded from providing care or services to children under any provisions of this subchapter shall remain excluded pending the outcome of any exemption review and appeals.

(12) Supplemental Background Checks

- (a) The Department may, at anytime, request that the criminal background or status on the Department of Health's Vulnerable Persons Registry of any individuals having access to children under any of the circumstances set forth in this subchapter be reviewed using the processes described above or in T.C.A. § 71-3-507. All other provisions applicable to any pre-employment or post-employment, residential or access status of any individual shall apply to any background review conducted pursuant to this paragraph (12).
- (b) The employment status of persons for whom a post-employment criminal background check was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a child care agency for whom a criminal background check was conducted after license approval or after employment or assuming duties as a volunteer or substitute, and who were not otherwise subject to a pre-status applicant background check and to the exclusionary provisions provided in this subchapter, shall be governed by the provisions of this subchapter and T.C.A. § 71-3-507.

**Authority:** T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), and 71-3-507.  
**Administrative History:** Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed April 22, 1992; effective June 6, 1992. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Withdrawal of new rule 1240-04-03-.07(4)(e) and (m)1. filed August 31, 1998. Amendment filed September 29, 2000; effective December 13, 2000. Stay of effective date filed December 8, 2000 by The House Government Operations Committee for subparts 3, 4, 11, 12, 13 and 14 of subparagraph (e) of paragraph (4). The new effective date for the these subparts is February 13, 2001. Amendment filed August 27, 2001; effective November 10, 2001. Amendment filed October 17, 2001; effective December 31, 2001. Amendment filed September 29, 2003; effective December 13, 2003. Repeal and new rule filed June 20, 2006; effective September 3, 2006.

**1240-04-03-.08 EQUIPMENT FOR CHILDREN.**

(1) General.

- (a) The manufacturer's safety instructions shall be followed for the use and/or installation of all indoor and outdoor equipment and appliances. Such instructions shall be retained and communicated to all appropriate staff.
- (b) All indoor and outdoor equipment shall be well-made and safe. There shall be no dangerous angles, no sharp edges, splinters, protruding nails, nuts and bolts, heavy or hard swing seats, head entrapment spaces, no open S-hooks or pinch points, etc. within children's reach.
- (c) Electrical cords on equipment for children shall be inaccessible to the children.
- (d) Damaged or unsteady equipment shall be repaired or removed from the room or playground immediately.

(Rule 1240-04-03-.08, continued)

- (e) Equipment shall be kept clean by washing frequently with soap and water.
  - (f) There shall be developmentally-appropriate equipment and furnishings for each age group in attendance.
  - (g) Individual lockers or cubbies, separate hooks and shelves or other containers, placed at children's reaching level, shall be provided for each child's belongings.
  - (h) In infant/toddler rooms, equipment and space shall be provided for climbing, crawling, and pulling without the restraint of playpens or cribs.
- (2) Indoor Play Equipment.
- (a) Pieces of equipment, such as television sets, bookcases, shelves and appliances, shall be secured or supported so that they will not fall or tip over.
  - (b) Sufficient indoor equipment, materials, and toys shall be available to:
    - 1. Meet the active and quiet play needs of all children enrolled;
    - 2. Provide a variety of developmentally appropriate activities so that each child has at least three (3) choices during play time; and
    - 3. Adequately provide for all the activities required in the Program subchapter (1240-04-03-.09) of these rules.
  - (c) Toys, educational materials, and play materials shall be organized and displayed within children's reach so that they can select and return items independently.
  - (d) Toys and teaching aids that are small or that have small parts that can be inhaled or swallowed shall be inaccessible to infants and toddlers.
- (3) Outdoor Play Equipment.
- (a) There shall be developmentally appropriate outdoor play equipment for all children who are in care more than three (3) daylight hours.
  - (b) All outdoor play equipment and materials shall be sufficient in amount and variety so that children have an opportunity to participate in a minimum of at least three (3) different types of play using either stationary equipment and/or portable play materials.
  - (c) All outdoor play equipment shall be placed to avoid injury:
    - 1. Fall zones shall extend six (6) feet away from the perimeter of climbing equipment and away from retainer structures, fences, and other equipment and out of children's traffic paths.
    - 2. Agencies with a playground continually licensed since prior to January 1, 2002, shall be permitted to maintain fall zones of at least four (4) feet; provided, however that any expansion or addition shall comply with the six (6) foot fall zone required by part 1 above.
  - (d) Anchorage of Equipment.

(Rule 1240-04-03-.08, continued)

1. Supports for climbers, swings, and other heavy equipment that could cause injury if toppled shall be securely anchored to the ground, even if the equipment is designed to be portable.
2. Portable equipment shall otherwise be anchored to the ground if the height and weight of the equipment exceeds the height and weight of the smallest child who will use the equipment.

(e) An acceptable resilient surfacing material, as recognized by the Department, shall cover fall zones in accordance with the following chart:

Resilient Surfacing Material	Minimum Acceptable Depth
Wood chips or Mulch	Six (6) inches
Double Shredded Bark	Six (6) inches
Pea Gravel	Six (6) inches
Medium Gravel	Eight (8) inches
Fine Sand	Eight (8) inches
Course Sand	Eight (8) inches
Artificial (Manufactured) Surface	As Recommended by Manufacturer

(4) Naptime and Sleeping Equipment.

- (a) Napping or sleeping equipment shall be available for each preschool child who is in care for six (6) hours or more.
- (b) A quiet rest area and cots or mats shall be available for all children who want to rest or nap; provided, however, that no child shall be forced to nap.
- (c) No child shall be forced to stay on a cot or on a mat for an extended period of time.
- (d) All nap/sleep equipment shall be clean and in good repair, and shall comply with the following requirements:
  1. Individual cots or two-inch (2") mats shall be provided for children ages twelve (12) months through five (5) years.
  2. Individual beds or cots shall be provided for children sleeping for extended periods of more than two and one half (2 1/2) hours, such as during nighttime care.
  3. Each child under twelve (12) months shall have an individual, free-standing, crib at least twenty-two inches (22") x thirty-six inches (36") with an open top.
  4. Mattresses and foam pads shall be upholstered with a safe, waterproof material.
  5. A clean sheet or towel shall be used to cover whatever the child sleeps on.
  6. A clean coverlet shall be available to each child.
  7. Soiled sheets and coverlets shall be replaced immediately.
  8. For health and safety reasons each crib, cot, bed or mat shall be labeled to assure that each child naps on his own bedding.

(Rule 1240-04-03-.08, continued)

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2). **Administrative History:** Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed April 22, 1992; effective June 6, 1992. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Repeal and new rule filed June 20, 2006; effective September 3, 2006.

**1240-04-03-.09 PROGRAM.**

- (1) Schedule and Routines.
  - (a) Routines such as snacks, meals, and rest shall occur at approximately the same time each day.
  - (b) There shall be a balance between child's choice and adult-directed activities.
  - (c) There shall be alternating periods of vigorous activity and quiet play or rest throughout the day.
  - (d) Special consideration shall be given to providing early morning and late afternoon activities that will help children cope with possible unhappiness over separation from parents and end-of-day fatigue.
  - (e) Each caregiver shall be responsible for providing consistent care for a specific infant(s)/toddler(s). "Consistent care" includes, but is not limited to: planning and record-keeping for the child, communication, general interaction with and routine care of the child.
  - (f) The caregiver(s) shall give individual attention to each child, in addition to the time devoted to diapering and feeding.
  - (g) Children shall not be left in restraining devices such as swings, car seats, or high chairs (in excess of thirty (30) minutes). Stimulation shall be provided to children in those settings.
  - (h) Opportunities shall be provided for children to interact with one another.
  - (i) Opportunities shall be provided for children to be by themselves to play alone or do homework, if they choose, in a small, quiet area away from other activities.
  - (j) Children ten (10) years and older shall be encouraged to participate in the planning of their own schedules and activities.
  - (k) Extended Care. Children shall be given the same opportunities for developmentally appropriate activities during extended care hours as during conventional care hours.
- (2) Television, Radio, Videos, and Computers.
  - (a) Programs, movies, computer games, and music with violent or adult content (including "soap operas") shall not be permitted in children's presence.
  - (b) Programs/movies/computer games shall be developmentally appropriate for the viewers.

(Rule 1240-04-03-.09, continued)

- (c) Parents shall be informed of movie showings and video/computer games and their ratings.
  - (d) Videos, movies, and video/computer games must be previewed by staff for content.
  - (e) If television, video tapes/DVDs, video/computer games, and/or movies are used, they shall be limited to:
    - 1. Two (2) hours per day, or the length of a movie if more than two (2) hours in the case of school-agers.
    - 2. Extended Care. Television viewing by children during night care between 6 p.m. and 6 a.m., shall be limited to one (1) hour.
  - (f) All programs shall be designed for children's education and/or enjoyment.
  - (g) Up to one (1) additional hour per day, but not more than three (3) days per week, can be added to viewing time for computer use.
  - (h) School-age children may use computers for completion of homework with no time limitations.
  - (i) Computers, if used, shall be located in view of a caregiver for monitoring purposes.
  - (j) Computers which allow internet access by the children shall be equipped with monitoring or filtering software, or an analogous software protection, which limits children's access to inappropriate web sites, e-mail, and instant messages.
  - (k) Other activity choices shall be available to children during television/movie viewing or computer use.
- (3) Outdoor Play and Playground Routines.
- (a) An opportunity for outdoor play shall be extended to children of all ages who are in care more than three (3) daylight hours; provided, however, for agencies where outdoor play is prohibitive or dangerous, as determined in the discretion of the Department, unoccupied indoor space providing fifty (50) square feet per child is acceptable.
  - (b) Children shall be allowed to experience a variety of weather conditions:
    - 1. Children shall be provided an opportunity for outdoor play when the temperature range, after adjustment for wind chill and heat index, is between thirty-two (32) degrees and ninety-five (95) degrees Fahrenheit and not raining;
    - 2. Children shall be properly dressed and the length of time outside adjusted according to the conditions and the age of the children.
  - (c) Caregivers shall be alert for signs of dehydration, heat stroke, frostbite, etc., dependent upon the season.
  - (d) Each agency shall develop a set of age appropriate playground rules that uses positive language. Rules shall be posted in each play area.
- (4) Reclining Rest Period:

(Rule 1240-04-03-.09, continued)

- (a) A reclining rest period of at least one (1) hour shall be provided for all preschool children in care for six (6) hours or more. Extended Care: Children shall be allowed reasonable rest time as indicated in the extended night care schedule.
  - (b) Each child shall be allowed to form his or her own patterns of sleep.
  - (c) A child shall not be left in a crib or on a cot for an unreasonable length of time.
- (5) Behavior Management and Guidance.
- (a) Attention spans and skills of children shall be considered so that caregivers do not require children to engage in developmentally inappropriate behavior.
  - (b) Discipline shall be reasonable, appropriate, and in terms the children can understand.
  - (c) Discipline that is potentially shaming, humiliating, frightening, verbally abusive, or injurious to children shall not be used.
  - (d) Discipline shall not be related to food, rest, or toileting.
  - (e) Spanking or any other type of corporal punishment is prohibited. ("Corporal punishment" is the infliction of bodily pain as a penalty for behavior of which the punisher disapproves.)
  - (f) Caregivers shall not focus solely upon unacceptable behavior.
  - (g) Praise and encouragement of good behavior shall be used.
  - (h) Efforts shall be made to help children develop a feeling of self-worth beginning at infancy and continuing throughout the school-age years.
  - (i) When a child is engaging in unacceptable behavior the caregiver shall, prior to disciplining the child, first distract the child's attention and substitute a desirable activity.
  - (j) Time out shall be reasonable and developmentally appropriate.
    - 1. Time out shall take place in an appropriate location within sight of the caregiver.
    - 2. The length of each time out session shall be based on the age of the child and shall not exceed one (1) minute per each year of age of the child; provided, however, that in no event shall any child below the age of thirty-six (36) months be placed in time-out for more than three (3) minutes, and no child between thirty-six (36) months and sixty (60) months of age shall be placed in time-out for longer than five (5) minutes.
- (6) Physical Care-Toilet.
- (a) Toilet training shall never be started until a child has been in the child care setting long enough to feel comfortable.
  - (b) Toilet training shall not be started until a child is able to understand, to do what is asked of them, and to communicate their need to use the bathroom.
  - (c) Children shall not be made to sit on the potty or toilet for more than five (5) minutes.

(Rule 1240-04-03-.09, continued)

- (d) Children shall be diapered or cleaned immediately in a safe, sanitary manner.
- (7) Educational Activities.
- (a) Activities shall be based on developmentally appropriate educational practices.
  - (b) A daily program shall provide opportunities for learning, self-expression, and participation in a variety of creative activities such as art, music, literature, dramatic play, science, and health.
  - (c) Staff shall plan ahead for developmentally appropriate activities; written lesson plans shall be provided for children of each age group.
  - (d) Indoor physical activities, requiring children to use both large and small muscles, shall be provided for children of each age group.
  - (e) For infants/toddlers, a portion of the day shall include floor time for activities that develop physical, social, language and cognitive skills.
  - (f) Because of the importance of language development and communication skills infants and toddlers shall have language experiences with adults on a daily basis.
  - (g) Personal Safety Curriculum.
    - 1. For ages three (3) through school-age, a curriculum shall be offered that shall include instruction, at least once a year, in personal safety.
    - 2. Personal Safety Curriculum Components and Guidelines.
      - (i) The personal safety curriculum shall include a Department-recognized component for the prevention of child abuse, including, for children four (4) years of age and older, a child sexual abuse prevention component.
      - (ii) The curriculum shall be based upon curriculum guidelines provided by the Department to the child care provider in any suitable format. The child care provider may choose terminology and instructional methods for this curriculum with a goal of providing clear, effective and appropriate instruction to the children in personal safety, including the prevention of all forms of child abuse.
    - 3. Personal Safety Instruction Requirements for School-Age Children.
      - (i) For school-age children, the curriculum shall include instruction for reporting physical, sexual or verbal abuse.
      - (ii) Children of school-age shall not be required to receive personal safety instruction from the child care agency if they annually receive personal safety instruction as required by this subparagraph (g) in the curriculum of their local public education agency, or, if they receive such instruction in any other educational setting, as approved, in either circumstance, by the Department.
      - (iii) Documentation of Personal Safety Instruction in Educational Settings.
        - (l) Written documentation, in a form and manner approved by the Department, verifying that annual personal safety instruction as

(Rule 1240-04-03-.09, continued)

required by this subparagraph (g) is being provided in a public educational setting to each child enrolled in the child care agency, shall be maintained on file with the Department.

- (II) For children who do not attend public schools, the child care provider shall secure and maintain documentation, in a form and manner approved by the Department, verifying that each school-age child enrolled in the child care agency is receiving annual personal safety instruction as required by this subparagraph (g).
4. Beginning October 1, 2008, the personal safety curriculum used by a child care agency shall be made available by the child care agency to parents and legal guardians for review. The child care agency shall use a standard notification form developed by the Department that will be provided to the parents or legal guardians by the child care agency to confirm that the parents/guardians have been notified of the curriculum to be used and of their opportunity to review the personal safety curriculum.
  5. The record of each enrolled child shall include a copy of the signed notification form acknowledging that parents/legal guardians have been provided an opportunity to review the agency's personal safety curriculum, and have been notified of the sexual abuse/personal safety curriculum for their child.
  6. If parents/legal guardians have questions regarding the personal safety curriculum, a representative of the child care agency shall meet with the parents/legal guardians to discuss the curriculum.
- (8) Extended Care. Agencies providing nighttime care shall meet the following additional requirements:
- (a) Calming activities preceding bedtime shall be provided, e.g., listening to a story or soft music. In addition, individual/adult attention shall be provided as needed.
  - (b) Routine personal hygiene shall be encouraged and supervised. A plan shall be made with parents for brushing teeth, baths, bed dress, etc.

**Authority:** T.C.A. §§4-5-201 et seq., 4-5-202; 4-5-209, 71-1-105(5), 71-3-501 et seq., 71-3-502, 71-3-502(a)(2), 71-3-502(l) and 2008 Tenn. Pub. Acts 1032. **Administrative History:** Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998, new effective date October 31, 1998. Repeal and new rule filed June 20, 2006; effective September 3, 2006. Public necessity rule filed October 1, 2008; effective through March 15, 2009. Amendment filed December 29, 2008; effective March 14, 2009.

#### 1240-04-03-.10 HEALTH AND SAFETY.

- (1) Children's health records shall be maintained as directed under subchapter 1240-04-03-.05.
- (2) Children shall be immunized in accordance with current Department of Health guidelines unless exempted pursuant to 1240-04-03-.05. The agency shall maintain written policies for the disenrollment of children who fail to comply with Department of Health immunization guidelines in a timely manner.

(Rule 1240-04-03-.10, continued)

- (3) Children shall be checked upon arrival and observed for signs of communicable disease during the day.
- (4) A child's temperature must be taken using a non-invasive method unless otherwise prescribed by a physician.
- (5) Symptomatic children shall be removed from the group until parents are contacted and health issues are resolved.
- (6) Universal precautions, as defined by the Department of Health, shall be followed when handling or cleaning bodily fluids.
- (7) First Aid.
  - (a) A standard first aid kit (for example, one approved by the American Red Cross) shall be available to all staff, and all staff shall be familiar with its contents and use.
  - (b) At least one staff member who has current certification or equivalent in first aid from a certifying organization recognized by the Department shall be on duty at all times. The course shall be a minimum of three (3) hours and shall be taught by a certified first aid instructor. Extended Care: All staff shall have certification or equivalent in first aid from a certifying organization recognized by the Department.
  - (c) Current and comprehensive first aid information shall be available to all staff who interact with children and the agency shall provide periodic training and updates on basic first aid and the use of the first aid kit.
- (8) Emergency Treatment.
  - (a) Cardiopulmonary Resuscitation (CPR) Requirements.
    1. At least one staff member on duty shall hold current certification in Infant/Pediatric Cardiopulmonary Resuscitation (CPR) from the American Red Cross, the American Heart Association, or other certifying organization, as recognized by the Department.
    2. Extended Care. All staff shall be certified in Infant/Pediatric Cardiopulmonary Resuscitation (CPR) from a certifying organization recognized by the Department.
  - (b) The initial CPR course shall be a minimum of four (4) hours and shall be taught by an individual currently certified, as recognized by the Department, to provide CPR instruction.
  - (c) When school-age children are present, and/or in a school-age only program, at least one staff member shall hold current certification, pursuant to the requirements listed in subparagraphs (a) and (b) above, in Adult CPR. Extended Care: All staff shall be certified pursuant to the requirements listed in subparagraphs (a) and (b) above, in adult CPR.
- (9) Preparation for Emergencies.
  - (a) The agency, in consultation with appropriate local authorities, shall develop a written plan to protect children in the event of disaster such as, but not limited to, fire, tornado, earthquake, chemical spills, floods, etc. and shall inform parents of the plan.

(Rule 1240-04-03-.10, continued)

- (b) The agency shall implement these emergency procedures through timely practice drills to meet local regulations and local emergency services plans and shall maintain documentation of drills for one year. Extended Care: At least one (1) of these drills shall be conducted during extended care hours.
  - (c) The following emergency telephone numbers shall be posted next to all telephones and be readily available to any staff member:
    - 1. Fire Department;
    - 2. Police Department/Sheriff;
    - 3. Nearest Hospital Emergency Room;
    - 4. Child Abuse Hotline;
    - 5. Local Emergency Management Agency;
    - 6. Ambulance or Rescue Squad; and
    - 7. Poison Control Center.
  - (d) If 911 or a similar generic number is operable in the community, it shall be posted in addition to the above numbers.
  - (e) All home/work contact numbers for parents shall be readily available to all staff.
- (10) Contagious Conditions:
- (a) Impetigo and diagnosed strep shall be treated appropriately for twenty-four (24) hours prior to readmission of the child to the center.
  - (b) Children diagnosed with scabies or lice shall have proof of treatment and be free of nits prior to readmission.
  - (c) The agency may not provide care and/or isolation for a child with a contagious condition unless written instructions are obtained from a licensed physician or certified health care provider.
  - (d) Parents of every child enrolled shall be notified immediately if one of the following communicable diseases has been introduced into the agency:
    - 1. Hepatitis A;
    - 2. Food borne outbreaks (food poisoning);
    - 3. Salmonella;
    - 4. Shigella;
    - 5. Measles, mumps, and/or rubella;
    - 6. Pertussis;
    - 7. Polio;

(Rule 1240-04-03-.10, continued)

8. Haemophilus influenza type B;
  9. Meningococcal meningitis; and
  10. Any other illness identified by the state or local Department of Health.
- (e) The agency shall report the occurrence of any of the above diseases to the local health department as soon as possible, but no later than the end of the day in which it occurred.
- (11) Notification to Parents of Accidents, Injuries, Illnesses.
- (a) Serious injuries, including but not limited to, massive bleeding, broken bones, head injuries, possible internal injury, etc. shall be reported to the parent immediately to arrange for emergency treatment.
  - (b) Signs of serious illness, including but not limited to, high temperature, disorientation, coughing, vomiting or diarrhea with blood present, severe difficulty breathing, seizure, etc. shall be reported to the parent immediately to arrange for emergency treatment.
  - (c) Accidents, injuries, and every sign of illnesses shall be reported, or a reasonable attempt made to report, to the parent as soon as possible, but no later than the child's release to the parent or authorized representative.
  - (d) In no event shall the agency delay seeking emergency treatment due to a delay in making contact with the parent.
- (12) Medications.
- (a) All medications, prescribed and non-prescribed, shall be received from the parent by a designated staff person or management level staff person.
  - (b) An alternate staff person shall be available to administer medication in the event the designated staff person is absent.
  - (c) The staff person designated in subparagraph (a) above shall document verification of the following:
    1. The parent's written authorization to administer each medication;
    2. That the medicines or drugs are in the original prescription container, are not out of date, and are labeled with the child's name;
    3. The specific dosage and times the medication is to be administered to the child; and
    4. That the parent has provided the agency with instructions on the methods of administration.
  - (d) The following documentation of administration shall be maintained in the child's file and a copy provided to the parent:
    1. Times medications administered;
    2. Noticeable side effects; and

(Rule 1240-04-03-.10, continued)

3. Name of staff person administering medication to child.
- (e) The parent shall sign documentation verifying that:
    1. The administration information required by subparagraph (c) above was received; and
    2. Unused medication was returned to the parent.
  - (f) Medication shall not be handled by children. Exception: A physician's authorization for the current school year shall be on file for school-age children who must have self-administered medication.
  - (g) Medication shall never be administered in bottles or infant feeders unless authorized by a physician.
  - (h) Accessibility of Medications.
    1. All medications, prescription and non-prescription, whether requiring refrigeration or not, shall be stored in a locked compartment or container.
    2. If medications requiring refrigeration are kept in a refrigerator used for food storage, the medicine shall be put in a leak-proof locked container.
    3. Keys for these compartments/containers shall be inaccessible to children.
    4. Exception for Emergency Administration. Medication requiring emergency administration, as directed by the physician, nurse practitioner or physician's assistant, e.g., "EpiPen", asthma inhaler, etc., may be kept in an unlocked container that is inaccessible to children.
  - (i) Unused medications shall be returned to the parent.
- (13) Prohibited Practices and Products.
- (a) Smoking.
    1. Smoking is not permitted in the presence of children.
    2. Under state law, smoking in child care centers that are not private homes is restricted within a child care facility to areas where children are not permitted access, and parents must be given notice that the facility has a smoking area.
      - (i) No smoking signs must be posted conspicuously within the facility as provided by state law.
      - (ii) Federal law prohibits smoking in any part of a child care facility that is not a private residence if the facility is constructed, operated, or maintained with Federal funds.
  - (b) Alcoholic Beverages.
    1. The use of alcoholic beverages is not permitted in child care centers during the hours of operation of the center.

(Rule 1240-04-03-.10, continued)

2. Alcoholic beverages shall not be located in the designated child care space when children are present.
  - (c) Illegal or inappropriate activities on the premises, property, or in a vehicle on the facility property or used for transportation of children enrolled in the child care center, or any activity that otherwise places children at risk are prohibited.
  - (d) Firearms shall not be on the premises of a child care agency, in any vehicle used to transport children or in the presence of a child. Exception: In a private residence, firearms and other deadly weapons or tools on the premises shall be secured in such a way that they are inaccessible to children.
  - (e) Kitchen knives and other potentially dangerous utensils or tools shall be secured so that they are inaccessible to children.
  - (f) Staff's personal belongings (such as, but not limited to, contents of purses, backpacks, coat pockets, diaper bags, etc.) shall be inaccessible to children at all times.
- (14) Diapering.
- (a) Children shall be diapered/changed and cleaned immediately when wet or soiled.
  - (b) For the protection of children and adults, the Centers for Disease Control guidelines for handwashing and diapering procedures shall be followed.
  - (c) The diapering area and/or toilet training area shall be located near a handwashing lavatory and shall be located in a separate area from the food preparation area.
  - (d) All diapering surfaces shall be off the floor, nonporous, and shall be sanitized using the following cleaning solutions for general cleaning and sanitizing purposes:
    1. For general cleaning and sanitation purposes, a fresh solution of one quarter (1/4) cup chlorine bleach to one gallon of water (or one (1) tablespoon chlorine bleach to (1) quart of water) must be made daily.
    2. Substitutions for the bleach solution required in part 1 above, that are approved for the child care setting by the Department of Health are permissible.
    3. The solution required in part 1 above is not appropriate for items associated with food preparation or for items that children frequently place in their mouths, and the Health Department does not permit the use of higher concentration than these in food preparation areas. Specific jurisdictions may have even more stringent requirements; therefore, the local health department should be consulted.
  - (e) A tightly covered container with plastic liner shall be used for diaper disposal and shall be inaccessible to children. This container shall be emptied by closing the liner and disposing of it in an outside receptacle.
  - (f) Special Needs Children.
    1. If older children are enrolled who lack independent toileting abilities, rules regarding diapering of preschool children shall apply.
    2. Children shall be changed in a location designated for that purpose and which provides privacy from other children and adults.

(Rule 1240-04-03-.10, continued)

3. School-age children may be diapered on the floor on a nonporous, washable diapering surface that adequately protects the floor from contamination.
4. The floor beneath the diapering surface shall be immediately cleaned after each diapering.
5. The diapering area shall be located near a handwashing lavatory. This area shall be in a separate location from the food preparation area.

(15) Naptime Care.

- (a) In order to avoid the spread of airborne diseases children shall be positioned on mats in a face to feet alternating pattern.
- (b) Spacing of cots, cribs, and mats shall allow sufficient space to walk between them.

(16) Tuberculosis Screening.

- (a) Tuberculosis (TB) screening prior to on-going contact with children is required for any individual who:
  1. Was born in a country other than the United States, Canada, Western Europe, Australia, New Zealand, and Japan;
  2. Has a weakened immune system (Human Immunodeficiency Virus [HIV], cancer, taking chemotherapy drugs, etc.); or
  3. Has been recently exposed to tuberculosis.
- (b) Any individual who has had a cough for three (3) weeks or longer shall be evaluated by a physician for tuberculosis.
- (c) Future screening is not required for individuals who have been treated for TB or latent TB infection unless persistent pulmonary symptoms develop or there is contact with tuberculosis.
- (d) All children born in countries other than the United States, Canada, Western Europe, Australia, New Zealand, and Japan shall present evidence of a tuberculin skin test performed in the United States at any time after twelve (12) months of age. Any child with a positive tuberculin skin test shall be referred to a physician for evaluation. After the initial evaluation, future periodic screening is not required unless the child develops persistent pulmonary symptoms or there is contact with tuberculosis.

(17) Staff Health.

- (a) Staff health records shall be maintained as directed under subchapter 1240-04-03-.05.
- (b) A statement of mental or emotional health shall be obtained from a psychiatrist or clinical psychologist when deemed necessary by the Department.

(18) Duty to Report Child Abuse and Neglect.

- (a) Duty to Report.

(Rule 1240-04-03-.10, continued)

1. Every operator, owner, licensee, director, or staff member of, or substitute staff member or volunteer in a child care agency licensed by the Department of Human Services is individually responsible, and is required by Tennessee Code Annotated, §§ 37-1-403 and 37-1-605, to immediately report any reasonable suspicion of child abuse or neglect to the Department of Children's Services, local law enforcement or the judge of the juvenile court in the county of the child's residence.
  2. Determining Suspicion of Abuse/Neglect.
    - (i) Due to both the immediate risk to children's safety, as well as to the extreme risk of destroying or losing critical evidence, the agency and/or individual staff shall not delay reporting possible abuse or neglect in an attempt to conduct an investigation to verify the abuse/neglect allegations.
    - (ii) In determining a reasonable suspicion for purposes of reporting, the agency shall limit questioning of the child and may make only the most basic inquiries necessary to determine if any reasonable possibility of abuse or neglect exists.
    - (iii) The agency does not have to, and shall not attempt to, validate (or "prove") the allegation prior to making a report as required by this paragraph (18). A final determination of the validity of the report of abuse or neglect shall be made exclusively by the Department of Children's Services and/or by law enforcement based upon the report by the child care agency's staff.
  3. Each center shall develop procedures, approved by the Department of Human Services in conformity with DCS policy, for staff to follow to report suspected abuse and neglect.
  4. Any statement from a child reasonably indicating abuse/neglect of that child or another child or any evidence of abuse/neglect observed on a child shall be immediately reported by staff to the Department of Children's Services in a manner specified by that department, to local law enforcement or to the judge of the juvenile court in the county of the child's residence.
- (b) The telephone numbers of the Department of Children's Services, the local law enforcement or the juvenile judge of the county of the child's residence for staff to call to report suspected abuse and neglect shall be posted in a conspicuous location by each telephone.
- (c) Prohibited Procedures for Reporting Suspected Child Abuse/Neglect/Penalties.
1. The agency shall not develop or implement policy that inhibits, interferes with or otherwise affects the duty of any staff, including substitutes and volunteers, to report suspected abuse or neglect of a child as required by subparagraph (a) above and Tennessee Code Annotated, §§ 37-1-403 and 605, and shall not otherwise directly or indirectly require staff to report to the agency management or seek the approval of agency management prior to any individual staff member reporting the suspected abuse or neglect.
  2. A report of suspected child abuse or neglect of a child enrolled in the child care agency by the operator, owner, licensee, director or staff member of, or substitute staff member or volunteer in, a child care agency shall not be made to any other entities or persons, including, but not limited to, hospitals, physicians, or educational institutions as an alternative to or substitute for the reporting

(Rule 1240-04-03-.10, continued)

requirements to the persons or entities specifically listed in subparagraph (a) above.

3. The operator, owner, licensee, director, or staff member of, or substitute staff member or volunteer in, the child care agency shall not suggest to, advise or direct a parent or caretaker of a child enrolled in the child care agency to make a report of suspected child abuse or neglect regarding that parent's or caretaker's own child who is enrolled in the child care agency as a means of fulfilling the duty of the operator, owner, licensee, director, or staff member of, or substitute staff member or volunteer in, the child care agency to report child abuse or neglect as required by Tennessee Code Annotated, §§ 37-1-403 and 37-1-605.
  4. Because the statutory requirements of Tennessee Code Annotated, §§ 37-1-403 and 37-1-605 do not authorize the prohibited procedures described in parts 1-3 of this subparagraph (c) to fulfill the statutory duty of any person, and especially the duty of those licensed by the State of Tennessee to care for and protect vulnerable children, to make timely and effective reports of child abuse and neglect to appropriate investigative agencies, and because the prohibited procedures described in parts 1-3 of this subparagraph (c) are completely unreliable procedures to ensure that the appropriate authorities are able to timely and satisfactorily investigate suspected child abuse or neglect, any action that does not comply in all respects with subparagraph (a) above, will not fulfill the statutory duty to report child abuse or neglect and the licensing requirements of this Chapter.
  5. Failure to Report Properly Is Grounds for Suspension, Denial or Revocation of the Agency License.
    - (i) Failure to make the reports required by subparagraph (a) above or the use of the prohibited methods described in parts 1-3 of this subparagraph (c) as an attempt to fulfill the duty to report suspected child abuse or neglect, for children in the care of the child care agency are, by themselves, grounds for suspension, denial or revocation of the agency's license.
    - (ii) If the facts establish by a preponderance of the evidence that there has not been strict compliance with the requirements of subparagraph (a) above or that the prohibited procedures described in parts 1-3 of this subparagraph (c) have been utilized as an alternative means of fulfilling the requirements of subparagraph (a) above, these circumstances shall create a rebuttable presumption for the Administrative Law Judge and the Child Care Agency Board of Review that the duty to report child abuse or neglect has not been fulfilled, and this ground for suspension, denial, or revocation of the agency's license by the Department of Human Services shall be sustained unless such presumption is rebutted by a preponderance of the evidence.
- (d) Agency Duties During Investigations of Child Abuse and Neglect; Custodial Authority of Children.
1. Every operator, owner, licensee, director, or staff member of, or substitute staff member or volunteer in, a child care agency licensed by the Department of Human Services shall fully cooperate with all agencies involved in the investigation of child abuse or neglect, and with the Department of Human Services in efforts to provide protection for children enrolled in the child care agency.
  2. The agency shall provide access to records of children and staff.

(Rule 1240-04-03-.10, continued)

3. The agency shall allow appropriate investigators to interview children and staff.
  4. The agency shall not interfere with a child abuse and neglect investigation.
  5. The agency shall protect the child by requesting the investigator's identification.
  6. The agency shall maintain confidentiality of the investigation and shall not disclose the investigation or details of the investigation except as required to carry out procedures for the protection of children or as otherwise directed by the Department of Children's Services, law enforcement or the Department of Human Services.
- (e) Upon notification of a pending abuse/neglect investigation of any agency staff member or resident of a home-based center, the agency shall enter into a Safety Plan with the Department regarding the individual's access to the agency and to children in the care of the agency.
- (f) All agency staff, including non-caregiving staff, shall receive training every six (6) months regarding procedures to report child abuse and neglect.
- (19) A parent shall be notified before the child leaves the premises except in emergency circumstances, except that an authorized investigator with the Department of Children's Services or local law enforcement may take a child off the premises of the agency if he/she has obtained custody of the child as follows:
- (a) Voluntary placement agreement with the parent;
  - (b) Court order;
  - (c) Emergency assumption of custody under T.C.A. §37-1-113 without parental permission;
  - (d) If the child's parent or legal guardian is present and approves; or
  - (e) In conjunction with investigative procedures under the child abuse laws.

**Authority:** T.C.A. §§4-5-201 et seq., 37-1-113, 37-1-401 et seq., 37-1-403, 37-1-601 et seq., 37-1-605, 39-17-1601 et seq., 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), and 71-3-508; and 20 U.S.C. § 6081 et seq. **Administrative History:** Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed April 22, 1992; effective June 6, 1992. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Amendment filed November 21, 2002; effective February 4, 2003. Amendment by Acts of 2003, Public Chapter 412, §§1(c) and 3 filed June 25, 2003; effective July 1, 2003. Amendment filed September 29, 2003; effective December 13, 2003. Amendment filed October 18, 2004; effective January 1, 2005. Amendment filed August 3, 2005; effective October 17, 2005. Repeal and new rule filed June 20, 2006; effective September 3, 2006.

#### 1240-04-03-.11 FOOD.

- (1) Nutritional Needs.

(Rule 1240-04-03-.11, continued)

- (a) If the agency provides meals, the agency shall provide developmentally appropriate meals, snacks, and drinks for each child that are of sufficient proportions and nutritional value to meet each child's health needs in accordance with the following minimum requirements:
  1. For children in care at least four (4) hours, one (1) snack shall be provided, unless the four (4) hour period covers a normal meal hour, in which case a meal shall be served; provided, however that, if the child is fed their meal at home or in school the child shall be served two (2) snacks in lieu of a meal.
  2. Children in care five (5) to six (6) hours shall be provided one (1) meal and one (1) or two (2) snacks; provided, however that, if the child is fed their meal at home or in school the child shall be served two (2) snacks in lieu of a meal.
  3. Children in care seven (7) to ten (10) hours shall be provided one (1) meal and one (1) or two (2) snacks.
  4. Children in care longer than ten (10) hours shall be provided two (2) complete meals and one (1) or two (2) snacks.
  5. A meal shall be offered to children who arrive before 7:00 a.m. and have not had breakfast at home.
  6. Extended Care. For extended night care children, meal and snack service will not apply while children are asleep, but snacks will be offered if the child awakens and indicates hunger.
- (b) Appropriate foods shall be encouraged; highly inappropriate foods, e.g. foods high in sugar and/or fat content, but containing low nutritional value, shall be discouraged.
- (c) Powdered milks shall be used only in a cooked food product.
- (d) All special needs diets shall be prepared as prescribed by a physician or by the written instructions of the parent.
- (e) In order for parents to be aware of the food their children are receiving the week's menus shall be planned and posted by the first day of each week and remain posted throughout the week.
  1. These menus shall be followed, although reasonable substitutions are permissible, if the substituted food contains the same nutrients.
  2. Any change shall be documented in advance of the meal.
- (f) Food shall not be forced on or withheld from children.
- (g) Food as Behavior Management.
  1. Foods served as part of the meal/supplement pattern shall not be used as reward; nor shall food be used or withheld as a form of discipline.
  2. Desserts and sweets shall not be used as rewards or a form of discipline.
- (h) New foods shall be introduced to infants and toddlers one at a time over a five (5) to seven (7) day period with parent's approval.

(Rule 1240-04-03-.11, continued)

- (i) The feeding schedule for infants shall be in accordance with the child's need rather than according to the hour.
  - (j) Staff shall support and facilitate a parent's decision to continue breast feeding.
  - (k) Parents and caregivers shall work together when weaning an infant to ensure consistency in the weaning process. Weaning shall be delayed until after an infant adjusts to group care.
  - (l) Children shall not be permitted to carry a bottle with them throughout the day.
- (2) Meal Service.
- (a) Caregivers and children shall wash their hands with soap and water.
  - (b) High chairs and tables on which food is prepared and served shall be washed with soap and water and sanitized prior to and after snacks and meals.
  - (c) Floors under tables and high chairs on which food is served shall be swept and/or vacuumed after each meal and cleaned as needed.
  - (d) Dishes and Utensils.
    - 1. Napkins, individual forks and/or spoons shall be provided for children who feed themselves.
    - 2. Individual dishes as necessary for the type of feeding shall be provided.
    - 3. Routine food service dishes, utensils, and bottles shall be break-resistant.
  - (e) Due to the extreme risk of choking, solid foods (including cereal) shall not be given in bottles or with infant feeders to children with normal eating abilities unless authorized by a physician. Violation of this rule may result in suspension, revocation or denial of the agency's ability under its license to provide infant care.
  - (f) To avoid choking, foods shall be appropriate for the eating and chewing abilities of children. Hotdogs, if served to preschool children, shall be finely chopped or quartered lengthwise because they swell if trapped in a child's throat.
  - (g) At mealtime, children shall be seated at tables and chairs of appropriate size, and adults shall sit with them.
  - (h) Formula and Food Brought from Home:
    - 1. All formulas and food brought from home shall be labeled with the child's name.
    - 2. Milk shall be placed immediately in the refrigerator.
    - 3. Once milk has been warmed, it shall not be re-warmed or returned to the refrigerator.
    - 4. For optimum digestion, formula is to be served at body temperature.
    - 5. Frozen breast milk shall be dated when expressed.
    - 6. All formulas remaining in bottles after feeding shall be discarded.

(Rule 1240-04-03-.11, continued)

- (i) Microwaves, Bottle Warmers, and Crock Pots. In order to prevent scald and splash burns:
    - 1. Microwave ovens, bottle warming devices, and crock pots, including cords, shall not be accessible to preschool children.
    - 2. School-age children shall use microwaves only under direct supervision.
    - 3. Children shall never be held while removing a bottle from a crock pot or warming device.
    - 4. The "splash zone" area immediately surrounding microwaves, crock pots and warming devices shall be kept inaccessible to children at all times.
    - 5. All crock pots, bottle warmers and other warming devices shall be maintained at the device's lowest available temperature setting.
    - 6. Crock pots and bottle warming devices shall be secured in such a manner as to prevent them from tipping over, splashing or spilling.
    - 7. Bottled breast milk, infant bottles, and formula shall not be heated in a microwave oven.
    - 8. To prevent scalding, liquid and solid foods heated in a microwave shall be carefully checked for "hot spots" prior to serving.
  - (j) Previously opened baby food jars shall not be accepted in the center. If food is fed directly from the jar by the caregiver, the jar shall be used for only one feeding.
  - (k) Infants shall be held while being fed as long as they are unable to sit in a high chair, an infant seat, or at the table.
  - (l) To avoid the risk of serious injury or choking, children shall always be restrained in the high chair manufacturer's restraint device while sitting in a high chair. Children who are too small or are too large to be restrained using the manufacturer's restraint device shall not be placed in a high chair.
  - (m) Bottles shall not be propped, and a child shall not be given a bottle while lying flat.
  - (n) When children are capable of using a high chair, they shall be allowed to do so and to experiment with food, with feeding themselves, and to eat with fingers or a spoon.
  - (o) Children shall never be left without adult supervision while eating.
- (3) Food Storage.
- (a) Potentially hazardous foods requiring cold storage shall be maintained at 45 degrees F or below, and accurate thermometers for measurement of the food temperature shall be kept in the refrigerators where such food is stored.
  - (b) Potentially hazardous food requiring hot storage shall be maintained at an internal temperature of 140 degrees F or above.
  - (c) Frozen foods shall be maintained at a temperature of 0 degrees F or below.

(Rule 1240-04-03-.11, continued)

- (d) Thermometers shall be placed in all freezers and all other cold storage equipment.
  - (e) All dry food supplies shall be stored in closed containers. These foods shall be stored in a manner to prevent possible contamination and to allow for proper cleaning of the storage area. Containers of food shall be stored a minimum of six inches above the floor or on movable dollies.
  - (f) All food shall be protected from contamination during storage, preparation, transportation, and serving.
  - (g) No poisonous or toxic materials except those required for sanitization purposes may be used or stored in a food-service area of a facility.
- (4) Food Sanitation.
- (a) Home canned food and raw milk are prohibited.
  - (b) Raw fruits and vegetables shall be washed before use.
  - (c) All eating and drinking utensils shall be thoroughly cleaned and sanitized after each use with the exception of single-service utensils which shall be discarded following use.
  - (d) Single-service articles shall be made from nontoxic materials and shall be stored, handled, and dispensed in a sanitary manner.
  - (e) All utensils and food-contact surfaces or equipment used in the preparation, transportation, service, display, or storage of potentially hazardous food shall be thoroughly cleaned and sanitized prior to and after each use.
  - (f) Milk and food shall not be placed on the table longer than fifteen (15) minutes prior to the beginning of the meal to avoid contamination and spoilage.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2). **Administrative History:** Original rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-03-.10). Repeal and new rule filed June 20, 2006; effective September 3, 2006.

#### 1240-04-03-.12 PHYSICAL FACILITIES.

- (1) Inspections and Compliance with Fire, Health and Safety Standards.
- (a) All facilities shall annually pass an inspection verifying compliance with all applicable state and local fire and environmental requirements.
  - (b) The following facilities, in addition to meeting the requirements set forth in subparagraph (a) above, shall pass inspection by the State Fire Marshall's Division of the Tennessee Department of Commerce and Insurance and the Food and General Sanitation Division of the Tennessee Department of Health:
    - 1. Facilities that are currently unlicensed;
    - 2. Facilities that have not previously been approved by the State Fire Marshall;
    - 3. Facilities that have relocated; and/or

(Rule 1240-04-03-.12, continued)

4. Existing facilities with renovations, new construction, additions to, and/or changes in occupancy.
- (2) Neither a temporary nor an annual license shall be issued unless all of the following requirements are met:
    - (a) The physical facility meets all requirements set forth in paragraph (1) above;
    - (b) The physical facilities (indoor and outdoor) present no apparent hazards; and
    - (c) The physical facilities are otherwise deemed appropriate by the Department for the safe care of children.
  - (3) Requests for inspections shall be made by the Department, but it is the responsibility of the applicant to obtain verification of the inspections and the approvals.
  - (4) Building Plans. Plans for new construction must be drawn by a registered architect or engineer and submitted to the State Fire Marshall and to the local health department when required by such departments and in accordance with the respective departments' procedures.
  - (5) Continuing Compliance. Physical facilities shall maintain compliance with all applicable codes as set forth in paragraph (1) above, throughout the licensing year, and shall additionally comply with any updated standards issued by the Department of Health and the State Fire Marshal.
  - (6) The agency shall not be located in a building used for purposes which would be hazardous to the children or would prohibit outdoor play unless the agency is an inner city agency which has requested and been granted an exception from the Department pursuant to the requirements for "Outdoor Play" found in paragraph 1240-04-03-.09(3) of this Chapter.
  - (7) Telephones and Other Communication Devices.
    - (a) Due to the potential unreliability of cellular phones and the potential failure of cordless phones during power outages and other emergencies at least one (1) working, land-line telephone shall be present in the agency.
    - (b) If answering machines/voice mail must be used, they shall be monitored at thirty (30) minute intervals (except when staff and children are off premises) so that emergency messages can be received.
    - (c) Parents shall be informed that answering machines/voice mail are used.
  - (8) Licensed Capacity of Physical Space.
    - (a) The maximum number of children who may be present inside a physical space (e.g., the agency's "licensed capacity") shall be determined in accordance with the minimum square footages set forth in this paragraph; provided, however, the Department may, in its discretion as determined reasonably necessary to maintain the health and safety of the children in care, restrict the agency's licensed capacity below the maximum which is set forth in these rules.
    - (b) A minimum of thirty (30) square feet of usable indoor play space must be provided for each child.

(Rule 1240-04-03-.12, continued)

- (c) Each naproom must contain a minimum of thirty (30) square feet of floor space per child.
  - (d) Teen parenting vocational classes shall have a separate space for the group, with a minimum of thirty-five (35) square feet of usable play space per child that is apart from the classroom space for students.
  - (e) Occupational/vocational child care classes shall have a separate space for the group, with a minimum of thirty-five (35) square feet per child of usable space, apart from the classroom space for students. The designated separate space may be located in the same room and divided by movable barriers less than four feet (4') in height.
  - (f) For the purposes of calculating square footage requirements, any area used as restrooms, halls, kitchen, or office space, and any space used by cribs or large pieces of furniture, shall not be considered "usable indoor play space" and shall not be counted toward the agency's licensed capacity.
  - (g) Rooms with sufficient floor space, as defined by the requirements set forth in these rules, may be divided and used for more than one (1) group; provided, however, that each area is adequately equipped and arranged and that each group shall have the security of a stable classroom space.
  - (h) Adequate Plumbing Facilities. The agency shall have the minimum number of toilets and handwashing sinks as established by the Department in accordance with the:
    - 1. Requirements of any applicable local ordinances and regulations;
    - 2. Proximity of the plumbing to the classroom(s); and
    - 3. Ages of the children served.
- (9) Outdoor Play Area.
- (a) Outdoor play areas shall contain a minimum of fifty (50) square feet of usable play space for each child using the area at one time.
  - (b) Agencies Initially Licensed After January 1, 2002. The outdoor play area must be enclosed by a fence or barricade at least four feet (4') in height; provided, however, that the agency may request that the Department, in its discretion, waive such requirement upon a clear showing that the the lack of such fence or barricade poses no apparent or potential risk to children.
  - (c) The areas where children play or are cared for shall be properly maintained:
    - 1. A written playground maintenance plan shall be prepared by the agency to address routine, remedial, and preventive maintenance and to designate who is responsible for each maintenance need.
    - 2. A pre-play/care inspection of the outdoor play area shall be completed by the agency before children play outdoors.
    - 3. The play/care areas shall be free of hazardous items or materials unless adequately protected by storage, inaccessibility, proper supervision, or other safety procedures.

(Rule 1240-04-03-.12, continued)

4. These play/care areas shall otherwise present no conditions which may be hazardous to children.
5. All such play/care areas shall be free of all animal wastes.

(10) Equipment Hazards.

- (a) Cords on window blinds shall be inaccessible to children.
- (b) Electrical cords on equipment shall be inaccessible to children.
- (c) All indoor and outdoor areas shall be kept safe by the absence of, or the immediate removal or repair of, any object, fixture, equipment, or substance in the facility or grounds that could potentially cause injury to a child.

(11) General Sanitation and Safety of Building and Grounds.

(a) Water Supply.

1. The drinking water supply serving child care facilities shall be from a source approved by the health authority having jurisdiction.
2. Drinking water from individual single service cups or an approved drinking fountain shall be provided in all occupied rooms.

(b) Sewage and Waste Disposal.

1. Connection to a public sewage disposal system shall be made where possible. The use of a private sewage disposal system shall have the approval of the local health department and it shall be operating satisfactorily.
2. All garbage shall be removed from the building daily.
3. All garbage storage receptacles shall be outside and kept closed with tight-fitting lids.
4. The area surrounding the garbage containers shall be kept clean.

(c) Building, Grounds and Pools.

1. The building shall be kept clean and maintained in good repair, without unsafe cracks, leaks or unsatisfactory plumbing.
2. All outside doors and windows shall be screened and operable unless air-conditioning is operational.
3. Adequate natural and/or artificial lighting shall be provided throughout the facility.
4. All rooms used by children shall be maintained at a temperature of between 68 degrees to 78 degrees F by means of heating, cooling or ventilation sources approved for use.
5. Stoves, hot radiators, steam and hot water pipes, fans, or other shall be adequately protected by screens, guards, insulation, or suitable measures that will protect children from coming in contact with them.

(Rule 1240-04-03-.12, continued)

6. Broken glass, trash and debris shall be kept removed from the building and grounds.
7. Building and grounds shall be kept free of unprotected ponds, wells, cisterns, refrigerator or similar hazards.
8. Swimming pools shall be fenced to prevent entry of children without adult supervision.
9. Swimming pools and/or wading pools shall not be used without prior approval by the Health Department.
10. Grounds, tire swings and containers shall have adequate drainage to prevent standing water that can breed mosquitoes and other insects.
11. If animals or birds are kept in classrooms as pets, they shall be caged away from the food storage and preparation or service area, and cages kept clean.
12. Turtles shall not be kept as pets due to the risk of salmonella.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2). **Administrative History:** Original rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-4-1-.11). Repeal and new rule filed June 20, 2006; effective September 3, 2006.

#### 1240-04-03-.13 TRANSPORTATION.

- (1) Management Responsibility.
  - (a) Prior to offering child care transportation services of any type, directly or by contract, all new and existing child care agencies must provide written notice to the Department.
  - (b) Unless specifically noted otherwise within the context of the rule, the agency is responsible for compliance with all transportation provisions of this subchapter, regardless of whether the agency provides transportation directly, through a third party by contract or otherwise.
  - (c) The child care agency's management shall be fully responsible for the transportation of children between the child's home and the agency, to or from school, and/or for off site activities, on any vehicle which it operates, for which it contracts or which is otherwise under its direction or control.
  - (d) Prior to providing transportation services of any type all existing and new child care agencies must provide a written statement to the Department:
    1. Stating the type(s) of transportation that will be offered, e.g., from the child's home to the child care agency, from the child care agency to the child's school, etc.;
    2. Listing and describing the vehicles that will be used for the transportation of children; for example, "2002 small white school bus";

(Rule 1240-04-03.13, continued)

3. Describing any contracts, agreements or arrangements with any third (3<sup>rd</sup>) parties for the provision of transportation services, with copies of such contracts or agreements or arrangements available upon the Department's request;
  4. Describing the agency's plan for maintaining compliance with the transportation time limits set forth in this Chapter;
  5. Describing the agency's policy, procedures and staff training plans for maintaining compliance with the responsibilities for loading, unloading, and tracking each child as set forth in this Chapter;
  6. Describing the agency's management plan for ensuring all transportation staff properly perform their duties in accordance with the licensing rules and agency policies and procedures;
  7. Describing the agency's policy, procedures and staff training plans for attaining and maintaining compliance with all applicable child safety restraint requirements as set forth in these rules and state law; and
  8. Describing the provider's policy, procedures and staff training plans for the emergency evacuation of the vehicle.
- (e) Vehicles used to transport children and which are owned or operated by, contracted for or which are otherwise under the direction or control of the child care agency, shall carry automobile liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by rule 1240-04-03-.05(4) of this Chapter.
- (2) Supervision of Children During Transportation.
- (a) An adult must be in the vehicle whenever a child is in the vehicle.
  - (b) An adult must be seated behind the steering wheel if the motor is running and children are being loaded and/or are on board.
  - (c) Adult Monitor Requirements.
    1. An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more children ages six (6) weeks through five (5) years of age, who are not in kindergarten.
    2. An adult monitor, in addition to the driver, is required on the vehicle for all routes exceeding thirty (30) minutes for children ages six (6) weeks through five (5) years of age, who are not in kindergarten, regardless of the total number of children being transported.
    3. An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more non-ambulatory children (permanently or temporarily non-ambulatory) of any age.
    4. An adult monitor shall not be seated in the front passenger seat, but shall be seated in the vehicle in a position which will allow:
      - (i) Each child to be seen with a quick glance;
      - (ii) Each child to be heard at all times;

(Rule 1240-04-03.13, continued)

- (iii) Each child's activities to be observed; and
    - (iv) The monitor to respond immediately should there be an emergency.
- (3) Responsibility for Loading, Unloading and Tracking Each Child.
  - (a) Passenger Log:
    - 1. A passenger log provided by, or in a format approved by the Department shall be used to track each child during transportation.
    - 2. The first and last name of each child received for transport shall be recorded on the passenger log. A sibling group shall not be listed as a single group entry, for example, "Smith children".
    - 3. Either the driver of the vehicle or the monitor shall be designated by management as the person responsible for completing the log.
  - (b) Loading Procedures:
    - 1. As each child is loaded onto the vehicle the time the child was placed on the vehicle shall be recorded onto the passenger log by the person designated to keep the log.
    - 2. If the child was loaded from home, the parent or other authorized person will additionally sign the log indicating that the child was placed on the vehicle.
  - (c) Unloading Procedures:
    - 1. The individual designated by the agency as responsible for the log shall update it immediately upon the child being released from the vehicle. The designated staff member shall update the log by:
      - (i) Recording the time the child was released; and
      - (ii) Initialing next to the time of release.
    - 2. When the child is released to a parent or other authorized person, that person must sign the log indicating that the child was released to them.
  - (d) Confirming that Every Child Is Off of the Vehicle.
    - 1. Driver Responsibilities. Immediately upon unloading the last child and to ensure that all children have been unloaded the driver shall:
      - (i) Physically walk through the vehicle;
      - (ii) Inspect all seat surfaces, under all seats and in all compartments or recesses in the vehicle's interior;
      - (iii) Sign the log, with the driver's full name, indicating the children are all unloaded; and
      - (iv) Give the passenger log to the monitor, or to the additional reviewer if no monitor is required.

(Rule 1240-04-03.13, continued)

2. Monitor Responsibilities. If a monitor was also on the vehicle the monitor shall:
    - (i) Physically walk through the vehicle;
    - (ii) Inspect all seat surfaces, under all seats and in all compartments or recesses in the vehicle's interior;
    - (iii) Sign the log with the monitor's full name indicating the children are all unloaded; and
    - (iv) If the monitor has been designated by the agency as responsible for keeping the log, the monitor shall give the log to the additional reviewer as set forth below.
  3. Additional Reviewer Responsibilities:
    - (i) Agency management shall designate an additional person, who did not ride on the vehicle, to conduct an inspection once the vehicle has been unloaded.
    - (ii) The additional reviewer shall:
      - (I) Physically walk through the vehicle;
      - (II) Inspect all seat surfaces, under all seats and in all compartments or recesses in the vehicle's interior;
      - (III) Reconcile the passenger log with the agency's attendance roll to verify that each child is off the vehicle and present in his assigned classroom. This transfer of responsibility of each child shall be verified by the reviewer's full signature on the passenger log; and
      - (IV) Immediately notify the director or other individual designated in charge of any discrepancies between the passenger log and the attendance roll.
- (e) Loading/Unloading Children at School.
1. When children are transported to school, they shall be released in accordance with the following procedures:
    - (i) Children shall be unloaded only at the location designated by the school;
    - (ii) Children shall be unloaded from the agency's vehicle only at the time the school is open to receive them;
    - (iii) The driver/monitor shall watch the children who are unloaded from the vehicle walk through the entrance door designated by the school for the children; and
    - (iv) Any additional procedures established by the school.
  2. After all the children have been unloaded at school, the vehicle shall return to the center for the review procedures outlined above.

(Rule 1240-04-03.13, continued)

3. When children are picked up from school they shall be loaded on the vehicle at the location designated by the school using all applicable procedures for logging of children's presence on the vehicle, release and inspection contained in this subchapter 1240-04-03-.13.
  4. The child care agency shall develop written policy approved by the Department that:
    - (i) Contains procedures for the driver to follow in the event that a child scheduled to be picked up does not report to the vehicle; and
    - (ii) Insures that children will have adult supervision should the driver need to try to locate a missing child.
- (f) Unloading Children at the End of the Day. When children are unloaded at the end of the day and the vehicle does not return to the center for the additional review that confirms every child is off the vehicle, the center shall develop procedures, approved by the Department, to:
1. Verify that all children are off the vehicle; and
  2. Verify that each child was released to a responsible person authorized by the parent.
- (4) Vehicle Monitoring Devices.
- (a) All vehicles used by or on behalf of the agency for the transportation of children that are designed to transport six (6) or more passengers must be equipped with a child safety monitoring device approved by the Department which prompts staff to inspect the vehicle for children before an alarm sounds; provided, however, that such device shall not be required:
    1. On vehicles in which all the children being transported are five (5) years of age and in kindergarten, or older, unless any of the children are developmentally or physically disabled or non-ambulatory; or
    2. On vehicles used exclusively for occasional field trips.
  - (b) Only devices approved by the Department are authorized for use on such a vehicle.
- (5) Transportation Staff Qualifications.
- (a) All drivers and monitors (employed by the agency or provided through contract or otherwise), shall comply with all applicable transportation staff qualifications set forth in this subchapter.
  - (b) Documentation of all transportation staff qualifications shall be kept on file at the agency and shall be immediately available to the Department upon request.
  - (c) Drivers license. At a minimum, the person driving a vehicle used to transport children in a child care agency shall possess a current, valid Tennessee driver license with an "F" ("For Hire") endorsement or an equivalent endorsement recognized by the Department of Safety as meeting the minimum qualifications for transportation of children enrolled in child care agency in the applicable type of vehicle in which the children are being transported.

(Rule 1240-04-03.13, continued)

(d) Department of Safety Driver Requirements.

1. Persons transporting children for a child care agency shall have available for review by the Department of Human Services documentation of any training and testing required and provided by the Department of Safety.
2. All persons subject to this paragraph (5) shall obtain a certification document from the Department of Safety to signify that they have passed additional written or skills tests required for persons who may, in the course of their duties, drive a vehicle that transports children enrolled in a child care agency.
3. All persons subject to this paragraph (5) shall be required to obtain annual training that is utilized for school bus drivers offered by the Department of Safety or such other equivalent training as the Department of Safety may determine is appropriate.

(e) Health Examinations for Drivers: The agency or the contractor providing transportation services shall maintain documentation, updated annually and signed by the examining licensed physician, licensed psychologist, licensed clinician, Nurse Practitioner or Physician's Assistant, verifying that the individual who drives a vehicle transporting the children for the child care agency is physically, mentally and emotionally capable of safely and appropriately providing transportation for children.

(f) Drug Screenings for Drivers.

1. Individuals shall pass a drug screening test in accordance with procedures established by the Department:
  - (i) No later than ten (10) days prior to the individual being employed full or part-time as a driver (contract or otherwise) who provides transportation services for compensation on behalf of the agency; or
  - (ii) No later than ten (10) days prior to an existing employee (contract or otherwise) assuming driving duties, at any time.
2. The child care agency management shall immediately review the results of the drug screen upon receipt.
3. Upon receipt of a positive drug screen result for the individual being considered for driving duties or upon receipt of notification by a contractor or other person or entity providing transportation for compensation regarding such individual, the child care agency shall immediately:
  - (i) Notify the Department and prohibit the individual from any duties involving children enrolled in the child care agency; and
  - (ii) Enter into a safety plan approved by the Department that excludes the individual from driving for the child care agency until the individual passes a drug screen test and is otherwise approved, in writing, by the Department, to perform driving duties involving the transportation of children for the child care agency.
4. The agency shall be responsible for verifying that a contractor, or other person or entity providing transportation for compensation to the child care agency has not employed or assigned any driving duties for the agency to any individual who fails to pass a drug screen as required by this subparagraph.

(Rule 1240-04-03.13, continued)

- (g) Prior to assuming their duties, all individuals responsible, or who may in the course of their duties become responsible at any time for transporting children (including drivers and monitors), shall complete Department-recognized pre-service training in:
    - 1. The proper daily safety inspection of the vehicle as required by these rules;
    - 2. The proper use of child safety restraints required by these rules and state law;
    - 3. The proper loading, unloading, and tracking of children as required by these rules;
    - 4. The proper use of a blood-borne pathogen kit, first aid kit, and other required vehicle emergency equipment as required by these rules;
    - 5. The proper verification procedures for the evacuation of the vehicle based upon the type of vehicle and the ages of the children served; and
    - 6. The developmentally appropriate practices applicable to the behavior management of children during transportation.
  - (h) Following the completion of pre-service transportation training, all persons responsible at any time for the transportation of children (including drivers and monitors), shall complete Department-recognized transportation training on transportation rules every six (6) months.
  - (i) Emergency Aid Training. All persons responsible (including all drivers and monitors), or who in the course of their duties may become responsible at any time, for the transportation of children shall hold current certification in:
    - 1. Infant/Pediatric Cardiopulmonary Resuscitation (CPR) from the American Red Cross, the American Heart Association, or other certifying organization as recognized by the Department; and
    - 2. A first aid course sponsored or approved by the American Red Cross, or other first aid course, as recognized by the Department.
  - (j) The training requirements set forth in this paragraph do not apply to individuals who provide transportation services exclusively for occasional field trips.
- (6) Vehicle Requirements and Inspections.
- (a) The requirements of this paragraph include vehicles used at anytime by the agency or by a contractor for the agency as the regular child care vehicle(s) and/or as back-up vehicles.
  - (b) The following equipment shall be maintained in the vehicle and stored in a manner which is not readily accessible to children:
    - 1. Fire extinguisher;
    - 2. Emergency reflective triangles;
    - 3. First aid kit;
    - 4. Blood-borne pathogenic clean-up kit; and

(Rule 1240-04-03.13, continued)

5. Seat-belt cutter or similar device manufactured and designed to immediately release the vehicle's child restraint system(s) in an emergency.
- (c) The driver or monitor assigned to the vehicle shall be familiar with the location and use of all equipment required under subparagraph (b) above.
  - (d) Emergency exiting procedures shall be practiced on a regular basis by all staff responsible for transporting children.
  - (e) The carrying, possession or storage of firearms or other weapons, alcohol or illegal substances in child care vehicles is prohibited.
  - (f) The child care agency shall maintain documentation that the following daily inspections have been performed and any necessary repairs completed or other appropriate action taken before transporting children:
    1. A visual inspection of the vehicle's tires for wear and adequate pressure;
    2. A visual inspection for working headlights and taillights (brake lights and back-up lights), signals, mirrors, wiper blades and dash gauges;
    3. An inspection for properly functioning child and driver safety restraints;
    4. An inspection for properly functioning doors and windows;
    5. An inspection for the presence of safety equipment required by these rules or any other provisions of law or regulations, and repair or replacement as necessary based upon visual evidence of the need to do so;
    6. A determination that the vehicle has adequate fuel; and
    7. An inspection for, and cleaning of, debris from the vehicle's interior.
  - (g) The child care agency shall maintain documentation that the following maintenance is performed:
    1. Receive regular inspections and maintenance by a certified mechanic in accordance with the maintenance schedule recommended by the vehicle manufacturer, and
    2. Have the following vehicle equipment certified as inspected at least every four thousand (4,000) miles if not covered by, and/or otherwise serviced in accordance with the manufacturer's maintenance schedule:
      - (i) Brakes;
      - (ii) Steering;
      - (iii) Oil levels, coolant, brake, windshield-washer and transmission fluids;
      - (iv) Hoses and belts; and
      - (v) Tires.

(Rule 1240-04-03.13, continued)

- (h) Department of Safety Inspections. All child care vehicles that are designed by the vehicle manufacturer to carry ten (10) or more passengers must be inspected in accordance with the schedule established by the Department of Safety. Any maintenance or repair to the vehicles disclosed by the inspections shall be the sole responsibility of the child care agency.
  - (i) No vehicle which does not pass the inspections required in this paragraph (6) shall be used by the child care agency or by its contractors, or others subject to the agency's direction and control, to provide transportation services until necessary repairs, as determined by the Department, have been made.
- (7) Passenger Safety Restraints.
- (a) The provisions of this paragraph (7) apply to all transportation, including field trip transportation, provided by or on behalf of the agency.
  - (b) All child care vehicles must have a rear seat, i.e., passenger seating located behind the driver position that has been factory-installed or professionally retrofitted, and must have factory-installed or professionally retrofitted passenger restraint anchorages and passenger restraints as required by the provisions of this paragraph (7) for the age and size of the driver/passengers being transported and the type of vehicle being used; provided, however, that passenger restraint devices which are designed by the manufacturer to be attached to the seat by the end-user, e.g., add-on restraint systems such as infant carriers and harness systems, are not required to be factory-installed.
  - (c) All restraints must be used in accordance with the restraint manufacturer's instructions and must be secured to the vehicle in accordance with the vehicle manufacturer's and the restraint manufacturer's instructions.
  - (d) Passenger air bags shall remain turned off unless an adult or a child fifteen (15) years of age or older is riding in the front passenger seat of the vehicle.
  - (e) No child or adult shall ride on the floor of a vehicle.
  - (f) No child shall be placed with another child in the same restraint device.
  - (g) Children under four (4) years of age shall always be placed in a rear seat of the vehicle. For the purposes of this paragraph (7), a "rear seat" in any vehicle which is categorized as a "school bus" shall mean any passenger seat that has been factory-installed or professionally retrofitted and that is located behind the bus driver or behind the bus entrance which is directly to the right of the bus driver.
  - (h) Effective September 1, 2007, all vehicles with a Federal Motor Vehicle Safety Standards ("FMVSS") classification of "Small School Bus" or "Multi-function School Activity Bus" and a Gross Vehicle Weight Rating (GVWR) of ten thousand pounds (10,000 lbs.) or less must, in accordance with federal law, be manufactured with a "Type 2" restraint device, i.e., a lap and shoulder belt assembly) at each designated seating position, except at side-facing positions at which a "Type 1" restraint device, i.e., a lap belt, must be used.
    1. Child Restraint Requirements for Vehicles Manufactured before September 1, 2007.

Child passenger restraint equipment and usage requirements contained in this paragraph (7) applicable to any vehicles manufactured before September 1,

(Rule 1240-04-03.13, continued)

2007, that are subject to the class/weight requirements of this subparagraph (h) shall continue to apply after such date, except as amended by law or regulation.

2. Child Restraint Requirements for Vehicles Manufactured on or after September 1, 2007.

In addition to all other child passenger restraint equipment and usage requirements of this paragraph (7) applicable to any vehicles that are subject to the class/weight requirements of this subparagraph (h), children ages nine (9) years or older shall be restrained in a "Type 2" restraint device, i.e., a lap and shoulder belt, at each designated seating position in such vehicles manufactured on or after September 1, 2007, except that, at side-facing positions, a "Type 1" restraint device, i.e., a lap belt, must be used.

- (i) Child Restraint Requirements under Applicable State or Federal Law.

In addition to the requirements set forth in subparagraphs (a) through (h) above, all children shall be restrained in accordance with the requirements for child passenger restraint systems set forth in Tennessee Code Annotated, §§ 55-9-601—55-9-603 and any applicable federal law or regulation.

- (j) Adult Restraint Requirements.

1. Adult Restraint Requirements for Vehicles with a Gross Vehicle Weight Rating (GVWR) of 8,500 lbs. or less:

All adults operating or riding in any vehicle subject to the weight classification in this part 1 shall be restrained in a "Type 2" restraint, i.e., lap and shoulder belt assembly); provided, however, that if the seating position is not equipped with a Type 2 restraint, the adult must be restrained with a "Type 1" restraint device i.e., a lap belt.

2. Effective September 1, 2007 all vehicles with a Federal Motor Vehicle Safety Standards ("FMVSS") classification of "Small School Bus" or "Multi-function School Activity Bus" and a Gross Vehicle Weight Rating (GVWR) of ten thousand pounds (10,000 lbs.) or less must, in accordance with federal law, be manufactured with a "Type 2" restraint device, i.e., a lap and shoulder belt assembly) at each designated seating position, except at side-facing positions at which a "Type 1" restraint device, i.e., a lap belt, must be used.

- (i) Adult Restraint Requirements for Vehicles Manufactured Before September 1, 2007.

Adult driver/passenger restraint equipment and usage requirements contained in this paragraph (7) applicable to any vehicles manufactured before September 1, 2007, that are subject to the class/weight requirements of this part 2 shall continue to apply after such date, except as amended by law or regulation.

- (ii) Adult Restraint Requirements for Vehicles Manufactured on or After September 1, 2007.

In addition to all other adult driver/passenger restraint equipment and usage requirements of this paragraph (7) applicable to any vehicles that are subject to the class/weight requirements of this part 2, adults operating or riding in such vehicles shall be restrained in a "Type 2" restraint device,

(Rule 1240-04-03.13, continued)

i.e., a lap and shoulder belt at each designated seating position in such vehicles manufactured on or after September 1, 2007, except that, at side-facing positions, a "Type 1" restraint device, i.e., a lap belt, must be used.

(8) Capacity Limitations and Cargo Requirements.

- (a) The total number of adults and children in vehicles used for the transportation of children enrolled in the agency shall never exceed the manufacturer's rated passenger capacity.
- (b) All cargo, luggage or equipment of any type shall be adequately secured at all times in such manner as to protect the passengers in case of accident or emergency maneuvers.

(9) Requirements for Child Care Transportation Vehicles Effective January 1, 2007.

- (a) All vehicles used by a child care agency that are designed to carry ten (10) or more passengers must conform to all Federal Motor Vehicle Safety Standards (FMVSS) governing either "large" school buses or "small" school buses, as applicable, in accordance with the provisions of the FMVSS described in 49 Code of Federal Regulations Part 571, or as such law may be amended.
- (b) The requirements of this paragraph do not apply to vehicles used exclusively for the provision of occasional field trips.

(10) Vehicle Signage Requirements.

- (a) The requirements of this paragraph are applicable to all vehicles used for the transportation of children enrolled in the agency, including vehicles operated by a contractor of the agency or vehicles operated by any other provider of services under the direction or control of the child care agency, unless specifically exempted by these rules.
- (b) On each side of the vehicle the following information shall be displayed in a block font that is not less than one and one-half inches (1½") in height:
  - 1. The full name of the child care agency and emergency contact number for the agency in any font or color, including the agency's current logo and lettering scheme, which is clearly readable at a distance of fifty feet (50') on a stationary vehicle in daylight conditions; and
  - 2. The words "Child Care Transportation Complaints" followed by the Department's toll-free Child Care Complaint phone number in black text on a clearly contrasting background that is clearly readable at a distance of fifty feet (50') on a stationary vehicle in daylight conditions.
- (c) On the rear of the vehicle the following information shall be displayed:
  - 1. The full name of the child care agency and the words "Child Care Transportation Complaints" followed by the Department's toll-free Child Care Complaint phone number in black letters in a block font not less than one inch (1") in height on a clearly contrasting background that is clearly readable at a distance of forty feet (40') on a stationary vehicle in daylight conditions.
  - 2. Exception: Display of the Complaint number is not required on passenger automobiles (excluding minivans) used for transportation by the child care

(Rule 1240-04-03.13, continued)

agency with a manufacturer's rated seating capacity of six (6) or fewer passengers.

- (d) The vehicle signage required by these rules shall be applied to the vehicle in one of the following formats:
  - 1. Painted directly on the vehicle in accordance with the paint manufacturer's instructions using paint recommended by the paint manufacturer as appropriate for use on a vehicle; or
  - 2. A weather-resistant sign securely fastened to the vehicle. The term "securely fastened" includes magnetic signs and signs bolted to the vehicle. The term does not include adhesives such as tape or glue unless recommended by the adhesive manufacturer as being appropriate for outdoor use on a vehicle.
- (e) Special Requirements for Centralized Transportation.
  - 1. Central transportation operations or any other entity that may own or operate more than one child care agency and which may provide centralized transportation services for its child care agencies; and/or
  - 2. Contractors, or other transportation service providers under the direction or control of the child care agency, which may provide centralized transportation services to more than one child care agency may substitute for the name and phone number of the child care agency the full name and emergency contact number of the central operator, contractor or other transportation service providers under the direction or control of the child care agency. If the name on the vehicle does not clearly designate the agency or entity as one providing child care transportation, words such as "Child Care Transportation Vehicle" or "Child Care Transportation Services", or similar language approved by the Department, must be displayed on the vehicle in a manner that demonstrates, as determined by the Department, that the vehicle is providing child care transportation.
- (f) Exceptions to Vehicle Identification Requirements.
  - 1. Vehicles used exclusively for the provision of occasional field trips; and
  - 2. Vehicles used exclusively for the limited provision of emergency transportation, e.g., as a result of the mechanical breakdown of the regular child care vehicle.
  - 3. The Department may, in its discretion, waive the requirements of this paragraph for any child care agencies owned, operated, or under the direction or control of a public agency.
  - 4. The Department may, in its discretion, waive the requirements of this paragraph if circumstances clearly warrant such an exemption.
- (11) Limits on Time Children Are Transported/Transportation Waivers.
  - (a) Children shall not spend more than forty-five (45) minutes traveling one way to or from the agency's facility or to or from school; provided, however, this provision is not applicable to field trips.
  - (b) If extended transportation beyond the limits in subparagraph (a) is necessary in special circumstances, or as may be required by geographic factors, an individualized plan for

(Rule 1240-04-03.13, continued)

each child shall be established and signed by the parent and the child care agency and approved by the Department prior to providing such transportation.

**Authority:** T.C.A. §§4-5-201 et seq., 55-9-601 through 55-9-603, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), and 71-3-502(d)(7)(C)(iii); and 49 C.F.R. §§ 571 et seq. and 49 C.F.R. § 571.208.

**Administrative History:** Original rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-4-1-.12). Repeal and new rule filed June 20, 2006; effective September 3, 2006.

#### 1240-04-03-.14 EXTENDED CARE.

- (1) Extended care services may be offered by an agency as an additional component to conventional care services, or the agency may exclusively provide extended care services.
- (2) In order to facilitate the availability of child care services during extended care hours while ensuring the health, safety and welfare of children during such hours, any agency which is licensed to provide child care services during extended care hours shall comply with the following "Extended Care" rules in addition to the rules otherwise contained in this Chapter:
  - (a) Definitions contained in 1240-04-03-.02(22).
  - (b) Supervision as required in 1240-04-03-.06(3)(d) - adult:child ratios.
  - (c) Program 1240-04-03-.09.
    1. Schedule and Routines, paragraph (1)(k);
    2. Television, Videos and Computers, paragraph (2)(e);
    3. Reclining Rest Period, paragraph (4)(a); and
    4. Extended Care, paragraph (8).
  - (d) Health and Safety, 1240-04-03-.10.
    1. First Aid, paragraph (7)(b);
    2. Emergency Treatment, paragraph (8)(a)(2) and (8)(c); and
    3. Preparation for Emergencies, paragraph (9)(b).
  - (e) Food, 1240-04-03-.11, paragraph (1)(a)(6).

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2)..

**Administrative History:** Original rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Amendment filed October 17, 2001; effective December 31, 2001. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-4-1-.13). Repeal and new rule filed June 20, 2006; effective September 3, 2006.

#### 1240-04-03-.15 CARE OF CHILDREN WITH SPECIAL NEEDS.

(Rule 1240-04-03-.15, continued)

- (1) When children with disabilities are enrolled, all reasonable and appropriate efforts shall be made to provide each child an equal opportunity to participate in the same program activities as their peers.
- (2) Parents or other appropriate individual identified by the parent shall provide information and, as appropriate, training for caregivers regarding special needs/techniques/emergency measures/etc., as utilized in the child's home to ensure the child's safety and well-being.
- (3) Adaptations to the environment shall be directed toward normalizing the lifestyle of the child by helping the child to become independent and develop self-help skills.
- (4) Behavior management techniques or program activities which would tend to demean or isolate the child are prohibited.
- (5) The agency shall inform parents of any specialized services available from the agency, and if the agency is aware of any specialized services available through third parties, shall additionally inform the parent of such services.
- (6) Efforts to provide specialized services (e.g., speech/hearing therapy, physical therapy, psychological evaluation, or services for the mentally retarded) either directly or by referral, shall be conducted only with written permission by the parent and documented in the child's record. Any information exchange regarding these services that is shared with or received from third parties shall also be documented.
- (7) Emergency Plans.
  - (a) The agency shall have written individualized emergency plans for each disabled child who requires more assistance in emergencies than other children of the same age or in the same group.
  - (b) The emergency plan shall be approved by the Department.
  - (c) The agency shall maintain documentation that the Emergency Plan is practiced monthly.
- (8) Each non-verbal child's daily activities, including, as applicable to the individual child, the time and amount of feeding, elimination, times of diaper changes, sleep patterns, and developmental progress, shall be recorded and shared with the parents daily.
- (9) Diapering of School-age Children with special needs shall be completed as required by Rule 1240-04-03-.10.
- (10) Physical Restraint. In order to avoid an extremely high risk of physical injury or death for children subject to this subchapter 1240-04-03-.15, the child care agency shall not use physical restraint, as defined by rule 1240-04-03-.02(38), unless approved to do so by the Department and in accordance with all of the requirements of this paragraph.
  - (a) Least Restrictive Alternative. The agency shall attempt to alleviate the danger to the child by exhausting all methods which are least restrictive to the child's mobility prior to applying a safe-hold restraint on the child, including but not limited to:
    1. Calming the child through talking, distraction toward favored activities, and other developmentally appropriate behavior management techniques;
    2. Removing any implements which the child is using or could use to self-inflict injury;

(Rule 1240-04-03-.15, continued)

3. Physically removing the child to a secured or otherwise less dangerous area; and
  4. Physically blocking the child from access to walls, equipment and other materials which the child is using or could use to self-inflict injury.
- (b) Prior to using physical restraint that has been approved by the Department, the agency shall have developed a clear written policy on the acceptable use of physical restraints that is approved by the Department and which includes, at a minimum, the following:
1. Criteria, including the medical authorization required by these rules, for the identification of specific individual children for whom the use of physical restraints is not prohibited;
  2. Criteria for the identification and authorization of specific individual staff to administer the physical restraint;
  3. Provisions for the initial and ongoing training of staff authorized to administer physical restraint;
  4. Provisions for alternative available methods of behavior management and procedures requiring their use prior to administering physical restraint;
  5. Procedures for the immediate notification of the parent after physical restraint is administered; and
  6. Policies and procedures for insuring compliance with all other requirements contained within this paragraph (10).
- (c) The agency shall maintain in the child's health record required by 1240-04-03-.05 a written statement, updated annually and signed by a physician or licensed clinician, which states that the child does not have any medical or physical condition that would contraindicate the use of physical restraint. The agency is prohibited from administering physical restraint on any child whose health record does not contain this current statement.
- (d) The agency shall maintain written documentation, signed by the parent, that the possible use of physical restraint has been discussed and explained in detail with the parent at the time their child is enrolled in the agency.
- (e) Physical restraint shall only be administered by staff members who have completed training approved by the Department on the proper administration of physical restraint.
1. This training shall be updated annually.
  2. The agency shall maintain documentation of the training in the staff record required by 1240-04-03-.05.
- (f) In order to assure that the child can be checked for signs of distress and to otherwise monitor the appropriate application of the physical restraint, the agency is prohibited from administering physical restraint unless a second (2<sup>nd</sup>) trained staff member is available on the premises to assist.
1. The second (2<sup>nd</sup>) trained staff member shall be called immediately upon the determination being made that physical restraint will be necessary.

(Rule 1240-04-03-.15, continued)

2. Untrained staff are prohibited from assisting in any manner whatsoever in the administration of the physical restraint.
- (g) Administration of the physical restraint must cease immediately upon the child no longer posing an imminent threat to herself/himself, regardless of whether the child is continuing to exhibit inappropriate or unacceptable behavior.
  - (h) Emergency 911 or local emergency services must be contacted for assistance if a child remains uncontrollable and continues to pose a threat to himself/herself after five (5) continuous minutes of restraint have been applied.
  - (i) After an incident using physical restraint the agency shall create a written incident report within one (1) business day that is available to the parent and to the Department and which documents:
    1. The date and time the potentially dangerous behavior began;
    2. A description of the means in which the behavior escalated;
    3. All alternative methods which were used to manage the behavior;
    4. The exact methods, including a physical description, used to administer the restraint;
    5. The child's physical appearance and behavior following administration of the restraint; and
    6. The identification of all staff who interacted with the child in any manner whatsoever during this time period and the nature of their interaction.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2). **Administrative History:** Original rule filed November 21, 2002; effective February 4, 2003 (Formerly 1240-4-1-.14). Repeal and new rule filed June 20, 2006; effective September 3, 2006.

#### 1240-04-03-.16 SICK CHILD CARE.

- (1) Scope of Services. Agencies that provide sick child care as either an exclusive service or as a component of an existing child care service must, in addition to the rules contained in this Chapter, comply with the rules contained in this subchapter 1240-04-03-.16. Any conflict between the provisions of subchapter 1240-04-03-.16 and subchapters 1240-04-03-.01 through 1240-04-03-.15, inclusive, shall be resolved by reference to the requirements contained in this subchapter 1240-04-03-.16.
- (2) Statement of Agency Services, Policies and Procedures.
  - (a) An applicant for a license to operate a child care agency providing sick child care services shall submit a written statement to the Department, in the form and manner directed by the Department, which provides the following information:
    1. If sick child care services will be operated in the same facility as non-sick child care, the child care agency's provisions for maintaining the physical and operational separation of the sick child care and non-sick child care services;
    2. A description of the types of sick care child care services that are to be offered to children and, as applicable, to parents/family;

(Rule 1240-04-03-.16, continued)

3. Ages of children to be served;
  4. Types of illnesses/symptoms that will be served and types that will be excluded;
  5. Admission requirements and enrollment procedures not included in the agency's Statement of Purpose as required by 1240-04-03-.05;
  6. Hours of operation;
  7. Plans for feeding children as appropriate to each child's age and illness;
  8. Procedures for cleaning, sanitizing and infection control;
  9. Staff training plan;
  10. Methods of daily care including record keeping, reports;
  11. Policy, procedures, and staff training plan for emergency medical care; and
  12. Procedures for staff communication with parent and health care providers.
- (b) After being licensed, if a licensee wishes to change the scope or type of service offered to children and families, an amended statement shall be filed with the Department for approval prior to implementation.
- (3) Medical Protocols.
- (a) The sick care agency management shall develop a medical protocol for specific illness groups in accordance with best practices and the requirements of these rules, and otherwise review and update agency policies in accordance with such best practices. Medical protocol and policies shall be developed in consultation with a licensed family, internal medicine or pediatric physician, or a licensed nurse practitioner/clinician with specialization in family or pediatric medicine.
  - (b) The responsible physician or nurse must review and provide an updated, signed, approval of such protocols at least annually, and at any time that the agency changes its scope of services. In addition, the physician or nurse must otherwise be available on an ongoing basis for medical consultation.
- (4) Admission and Enrollment Requirements.
- (a) Children must be at least six (6) weeks of age and no more than twelve (12) years of age for admission to the sick child care agency.
  - (b) Children between the ages of six (6) weeks and six (6) months with a fever of 101 to 102 degrees Fahrenheit (F) shall not be admitted until a written statement is provided from a licensed physician or nurse practitioner/clinician which states that it is acceptable for the infant to attend the sick child care agency.
  - (c) Children with any of the following symptoms shall not be accepted for care:
    1. Temperature greater than 103 degrees Fahrenheit (F) and unresponsive to medication;
    2. Neck pain or stiffness;

(Rule 1240-04-03-.16, continued)

3. Exhibiting confusion;
  4. Unequal pupils;
  5. Dehydration;
  6. Undiagnosed non-clear eye discharge;
  7. Untreated TB;
  8. Excessive, persistent crying;
  9. Head trauma with vomiting;
  10. Severe or persistent pain;
  11. Contagious stages of pertussis, measles, mumps, rubella, diphtheria, chicken pox, mumps, hepatitis B, unless such child is isolated from other children in a contagious room with its own exterior entrance and ventilation system; provided, however, that children with chicken pox and mumps shall not be cared for simultaneously in the same contagious room;
  12. Untreated lice, scabies, pinworm, ringworm unless the child can be isolated from other children;
  13. Rapid or labored breathing;
  14. Undiagnosed rash;
  15. Persistent vomiting and/or severe diarrhea; and
  16. Other conditions as determined by the nurse or medical consultant.
- (d) All children shall be evaluated by the Registered Nurse prior to admission and upon arrival each day.
- (5) Children's Records.
- (a) The records required by this paragraph shall be maintained in an organized manner on-site at the center and made available to the Department upon request.
  - (b) A care plan shall be developed and updated daily for each child. The care plan shall be completed with the assistance of the child's parent and shall be verified by the parent's signature and date on the plan.
  - (c) A chart shall be maintained for each sick child in care.
  - (d) The following records must be obtained prior to enrolling the child and must additionally be updated annually, or as changes occur:
    1. A current information form which includes the child's name, date of birth, name of parents, child's and parents' home addresses, parents' business addresses, home and work phone numbers, work hours, social history, and the name and address (home and business or school) of a responsible person to contact in an emergency if parent cannot be located promptly. This information shall be updated annually, or as changes occur;

(Rule 1240-04-03-.16, continued)

2. Name, address, and telephone number of a physician to call in case of an emergency;
3. Written consent of parent regarding emergency medical care;
4. A child release plan stating to whom the child shall be released and procedures for allowing the refusal to release children to anyone whose behavior may place the children at immediate risk;
5. Daily attendance records for each child to include time in and time out;
6. Child's care plan;
7. Physical assessment;
8. History of illness;
9. Admission form;
10. Medication permission form;
11. Immunization record; and
12. Daily health record, including activities, vital signs, intake, output, and administration of medication.

(6) Staff.

- (a) A Registered Nurse with at least one (1) year of pediatric experience shall be present at all times that sick children are in care.
- (b) In agencies that exclusively provide sick child care, the director shall not be required to meet the provisions set forth in 1240-04-03-.07(4) if:
  1. The director holds a BSN; and
  2. At least one (1) full-time caregiver has a minimum of four (4) years of experience in early childhood and/or education.
- (c) At least fifty percent (50%) of caregivers shall have at least one (1) year experience in early childhood care and/or education.
- (d) All staff must have current pediatric CPR and First Aid certification.
- (e) Within the first two (2) weeks of employment all staff shall receive training in the following areas:
  1. A general overview of the agency's medical protocols;
  2. General infection control procedures, including handwashing, handling of contaminated items/universal precautions, use of sanitizers, food handling, and washing and disinfecting toys;
  3. Care of children with common mild childhood illnesses;

(Rule 1240-04-03-.16, continued)

4. Recognition and documentation of illness signs and symptoms;
5. Proper temperature monitoring methods;
6. Nutrition for ill children;
7. Communication with parents of ill children;
8. When and how to call for medical assistance;
9. Notification to the local public health department of communicable diseases;
10. Emergency procedures;
11. The child abuse reporting requirements set forth in subchapter 1240-04-03-.10(18) of these rules;
12. Developmentally appropriate activities for children who are ill; and
13. Staff members who are responsible, or who may in the course of their duties become responsible, for the care of infants shall additionally complete training on the SIDS requirements set forth in subchapter 1240-04-03-.06(4) of these rules.

(f) Each director and caregiver shall have at least six (6) clock hours of continuing education annually which is recognized by the Department, three (3) hours of which shall relate to the care of ill children and the prevention and control of communicable disease.

(g) After the first year of employment:

1. All staff shall annually receive a general refresher overview of the agency's medical protocols.
2. Any staff member who cares for infants or may in the course of their duties become responsible for the care of infants shall additionally annually complete refresher training on the SIDS requirements set forth in section 1240-04-03-.06(4) of these rules.

(7) Grouping of Adults and Children.

(a) The adult:child ratios and maximum group sizes contained in the following charts shall be maintained at all times.

Chart 1: Children three (3) months through twenty-three (23) months

Ratio	Maximum Group Size
1:3	9

Chart 2: Children twenty-four (24) months to twelve (12) years

Ratio	Maximum Group Size
1:4	12

(Rule 1240-04-03-.16, continued)

- (b) In a multi-age grouping the adult:child ratio and maximum group size shall be determined based upon the requirement for the youngest aged child in the group. Exception: Children under sixteen (16) months may not be grouped with children age three (3) years and above.
  - (c) Children shall additionally be grouped based upon the type of illness:
    - 1. Children with respiratory illnesses, gastrointestinal illnesses and non-infectious illnesses shall be cared for in a separate room from each other; and
    - 2. Children shall otherwise be separated in accordance with the agency's medical protocols.
  - (d) Children who begin their day in a sick child care center shall remain there throughout the day and shall not be permitted to return to any other part of the child care center or to any other child care center.
  - (e) Staff may care for well children on the same day that they care for sick children only if all of the following conditions are met:
    - 1. Prior to exiting the sick child center and entering the well child center the staff shall follow handwashing and all other sanitation requirements in compliance with these rules and the agency's medical protocols; and
    - 2. Prior to exiting the well child center and entering the sick child center the staff shall follow handwashing and all other sanitation requirements in compliance with these rules and the agency's medical protocols.
  - (f) Staff caring for sick children must not prepare food for well children or enter the kitchen used to prepare food for well children.
- (8) Equipment.
- (a) Furnishings, objects, and equipment must be maintained in good repair, and cleaned and sanitized daily and as needed.
  - (b) Separate rest equipment shall be available to each child in attendance.
- (9) Program.
- (a) The licensee providing sick child care pursuant to this subchapter shall develop, maintain, and implement a written plan to ensure the provision of a variety of indoor activities designed to meet the needs of mildly ill children. Such activities shall include, but are not limited to:
    - 1. Quiet and active play;
    - 2. Rest and relaxation;
    - 3. Eating;
    - 4. Toileting;
    - 5. Individual attention; and
    - 6. Children being comforted by care providers.

(Rule 1240-04-03-.16, continued)

- (b) Outdoor play is prohibited.
  - (c) Transportation provided by the agency is prohibited.
  - (d) Children shall be allowed to rest/nap as desired. Children shall have access at all times to rest/nap areas without distraction or disturbance from other activities.
  - (e) Drinking water and other fluids consistent with the child's condition shall be available at all times.
  - (f) All medications shall be kept locked and the key shall be available only to personnel authorized to administer medication; provided, however, that medications requiring emergency administration, including, but not limited to, asthma inhalers and EpiPens, may be kept in an unlocked location which is inaccessible to children.
- (10) Infection Control.
- (a) Only disposable diapers shall be used for children using diapers.
  - (b) Diapering practices outlined in subchapter 1240-04-03-.10 shall be followed.
  - (c) Drinking fountains are prohibited.
  - (d) If meals and snacks are served, disposable cups, plates, utensils, and napkins shall be used.
  - (e) Only liquid soap from a dispenser is allowed.
  - (f) Carpet is prohibited.
  - (g) Walls and floors in rooms where sick care is provided and all linens, furnishings, objects, and equipment used by or with sick children must be cleaned and disinfected a minimum of daily and more often as needed.
  - (h) Toys handled by a child shall be cleaned with soap and water, then sanitized before handling by another child.
  - (i) All handled toys shall be sanitized at the end of each day.
  - (j) Non-washable toys shall not be provided. If such toys are brought from home (for example, a stuffed animal which would require machine washing for proper sanitation) they must be limited to personal use articles that are not shared between children.
- (11) Physical Facilities.
- (a) No furnishings, toys, or materials shall be shared.
  - (b) The physical space designated for sick child care shall not be used by children or staff from any other component of the center when sick children are in care; provided, however, unless otherwise restricted pursuant to rule 1240-04-03-.16(11)(m) below, staff and children may enter and exit the sick care facility through the non-sick care facility.
  - (c) Rooms shall be separated by a floor to ceiling wall or separate structure.

(Rule 1240-04-03-.16, continued)

- (d) There shall be no shared space, furnishings, fixtures, toys, supplies, or equipment if the facility serves both sick and well children.
- (e) The use of potty chairs is prohibited.
- (f) There shall be a minimum of fifty (50) sq. feet of usable play space per child, not including cribs, large pieces of furniture, restrooms, halls, kitchen, or office space, with a minimum of three (3) feet between cots/beds.
- (g) Rest rooms, sinks for toileting/diapering and food preparation areas used for sick care must be separate from those used for well children.
- (h) Rest rooms shall have a minimum of one (1) toilet per ten (10) children.
- (i) A washer and a dryer shall be provided on site or the licensee shall contract with a laundry service to wash smocks, linens, shoulder cloths, scrubs and other non-disposable clothing and linens.
- (j) Rooms shall be designed to allow separate areas for resting and sleeping.
- (k) Telephones shall be located for ready access by staff in every child care area or an intercom system shall be provided to communicate with staff.
- (l) A program providing only sick child care shall not be required to have outdoor play space or equipment.
- (m) Contagious Room.
  - 1. No child who requires separation in a contagious room may be enrolled unless authorized by the agency's medical protocols and a contagious room is provided for the care of a child in that condition.
  - 2. The contagious room must be located in a separate room with its own entrance from the outside, and must additionally contain a separate toilet and handwashing facilities, separate toys and equipment, and a separate ventilation/air system.

**Authority:** T.C.A. §§ 4-5-201 et seq.; 71-1-105(5); 71-3-501 et seq.; 71-3-502(a)(2). **Administrative History:** Original rule filed June 20, 2006; effective September 3, 2006.

**RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN SERVICES  
ADULT AND FAMILY SERVICES DIVISION**

**CHAPTER 1240-04-04  
STANDARDS FOR FAMILY CHILD CARE HOMES**

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**1240-04-04-.01 INTRODUCTION.**

- (1) Purpose Of Licensing. The primary purpose of licensing is the protection of children. Minimum requirements seek to maintain adequate health, safety, and supervision of children while in a group care setting. Develop mental (comprehensive) child care provides appropriate educational experience, health services, and social services to children and their families.
- (2) Types Of Agencies. Child care services may be offered by family day care homes, group day care homes, day care or child development centers, nursery schools, day nurseries, and kindergartens - as well as schools or agencies providing before and after school care. Regardless of name, purpose, or auspices, all are subject to licensure unless exempt by law. (See specific definitions below:)
- (3) General Standards And Requirements.
  - (a) Issuance of a license is based on achievement in meeting and maintaining compliance with minimum standards or requirements, set forth in these rules. The license applies only to the agency, organization, or person(s) to which or to whom it is issued and only to the building and premises approved for the operation of the child welfare agency. In addition to state licensing requirements, it is the responsibility of the applicant/licensee to comply with all applicable local ordinances, including zoning ordinances and business tax licenses or other locally required permits.
  - (b) A day care home must comply with all requirements in these rules to receive an annual license. In addition to fire safety and environmental sanitation approval, the applicant must demonstrate good faith intent to comply with these rules before a conditional license may be issued. Failure to meet such requirements, or to demonstrate good intention in meeting them in the case of a conditional license, shall constitute grounds for denial of a license or for revocation of a license already issued.
  - (c) Appendices to these rules which contain fire safety, health, environmental sanitation regulations, summaries of applicable laws, and other information are incorporated herein by reference..
- (4) Legal Basis For Licensing. *TCA §71-3-501 et seq.* provide for defining, inspection, licensing, and regulation of child welfare agencies including day care homes. (See Appendix A for summary of applicable laws.) The Tennessee Department of Human Services has responsibility for licensing all such agencies offering child care to groups of children.

(Rule 1240-04-04-.01, continued)

(5) Definitions. For the purpose of this Chapter, the following definitions are applicable:

- (a) Annual License. An annual permit issued by the Department to a child welfare agency or to a child care system central operator, authorizing the licensee to provide child care in accordance with provisions of the license, the law, and requirements (rules) of the Department. Issuance of a license is not an endorsement of child care methods or of an agency's operational philosophy. A license is not transferable from one location to another or from one licensee/operator to another.
- (b) Approved Day Care Home. An approved day care home is a day care home which is related through contractual or employment arrangements to a central operator. The approved day care home must meet the same requirements and must have been evaluated by the central operator in the same manner as an individual licensed day care home.
- (c) Caregiver(s). Any person who provides all or part of the care of a group of children, including the primary caregiver.
- (d) Central Operator. The individual(s), or the corporation, partnership, cooperative, or other private or public entity of any kind, who or which, through their authorized representative(s), in addition to other activities, if any, owns, administers or operates a child care system. The central operator shall have ultimate responsibility for the administration/operation of any or all day care homes and child care centers in the system and shall, together with the primary caregiver, sign the application for a license. The central operator shall be the licensee.
- (e) Child. A person under 17 years of age.
- (f) Child Care. The wide variety of arrangements made by parents (or guardians) for the care outside of their home of children under 17 years of age, for less than 24-hour periods, without transfer of custody.
- (g) Child Care System. The existence of any day care homes approved or licensed and used by a licensed and incorporated day care agency or a licensed child-placing agency in its work; or the existence of two (2) or more facilities used for day care purposes which facilities are under ownership, administration or control of any individual(s), corporation, partnership, cooperative, or other public or private entity of any kind.
- (h) Commissioner. The executive head of the Department of Human Services, appointed by the Governor.
- (i) Conditional License. A permit issued by the Department to a new child welfare agency or to a new child care system central operator, permitting and authorizing the licensee to begin child care operations. It is valid for ninety (90) days and is issued upon application by the operator only if the staff and facility do not present any apparent hazards to the children that may be in care and only if the facility has received fire safety and environmental sanitation approval. If, at the end of the 90-day period, evidence is provided by the applicant/licensee that such child welfare agency is suitable and properly managed and that the agency is in compliance with these rules, the Department will issue an annual license to the child welfare agency.
- (j) Day Care. Synonymous with definition of child care, above.
- (k) Department (DHS). The Tennessee Department of Human Services and its representatives.

(Rule 1240-04-04-.01, continued)

- (l) Family Day Care Home. A home (an occupied residence) operated by a person for the purpose of receiving therein a minimum of five and a maximum of seven children under 17 years of age, who are not related (see definition below) to such person and whose parent(s) or guardian(s) are not residents in the same house, for less than 24-hours per day for care, without transfer of legal custody.
- (m) Group Day Care Home. Any facility operated by a person, social agency, corporation or institution, or any other group which receives a minimum of eight and a maximum of 12 children (and up to three additional school-age children who will only be present before and after school, on school holidays, on school snowdays, and during school summer vacation) for less than 24-hours per day for care outside their own homes, without transfer of legal custody. Before a group day care home opens, fire safety and environmental inspectors must approve the facility.
- (n) High School Diploma. As used in the context of caregivers' qualifications, refers to a document recognizing graduation from an accredited institution, public or private, based on the issuing state's required number of academic credits, including passing a GED test. As used in this Chapter, a certificate or statement of attendance or similar document or correspondence or video course do not qualify as or for a high school diploma.
- (o) Infant. A child who is six weeks through 15 months of age.
- (p) Law. The licensing law as contained in *TCA* §§71-3-501 through 71-3-530, and related statutes or other referenced statutes or regulations.
- (q) Licensee. The person(s), agency(ies), or central operator to whom a license is issued and who must assume ultimate responsibility for a day care home or homes. In a single-site home, the licensee is the primary caregiver. In a child care system of approved homes, the central operator is the licensee. (The term as used herein also refers to an agency.)
- (r) Parent. A biological or adoptive parent, guardian, or custodian who has primary responsibility for a child.
- (s) Preschool Child. A person who is 31 months through five years of age. The term includes infants and toddlers.
- (t) Primary Caregiver. The adult who is responsible for direct care and supervision of children in a day care home and for the daily operation of a home. In a family day care home which is not operated by a central operator, the primary caregiver is the licensee. Duties may include hiring, training, and supervision of other caregivers.
- (u) Related. As used in this Chapter, any children under age nine of the following relationships by marriage, blood, or adoption: children, step-children, grandchildren, siblings, step-siblings, nieces, and nephews of the primary caregiver.
- (v) School-age Child. A person who is five years of age and in kindergarten or older (refers to kindergarten through grade six).
- (w) Staff. Full and part-time caregivers, employees, and volunteers if any.
- (x) Substitute. Paid or unpaid persons who are replacement for regular staff. The names, addresses, telephone numbers and dates of service shall be recorded for all substitutes in the staff personnel records of the home. Substitutes providing services

(Rule 1240-04-04-.01, continued)

for thirty-six (36) hours or more in a calendar year are required to have a criminal background check pursuant to 1240-04-04-.03(1)(a)6 and shall meet the same requirements for regular staff for physical examinations as required by 1240-04-04-.06(3); provided, however, for purposes of 1240-04-04-.03(1)(a)6, persons serving temporarily as caregivers in field service placements as part of an educational course of study or other curriculum requirement shall not be considered as substitutes for purposes of this rule.

- (y) Toddler. A child who is 16 months through 30 months of age.
  - (z) Volunteer. A person who provides services for a child care agency without payment and who is used to supplement regular staff or substitutes. The volunteer shall not be used to meet classroom adult:child ratios. The names, addresses, telephone numbers and dates of service for all volunteers shall be recorded in the staff personnel records of the home.
- (6) Procedures For Getting A License.
- (a) The Department offers one precensure consultation session. When an individual or group is giving consideration to opening a child care service/business, the local county office of the Tennessee Department of Human Services should be contacted. The individual or group will be given the name of a licensing representative who will serve as their consultant.
  - (b) The Department will offer precensure training to prospective providers of day care. Interested persons or groups should contact a licensing representative to determine the date of the next meeting in their area.
  - (c) The licensing representative will inform the interested individuals or entity of the appropriate time to apply for a license. The family day care home application fee is \$5.
  - (d) Upon satisfaction of the following minimum requirements, a conditional license may be issued:
    - 1. Primary caregiver's qualifications meet the requirements (see Chapter 1240-04-04-.03);
    - 2. Three satisfactory references for the primary caregiver are verified; and
    - 3. Physical facilities receive fire safety and environmental approval.
    - 4. If the staff and facility do not present any apparent hazards to the children in care.
  - (e) Receipt of an application begins the evaluation process which is completed with the issuance or denial of an annual license. This process includes:
    - 1. At least one unannounced visit to the day care home;
    - 2. Observation of caregivers' interaction with children;
    - 3. Review of agency records;
    - 4. Request for written and oral information related to licensure requirements; and

(Rule 1240-04-04-.01, continued)

5. Use of an evaluation checklist, itemizing requirements and noting compliance or noncompliance, a copy of which is left with the applicant.
- (f) Upon issuance of an annual license, the licensee is expected to maintain compliance with requirements throughout the year.
- (g) Near the end of a licensing term, the licensee will be notified by mail of a scheduled reevaluation for a new license. Application for renewal must be made prior to the expiration of the existing license. The reevaluation process is similar to the initial evaluation, but agencies receiving two consecutive annual licenses are rewarded with a shorter, less involved reevaluation and/or fewer reevaluations. A home accredited by the National Association for Family Day Care (NAFDC) may be reevaluated every three years. (See "Appendix A" for further information regarding the licensing process.)
- (7) Licensing Action And Appeal Rights. Procedures for applications, suspensions, denials, revocations of licenses and appeal rights as governed by Chapter 1240-5-1-1.
- (8) Grace Period. Because the amount of in-service training required has been increased, new agencies and new primary caregivers will be granted a reasonable grace period if needed to obtain the required hours of training.
- (9) Investigations Of Child Abuse And Neglect; Custodial Authority Of Children.
  - (a) A child care provider is required by law to cooperate with the Department and other investigators by reporting any suspected child abuse and neglect to the Department. The child care provider must further cooperate by providing access to the records of children and staff and by allowing investigators to interview children and staff.
  - (b) A child care provider should protect the child by requesting the investigator's identification and by knowing who is entitled to custody of the child. An investigator may take a child off of the premises of the agency if he/she has obtained custody of the child through voluntary placement agreement with the parent, through court order or through emergency assumption of custody under TCA §37-1-113 without parental permission or if the child's parent or legal guardian is present and approves, or in conjunction with investigative procedures under the child abuse laws.
  - (c) Child care providers do not have a right to be present during interviews with staff or children or to receive information or results of the interviews or investigations concerning child abuse or neglect unless directly related to efforts to enforce the child abuse or licensing laws.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105, 71-3-501 et seq., and Acts 2000, ch. 981, §§8 and 14.  
**Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed October 28, 1976; effective January 14, 1977. Repeal filed March, 17, 1980; effective June 29, 1980. New rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed April 30, 1996; effective July 14, 1996. Amendment filed September 29, 2000; effective December 13, 2000.

#### 1240-04-04-.02 OWNERSHIP AND ADMINISTRATION.

- (1) Ownership/Sponsorship.
  - (a) The licensee of a family day care home shall be the primary caregiver.
  - (b) A family day care home shall be the residence of the primary caregiver.

(Rule 1240-04-04-.02, continued)

- (c) The primary caregiver in a family day care home shall assume responsibility for daily operation of the home and shall meet specified qualifications prior to licensure. (See Chapter 1240-04-04-.03.)
  - (d) The central operator of a child care system shall have ultimate responsibility for the operations of any day care homes in the system. The central operator and the primary caregiver shall sign an application for a license for each home sponsored (unless sponsoring agency is classified public or unless homes are to be approved).
  - (e) The name, address, and phone number of an applicant, central operator, and all primary caregivers shall be made known to the Department of Human Services and to parents of children enrolled in the home(s) and shall become public record.
  - (f) The applicant/licensee shall notify DHS before changing location of a family day care home.
  - (g) Day care agencies sharing common land shall be located in separate facilities and shall not share equipment or facilities with the exception of outdoor equipment and play area, which shall be used by children from one agency at a given time.
- (2) Policies.
- (a) A new primary caregiver shall complete in the presence of the Licensing Counselor the "Checklist of Services" or write out a Statement of Purpose.
  - (b) A family child care home shall have written policies concerning
    1. Services offered;
    2. Provision for children's individual needs;
    3. The home's admission policies and enrollment procedures;
    4. Fees charged (if applicable) and plan for payment;
    5. Handling of children's personal belongings; and
    6. If the agency provides transportation for children in the agency's care, the written statement required by 1240-04-04-.07(1)(a) describing transportation plans, procedures and equipment utilized in the transportation process and parental permission for trips away from facility-{};
    - [7. Criteria for the disenrollment of children [see expulsion policy requirements in 1240-04 04-.02(b)(18);
    8. Specific criteria concerning the release of children; includes responsibility until signed out;
    9. Written parental permission for observation of children by non-child care agency staff;
    10. Behavior management techniques;
    11. Hours of operation;
    12. Late fees;

(Rule 1240-04-04-.02, continued)

13. Rates;
  14. Inclement weather;
  15. Emergency policy;
  16. Whether the environment is smoke free;
  17. Meal Service policy; and
  18. The agency shall have a written expulsion policy.
    - (i) The policy shall be:
      - (I) Clearly articulated to staff and parents;
      - (II) Developmentally appropriate and consistent; and
      - (III) Non-discriminatory.
    - (ii) Other options shall be considered prior to expulsion, such as but not limited to reducing the number of days or amount of time the child may attend, or if applicable, referrals to the Center on the Social and Emotional Foundations for Early Learning (CSEFEL), Early Intervention System, Individuals with Disabilities Education Act (IDEA).
    - (iii) Procedures shall be developed to allow for a planned transition of a child to another program if expulsion must occur.
    - (iv) Aggregate data that includes reasons for expulsions shall be maintained and reported to the Department annually.]
- (c) A policy statement signed by both the primary caregiver and the parent shall be given to the parent, and a signed copy or other documentation that parent received a copy shall be kept on file.
- (3) Enrollment Of Children And Parent Involvement.
- (a) Children shall be at least six weeks of age before entering day care.
  - (b) Prior to admission of children, the parent shall submit a completed information (application) form and current health record. [See 4(c) below and Chapter 1240-04-04-.06.]
  - (c) A copy of "Summary of Licensing Requirements" (furnished by the Department) shall be given to the parent(s) of each child enrolled.
  - (d) During normal hours of operation, parents shall be permitted access to their children and ready access to all licensed areas of the home and premises shall be granted to Department representatives and Inspection authorities (i.e., Fire Safety, Sanitation, and Health).
  - (e) Parents must be informed in advance of the child's removal from the premises except in cases of emergencies or pursuant to investigative procedures conducted pursuant to the child abuse laws.

(Rule 1240-04-04-.02, continued)

- [(f) The agency shall not admit a child into care until the parent/guardian has supplied the agency with a completed application, valid Tennessee Department of Health Official Immunization Certificates record (for children over two (2) months of age), and a health history. Exception: After an initial eligibility determination, children who are homeless and/or children in state custody may receive care prior to providing all required documentation as determined by the Department. Care without documentation of immunizations shall not exceed thirty days.
  - (g) The agency shall maintain written documentation that the parent/guardian performed an on-site visit to the agency prior to the child being enrolled into care and that the agency provided and reviewed parent engagement strategies recognized by the Department with the parent during the required pre-placement visit. Exception: A pre-placement visit is not required for children of homeless families.]
- (4) Records.
- The following records shall be kept and shall be available to the Department:
- (a) An annual operating budget (actual or projected), which includes a statement of income and expenditures. Adequate financing of the day care operation shall be maintained.
  - (b) Staff records including:
    - 1. Recommendations from three nonrelated references on each applicant and caregiver. The central operator's/primary caregiver's reference information shall be given to the licensing counselor;
    - 2. Training received during the year for each caregiver;
    - 3. Reserved;
    - 4. Adult health records.
  - (c) Children's health records.
  - (d) Daily attendance records on children; on staff if more than one caregiver.
  - (e) A record on each child which includes the following information:
    - 1. Name, date of birth, name of parent(s), home address, business address and telephone, work hours, child's background information, transportation plan, and the names of persons allowed to pick the child up.
    - 2. The following information shall be kept where it can be found quickly in an emergency: the name, address, and telephone number of the person parents wish to be called if they cannot be reached. The name, address, and telephone number of a doctor to call in an emergency, written permission of parent authorizing emergency medical care.
    - 3. A written plan of how the primary caregiver intends to communicate daily with parents of every child below 31 months of age.
  - ~~(f) Children's records shall be kept for one year following the child's leaving the agency.~~

(Rule 1240-04-04-.02, continued)

- [(f) All children, including related children younger than age nine (9), shall have required records on file before care is provided. Exception: After an initial eligibility determination, children of homeless families and/or children in state custody may receive care prior to providing required documentation as determined by the Department.
  - (g) Data Reporting - Agencies shall submit data as requested by the Department quarterly on topics such as but not limited to: active enrollment, homeless children, non-traditional hours, deaths/serious injuries, child abuse, English as a Second Language/dual language learners, and children with disabilities.]
- (5) Right To Privacy/Confidentiality. The licensee and caregivers shall not disclose or knowingly permit the use of by other persons any information concerning a child or family except as required by law or regulation.
  - (6) Posting Of License. During the hours of operation, an up-to-date license to operate a family day care home shall be posted near the main entrance where anyone entering may see it.
  - (7) Liability and Medical Payment Insurance Coverage.
    - (a) General liability, automobile liability and medical payment insurance coverage shall be maintained on the vehicles owned, operated or leased by the child care agency and on the operations of the child care agency's facilities.
    - (b) Automobile liability coverage shall be maintained in a minimum amount of Three Hundred Thousand Dollars (\$300,000) combined single limit of liability. The requirement of this subparagraph only applies to child care programs that transport children.
    - (c) General liability coverage on the operations of the child care agency facilities shall be maintained in a minimum amount of Three Hundred Thousand Dollars (\$300,000) per occurrence and Three Hundred Thousand Dollars (\$300,000) general aggregate coverage, or Three Hundred Thousand Dollars (\$300,000) per occurrence.
    - (d) Medical payment coverage as the primary coverage, shall be maintained in the minimum amount of Five Thousand Dollars (\$5,000) for injuries to children being transported in vehicles owned, operated or leased by the child care agency under subparagraph (b), and in the minimum amount of Five Thousand Dollars (\$5,000) for injuries to children resulting from the operation of the child care agency under subparagraph (c).
    - (e) The requirements of this paragraph shall not apply to an agency that is under the direct management of a self-insured administrative department of the state, a county or a municipality or any combination of those three (3) or that has, or whose parent entity has, a self-insurance program that provides, as determined by the Department, the coverages and the liability limits required by these rules.
    - (f) Documentation that the necessary insurance is in effect, or that the administrative department or other entity is self-insured, shall be maintained in the records of the child care agency and shall be available for review by the Department's licensing staff.

**Authority:** T.C.A. §§4-5-201 et seq., 4-5-202, 71-1-105, 71-3-105(5), 71-3-501 et seq., 71-3-502(a)(2), 71-3-502(4)(B), and Acts 2000, ch. 981, §§3(a)(4) and 14. **Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed October 28, 1976; effective January 14, 1977. Repeal filed March 17, 1980; effective June 29, 1980. New rule filed December 6, 1983; effective January 5,

(Rule 1240-04-04-.03, continued)

1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed July 1, 1993; effective September 14, 1993. Amendment filed November 18, 1999; effective January 31, 2000. Amendment filed September 29, 2000; effective December 13, 2000. Amendment filed August 30, 2001; effective November 13, 2001. Amendment filed November 21, 2002; effective February 4, 2003.

**1240-04-04-.03 STAFF.**

(1) Qualifications.

(a) All Caregivers.

1. Every staff person, including volunteers, practicum students, and substitutes, shall be physically, mentally, and emotionally capable of performing his/her duties satisfactorily.

(i) Drug Screening for Child Care Vehicle Drivers Upon Reasonable Cause.

- (I) The Department, in its sole discretion, may require any individual, who drives or may drive at any time any vehicle transporting children on behalf of the agency or its contractors, to undergo a drug screening test when, in the Department's sole determination, there is reasonable cause to believe that such individual may have an impairment or possible impairment that potentially poses a risk of harm to children in the care of the agency caused by the use, or possession and potential use, of any drug. For purposes of this part, the term "drug" shall include alcohol.

- (II) An individual directed to undergo such examinations or screenings may refuse to do so, but will not be permitted to drive a vehicle transporting children in the agency or have any further contact with children in the care of the child care agency until evidence is provided that is satisfactory, in the Department's discretion, to demonstrate that the individual does not represent a risk of harm to the children in the agency's care.

(ii) Safety Plans.

- (I) The Department may require, in its sole discretion, the child care agency to enter into a safety plan approved by the Department that prohibits or limits such individual's contact with children in the care of the child care agency pending the outcome of such testing.

- (II) The Department may otherwise require, in its sole discretion, that the child care agency enter into a long-term or permanent safety plan that prohibits or limits the driving duties by an individual described in part 1 for, or contact by such individual with, children in the care of the agency.

- (III) Failure to adhere to the safety plan shall be grounds for action by the Department against the child care agency's license as permitted by T.C.A. § 71-3-508(c).

- (IV) The child care agency, or any individual whose employment status is directly and adversely impacted by a safety plan or by refusal to undergo an examination as directed by the Department may, at any

(Rule 1240-04-04-.03, continued)

time during the existence of the plan or during the pendency of the directive for an examination, make written request to the Director of Licensing for an intradepartmental review of the safety plan. Such review shall be conducted by the Director or the Director's designee within ten (10) business days of receipt of the written request.

- (V) Any individual or child care agency that has received an adverse decision from the intradepartmental review set forth in subpart (IV) above, may appeal such safety plan to the Department by filing a written request for an administrative hearing before the Department's Administrative Procedures Division within ten (10) business days of the Director's decision. The hearing shall be held by the Division within twenty (20) business days of the receipt of the request for an administrative hearing.
- (VI) Any safety plan that exceeds ninety (90) days when proposed or that continues for more than ninety (90) days may be appealed by the child care agency to the Child Care Agency Board of Review.

2. A person who has a physical, mental, or emotional condition which is in any way harmful to children shall not be present with the children.
3. To be counted in the caregiver to child ratio, caregivers shall be at least 16 years of age and able to read and write, and be supervised by an adult.
4. Caregivers shall be of suitable character to work with young children.
5. Reserved.
6. ~~Criminal history and abuse registry background checks; appeals; exemptions.~~

~~(i) Each person:~~

- ~~(i) Applying to work with children as a paid employee, a director, or manager of a child care agency;~~
- ~~(ii) Applying to work as a new substitute in a child care agency;~~
- ~~(iii) Who applies for a license for, or who otherwise seeks to operate (an "operator") a child care agency as defined in TCA §§ 71-3-501 et seq. and who has significant contact with children in the course of the role of operator. For purposes of this subparagraph, an "operator" shall be an individual who is an owner or administrator of a child care agency or a child care system; or~~
- ~~(iv) Fifteen (15) years of age or older who resides in a child care agency or who moves into a child care agency following initial licensure shall:
 
  - ~~I. Complete a criminal history disclosure form as approved by the Department;~~
  - ~~II. Supply a fingerprint sample in a manner prescribed by the Tennessee Bureau of Investigation in accordance with procedures established by the Department, and shall submit to a fingerprint based criminal history check to be conducted by~~~~

(Rule 1240-04-04-.03, continued)

~~the Department and the Tennessee Bureau of Investigation in accordance with procedures established by the Department;~~

~~III. Submit to a review of their status on the Department of Health's vulnerable persons registry under Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated.~~

~~IV. Agree to release all records relating to his or her criminal history to the child care agency and to the Department so that the criminal history information can be verified.~~

~~(ii) The entity that is seeking to employ the person or use the person as a substitute, or which has the person residing in the agency, or the licensee or operator of a child care agency, shall be responsible for obtaining, and submitting the fingerprint sample and any information necessary to process the criminal history review, in such manner as may be required by the Department, to the Tennessee Bureau of Investigation within ten (10) days of the first day of beginning employment or substitute status, or within ten (10) days of the license application or seeking operator status, or, within ten (10) days of the application for an initial license for a facility in which the person resides or within ten (10) days after the resident moves into the child care facility.~~

~~(iii) The child care agency shall be responsible for all costs associated with obtaining, handling and processing of the fingerprint sample which is submitted to the Tennessee Bureau of Investigation. The Department of Human Services will pay for the costs of processing the criminal records background check with the Tennessee Bureau of Investigation using the applicant's fingerprint sample. The Department shall only pay for one (1) processing fee that is required by the Tennessee Bureau of Investigation. If the fingerprint sample is rejected, and further costs are required to process the fingerprint, the child care agency is responsible for any further costs, regardless of the number of efforts required to obtain a valid fingerprint sample.~~

~~(iv) Pending outcome of the fingerprint background check and the Department of Health's vulnerable person's registry the applicant for employment, for a license or for operator or for a substitute position shall be conditional and shall be dependent upon the background check. No person whose criminal history disclosure form describes a criminal history or other activities within the prohibitions of subpart (vii) shall be permitted to be employed as a caregiver, a substitute, director, nor may such person be allowed to be a licensee, or an operator who has significant contact with the children in the agency's care, nor shall such person be permitted to reside in or otherwise have access to children in the child care facility while children are present.~~

~~(v) A copy of the disclosure form and the results of the criminal history check and the results of the inquiry to the Department of Health's vulnerable persons registry shall be maintained in the child care agency's records for review by the Department of Human Services.~~

~~(vi) The child care agency shall immediately review the report of the background check received from the Department and the Tennessee Bureau of Investigation, and shall immediately consult with the Department to resolve any questions relative to the person's status. Upon determination that the person's status prohibits the person from having~~

(Rule 1240-04-04-.03, continued)

~~access to children as described in subpart (vii), the child care agency shall immediately exclude such person from access to children. Failure to exclude the person under this part or subpart (iv) will result in immediate suspension of the child care agency's license.~~

- ~~(vii) Exclusions from access to children based upon criminal history or other status.~~
- ~~(1) No person shall be employed, or otherwise act, as a caregiver or as a substitute caregiver for children in a child care agency, nor shall any person be a licensee, director, or be an operator who has significant contact with children in a child care agency, nor shall a person who is a resident in a child care agency have access to or contact with children in a child care agency, nor shall any other person have any access to children in a child care agency whatsoever, who:~~
  - ~~I. has any pending warrant, indictment or presentment;~~
  - ~~II. has been convicted, pled guilty to or pled no contest to any crime or charge, or~~
  - ~~III. has any pending juvenile proceeding or previous juvenile finding which, if an adult, would result in any crime or charge, involving:~~
    - ~~A. Any crime, including a lesser included offense derived from any crime involving the physical, sexual, or emotional abuse or gross neglect of a child or any other crimes involving a threat to the health, safety or welfare of a child; or~~
    - ~~B. Any crime of violence, including a lesser included offense derived from a crime of violence against another person; or~~
    - ~~C. Any crime involving, or lesser included offenses derived from any crime involving, the manufacture, sale, distribution or possession of any drug; or~~
    - ~~D. A violation of TCA §§ 39-13-213; 55-10-101; 55-10-102 or 55-10-401 or any felony involving use of a motor vehicle while under the influence of any intoxicant. Such persons under this subitem may not for a period of five (5) years from the date of the conviction or guilty plea be employed or serve as a driver transporting children for a child care agency.~~
  - ~~IV. Is listed on the abuse registry maintained by the Department of Health pursuant to Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated; or~~
  - ~~V. Known to the management or licensee of a child care agency as a perpetrator of child abuse or child sexual abuse or who is identified to the child care agency's management or licensee by the Department of Human Services or by the Department of~~

(Rule 1240-04-04-.03, continued)

~~Children's Services as a validated or indicated perpetrator of abuse of a child based upon an investigation conducted by the Department of Children's Services or by the child protective services agency of any other state; and~~

~~A. who is associated in providing care or ancillary services in any manner within a child care agency; or~~

~~B. who is a family member or other person residing at the child care agency's facility(ies) or adjacent residence of the caregiver; or~~

~~C. who has unrestricted access to children in the child care agency as determined by the Department of Human Services.~~

~~(II) An employee or volunteer who has been identified by the Department as having neglected a child based on an investigation conducted by the Department of Children's Services, or any child protective services agency of any state, and who has not been criminally charged or convicted or pled guilty as stated above, shall be supervised by another adult while providing care for children.~~

~~(viii) Appeals of exclusions.~~

~~(I) Any person who is excluded or whose license or operator status is denied based upon the results of the criminal history background review may appeal the exclusion or denial to the Department within ten (10) days of the mailing date of the notice of such exclusion or denial to the subject person.~~

~~(II) If timely appealed, the Department shall provide an administrative hearing pursuant to Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated in which the appellant may challenge the accuracy of the report, and may challenge the failure to grant an exception to the exclusion or denial required by this subsection if a rule for such purpose has been promulgated by the Department pursuant to subpart (ix).~~

~~(III) The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified in the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the report was generated, has been dismissed, nolleed or has resulted in an acquittal.~~

~~(ix) Exemptions from exclusions.~~

~~(I) The Department will consider the granting of exemptions from the prohibitions under subpart (vii).~~

~~(II) The person seeking the exemption may indicate the request on the disclosure form, or may seek the exemption by written request to the Commissioner at any time. The request shall state the basis for the~~

(Rule 1240-04-04-.03, continued)

~~request, including any extenuating or mitigating circumstances that would, in the person's opinion, justify an exemption from the exclusion. Any documentary evidence may also be submitted with the request.~~

~~(III) Advisory group to review exemption requests.~~

~~I. The Department will establish an advisory group composed, at a minimum, of law enforcement personnel, persons experienced in child protective services, persons experienced in child development issues and child care providers licensed by the Department to review the requested exemption and advise the Department as to whether such request is warranted.~~

~~II. At the Department's request, the advisory group shall review the written request and any other evidence in any other form which it determines necessary to determine the status of the exemption request.~~

~~III. Based upon the recommendation of the advisory group, the Department shall make the final determination regarding an exemption. The exemption shall only be granted if the circumstances, as reviewed and determined by the advisory group and the Department, clearly warrant the exemption. The decision will be filed with the child care agency and shall be maintained in the Department's record concerning the agency and shall be open to public inspection.~~

~~(IV) Appeal of exemption decision.~~

~~I. The Department shall notify in writing the person making the request for exemption of the decision regarding the exemption request and the basis for the decision. A person aggrieved by the Department's determination may appeal the decision by filing a written request with the Commissioner within ten (10) days of the mailing date of the decision as shown by the date of the notice. If timely appealed, the person shall be granted an administrative hearing under the provisions of TCA §§ 4-5-301 et seq.~~

~~II. The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified on the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the criminal background history report was generated, has been dismissed, nolleed or has resulted in an acquittal.~~

~~(x) Alternate and Supplementary Criminal Background Checks.~~

~~(I) The Department of Human Services may, at its own expense, utilize background checks pursuant to the provisions of TCA § 71-3-507(g) or (h) to determine the criminal history or other status on the~~

(Rule 1240-04-04-.03, continued)

~~Department of Health's abuse registry of persons applying to work or who are current employees, licensees, operators or volunteers or current residents of child care agencies or persons working with contractors of the Department who are not otherwise required by the provisions of this subparagraph or any other provisions of law to undergo a criminal history background check. The Department may also utilize the abuse registry of the Department of Health under Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated, for such persons.~~

~~(II) The Department may require such individuals to complete a disclosure form as required by subpart (i) and to undergo a fingerprint sample. The Department will submit the form and the fingerprints to the Tennessee Bureau of Investigation for review.~~

~~(III) Status Pending Background Check.~~

~~I. Pending the outcome of the background check, if required, the applicant for employment or licensee or operator status or for a substitute or volunteer services position, shall be in a conditional status with the child care agency or the Department contractor, and such status shall be dependent upon the outcome of the background check.~~

~~II. The employment status of persons for whom a post-employment criminal background check was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a child care agency for whom a criminal background check was conducted after license approval, and who were not otherwise subject to a pre-status applicant background check and to the exclusionary provisions provided in this part, shall be governed by any regulations which may govern their status in a regulated entity or by applicable employment law.~~

~~(IV) Name Searches.~~

~~I. As a further supplemental method of criminal background history review for any applicants for employment, license or operator status, or for substitute or volunteer status with child care agencies, or with the Department or its contractors, as listed in subdivision TCA § 71-3-501(g)(1) or with the entities which the Department may regulate, or for residents of new child care agencies, or for current employees, licensees, operators, substitutes or volunteers of child care agencies or for current residents of child care agencies, the Department may require such persons to submit a disclosure form as set forth in part 1, a copy of which shall be maintained with the Department and shall be filed with the entity with whom such person is associated, and may require such person to agree to release all records involving the person relating the criminal history of such person.~~

~~II. The Department may, by agreement with the Tennessee Bureau of Investigation, access the Bureau's criminal history computer database using only the name of the person and~~

(Rule 1240-04-04-.03, continued)

~~such other person as contained on the disclosure form or such other information as may be available. If the Department determines it to be necessary, then the Department may require fingerprint verification pursuant to items (I) and (II) above.~~

~~(V) All provisions of subpart (vii) including, but not limited to, the exclusion of individuals from providing care, from being licensed for the care of children or having access to children upon determination of the criminal background or perpetrator of such individual, the suspension of operations of regulated, certified or approved entities that fail to exclude persons with a criminal background, and the exemptions from the exclusionary provisions shall be applicable to persons having criminal backgrounds or perpetrator status as determined by the processes established by this part.~~

~~(VI) Any person disqualified from care for or access to children based upon the results of the criminal history background review under this part may appeal that determination to the Department as provided in subpart (viii).~~

~~(VII) Nothing in this part shall be construed to prevent the exclusion of any individual from providing care for, from being licensed or approved for the care of children pursuant to this part or from having access to a child in a child caring situation if a criminal or juvenile proceeding background or perpetrator status is discovered and verified in any other manner other than through a procedure established pursuant to this chapter. All procedures, rules, and appeal processes established pursuant to this subparagraph for the protection of children and the due process rights of excluded individuals shall also be applicable to such individuals.~~

~~(xi) Nothing in this part shall be construed to mean that any other law which mandates that criminal background checks be conducted on applicants for employment, license or operator status, for substitute or volunteer positions or for resident status is made voluntary, repealed or superseded in any manner by the provisions of this subparagraph, and the provisions of subpart (x) are supplementary to, and are not in lieu of any mandatory provisions for such other statutorily required criminal background checks.~~

[6. Criminal Background Check and State Registry/Records Review Procedures.

(i) Criminal Background and Abuse Registry Disclosures and Reviews; Fingerprinting Requirements.

(I) The following persons are required to have a background check no more than ninety (90) days before having access to any child care agency:

I. Any person who owns or operates a child care agency and will have significant contact with children;

II. Any person who applies to work in a child care agency as an employee, director or manager;

(Rule 1240-04-04-.03, continued)

- III. Any person who will provide substitute services to a child care agency for more than thirty-six (36) hours in a calendar year and who is counted in the adult: child ratio; and
  - IV. Any person who is fifteen (15) years of age or older who will reside in a child care agency.
- (II) New background checks are required for all staff and residents when an agency moves from one class of care to another, such as when a family home becomes a group home or when an agency is sold and staff remain employed by the new owner or any time an agency is issued a license that is not the renewal of an existing license. Exception: Does not apply to background checks completed within the last ninety (90) days.
- (III) Background checks are required for all staff at least every five (5) years.
- (IV) Requirements for Disclosure of Criminal/Juvenile and State Register History and Fingerprinting.
- I. The individuals identified in subparagraph (1)(a) above shall:
    - A. Complete a criminal/juvenile administrative findings history disclosure form;
    - B. Submit fingerprint samples for a criminal and juvenile records background check; and
    - C. Complete a criminal, juvenile background check/state review consisting of:
      - (A) An investigation of a person's criminal background history by the Tennessee Bureau of Investigation (TBI) and through the Federal Bureau of Investigation's (FBI) national database;
      - (B) An investigation of a person's juvenile records history that is available to the TBI;
      - (C) A review of any available juvenile court records, if determined necessary by DHS;
      - (D) A search of the vulnerable persons registry (VPR), maintained by the Tennessee Department of Health;
      - (E) A search of the TN sexual offender registry (SOR), maintained by the TBI; and
      - (F) A search of the DCS registry of indicated perpetrators of abuse or neglect of children.
      - (G) A search of any state or federal registries required by the Child Care and Development Block Grant Act.

(Rule 1240-04-04-.03, continued)

- (ii) Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Children Prior to Completion of Criminal History Review.
  - (I) A child care agency, substitute pool, or staffing agency shall be responsible for registration of persons required to have a background check. The responsible entity shall ensure that the process is completed prior to employment.
  - (II) A child care agency may not permit any person who is required to have a background check to assume any role or to have access to children until the agency receives written verification from the Department that the person is cleared to work/reside in the agency.
  - (III) Failure to Complete or Disclose Information on Criminal Disclosure Form.
    - I. Failure to properly complete all sections of the Criminal/Administrative History Disclosure Form shall result in the individual being prohibited from assuming any position for which a background review is required.
    - II. Failure to disclose all criminal and administrative history information may result in the person being:
      - A. Excluded by the Department from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and
      - B. Referred to the appropriate district attorney for criminal prosecution.
  - (IV) The Department will pay for the costs of performing one background check per person per agency per year.
  - (V) The child care agency shall be responsible for costs associated with the background check if:
    - I. The fingerprint sample is rejected and the fingerprint sample must be resubmitted;
    - II. The agency submits a second fingerprint sample for an individual when the initial background check has not been completed; or
    - III. The agency submits a fingerprint sample for a purpose unrelated to obtaining approval for a prospective employee, volunteer, etc. to have access to child care.
- (iii) Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Children.
  - (I) No person shall be employed, be a licensee or operator or, provide substitute services, reside, or have any access to children in a child

(Rule 1240-04-04-.03, continued)

care agency if the criminal background check identifies an excludable criminal offense for which the person has:

- I. Been convicted of, pled guilty or no contest to (or to a lesser included offense);
- II. Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or
- III. Been named in a pending warrant, indictment, presentment, or petition.

(II) An excludable criminal offense involves:

- I. The physical, sexual or emotional abuse or neglect of a child;
- II. A crime of violence against a child, or any person;
- III. Any offense, including a lesser included offense, involving the manufacture, sale, distribution or possession of any drug; or
- IV. Any offense that presents a threat to the health, safety or welfare of children.
- V. The criminal offenses for which a person will be excluded from a child care agency include but are not limited to the following offenses as well as their lesser included offenses (even if not listed here):
  - A. Aggravated arson (T.C.A. § 39-14-302);
  - B. Aggravated assault (T.C.A. § 39-13-102);
  - C. Aggravated child abuse (T.C.A. § 39-15-402);
  - D. Aggravated child neglect (T.C.A. § 39-14-302);
  - E. Aggravated cruelty to animals (T.C.A. § 39-14-212);
  - F. Aggravated kidnapping (T.C.A. § 39-13-304);
  - G. Aggravated rape (T.C.A. § 39-13-502);
  - H. Aggravated rape of a child (T.C.A. § 39-13-531);
  - I. Aggravated robbery (T.C.A. § 39-13-402);
  - J. Aggravated sexual battery (T.C.A. § 39-13-504);
  - K. Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);
  - L. Aggravated vehicular homicide (T.C.A. § 39-13-218);
  - M. Arson (T.C.A. § 39-14-301);

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- N. Assault (T.C.A. § 39-13-101);
- O. Carjacking (T.C.A. § 39-13-404);
- P. Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);
- Q. Criminal attempt, under T.C.A. § 39-12-101, to commit any criminal offense that requires exclusion from child care;
- R. Criminal exposure to HIV (T.C.A. § 39-13-109);
- S. Criminal homicide (T.C.A. § 39-13-201);
- T. Criminally negligent homicide (T.C.A. § 39-13-212);
- U. Cruelty to Animals (T.C.A. § 39-14-202);
- V. Custodial interference (T.C.A. § 39-13-306);
- W. Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);
- X. Domestic assault (T.C.A. § 39-13-111);
- Y. Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);
- Z. Especially aggravated burglary (T.C.A. § 39-14-404);
- AA. Especially aggravated kidnapping (T.C.A. § 39-13-305);
- BB. Especially aggravated robbery (T.C.A. § 39-13-403);
- CC. Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);
- DD. Exploitation of a minor by electronic means (T.C.A. § 39-13-529);
- EE. False imprisonment (T.C.A. § 39-13-302);
- FF. First degree murder (T.C.A. § 39-13-202);
- GG. Incest (T.C.A. § 39-13-302);
- HH. Indecent exposure (T.C.A. § 39-13-511);
- II. Involuntary labor servitude (T.C.A. § 39-13-307);
- JJ. Kidnapping (T.C.A. § 39-13-105);
- KK. Rape (T.C.A. § 39-13-503);

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- LL. Rape of a child (T.C.A. § 39-13-522);
  - MM. Reckless endangerment (T.C.A. § 39-13-103);
  - NN. Reckless homicide (T.C.A. § 39-13-215);
  - OO. Robbery (T.C.A. § 39-13-401);
  - PP. Second degree murder (T.C.A. § 39-13-210);
  - QQ. Sexual battery (T.C.A. § 39-13-505);
  - RR. Sexual battery by an authority figure (T.C.A. § 39-13-527);
  - SS. Sexual exploitation of a minor (T.C.A. § 39-17-1003);
  - TT. Solicitation of a minor (T.C.A. § 39-13-528);
  - UU. Stalking (T.C.A. § 39-17-315);
  - VV. Statutory rape (T.C.A. § 39-13-506);
  - WW. Statutory rape by an authority figure (T.C.A. § 39-13-532);
  - XX. Trafficking a person for sexual servitude (T.C.A. § 39-13-309);
  - YY. Vehicular assault (T.C.A. § 39-13-106);
  - ZZ. Vehicular assault while intoxicated (T.C.A. § 39-13-106);
  - AAA. Vehicular homicide (T.C.A. § 39-13-213);
  - BBB. Voluntary manslaughter (T.C.A. § 39-13-211); and
  - CCC. Weapons offenses (unlawful possession, carrying, use, etc.).
- (III) No person may be employed as a driver or serve as a driver for a child care agency if the person:
- I. Is currently charged with; or
  - II. Has been convicted of, or pled guilty, within the last five (5) years to any of the following criminal offenses:
    - A. Vehicular homicide;
    - B. Accidents involving death or personal injury;
    - C. Accidents involving damage to a vehicle;
    - D. Driving under the influence of an intoxicant, drug or drug producing stimulant; or

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- E. Any felony involving the use of a motor vehicle while under the use of any intoxicant.
- (iv) Exclusion from access to child care based on a listing on a state registry.
  - (l) No person shall be employed, be a licensee or operator, provide substitute services, reside, or have any access to children in a child care agency if the results of the state registry review identify the person as being:
    - I. Listed on the Vulnerable Persons Registry;
    - II. Listed on the Sexual Offender Registry; or
    - III. Indicated in the records of the Department of Children's Services as a perpetrator of abuse or neglect of a child.
- (v) Supplemental Background Checks Subsequent to Licensing, Employment or Residence in a Child Care Agency.
  - (l) The Department may, at any time, require a new background check of any individual with access to children in a child care agency.
    - I. For an individual who was not subject to a background check prior to assuming a role, the individual's existing status in their role shall be conditional upon the satisfactory outcome of any requested background check.
- (vi) Any person who is excluded shall remain excluded pending the outcome of any appeals or waiver review or any determination that the basis for exclusion no longer exists.
- (vii) An individual will also be excluded if a criminal or juvenile proceeding, registry or administrative background review requiring exclusion or any other provision of law is discovered and verified in any manner.
- (viii) If a child care agency, substitute pool or staffing agency receives information from a source other than the Department that requires them to exclude an employee, substitute, volunteer, or resident they shall immediately exclude the person from any access to children and notify the Department on the same business day by calling the child and adult care complaint hotline.
- (ix) The exclusion of such persons from access to child care shall be conducted pursuant to T.C.A. § 71-3-507 and this rule.
- (x) Failure of a child care agency to perform the required background check before allowing a person access to child care or to immediately exclude individuals with a criminal history or state registry review status that requires exclusion, shall be the basis for the immediate suspension, denial or revocation of the child care agency's license.]

7. Reserved

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8. All caregivers shall be able to explain emergency procedures to follow in case of fire, serious injury or illness of a child or a caregiver, or disaster.
9. All caregivers shall have training in detection, reporting, and prevention of child abuse.
10. All caregivers shall have a minimum of two hours training annually, in addition to other required training in specific subject areas.

(b) Primary Caregiver.

1. A primary caregiver or any substitute for him/her, shall be 18 years of age or older.
2. A primary caregiver shall be able to read and write English.
3. A primary caregiver shall complete a DHS-sponsored child-care orientation class within three months of licensure.
4. A primary caregiver shall annually complete at least four hours of workshops or other training, or present evidence of four hours of consultation or of personal study (one-time only), in child care or a related field. After the first year of licensure, this training shall be in addition to other required training [such as Child and Adult Food Care Program (CAFCP), personal safety or first aid, etc.].
5. A primary caregiver shall not be employed at any other occupation during child care operating hours.

(c) Central Operator.

1. In order to receive a license, the central operator or person in charge of a child care system (or multiple homes) shall have:
  - (i) Graduated a four-year college or university and completed one year of full-time work experience with a group of young children; or
  - (ii) Completed some formal college training in early childhood education or child development (or related field), or received a Child Development Associate (CDA) credential or National Association of Family Day Care (NAFDC) accreditation, and completed one year of full-time work experience with a group of young children; or
  - (iii) A high school diploma or its equivalent (See "Definitions" in Chapter 1240-04-04-.01) and two years full-time work experience with a group of young children.
2. The central operator or person in charge of the child care system shall complete a DHS-sponsored child-care orientation class within three months of licensure.

[(d) Prior to assuming duties, each new employee shall receive documented instruction in, and have a working knowledge of:

1. Program philosophy and policies;
2. Job description;

(Rule 1240-04-04-.03, continued)

3. Emergency health and safety procedures;
4. Behavior management procedures;
5. Detection, reporting, and prevention of child abuse;
6. Procedures for receiving and releasing children;
7. Safe sleep procedures;
8. Shaken baby syndrome/abusive head trauma;
9. Meal service and safe food preparation policies;
10. Supervision during high risk activities such as eating and outdoor play;
11. Food allergies;
12. Expectations for communications with parent/guardian;
13. Disease control and health promotion;
14. An overview of licensing requirements;
15. Information on risks of Cytomegalovirus (CMV) to female employees of childbearing age;
16. A minimum of two (2) hours pre-service training as recognized by the Department; and
17. Documentation of the requirements in this subparagraph (h) shall be maintained in the staff file.]

[(e) Ongoing Training Requirements – any ongoing training required for employees shall include health and safety topics, such as but not limited to:

1. Prevention and control of infectious diseases (including immunization);
2. Prevention of sudden infant death syndrome and use of safe sleeping practices;
3. Administration of medication, consistent with standards for parental consent;
4. Prevention of and response to emergencies due to food and allergic reactions;
5. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
6. Prevention of shaken baby syndrome and abusive head trauma;
7. Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

(Rule 1240-04-04-.03, continued)

8. Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;
9. Precautions in transporting children (if applicable); and
10. First aid and pediatric cardiopulmonary resuscitation.]

(2) Caregiver To Child Ratios And Supervision.

- (a) An adult caregiver (at least 18 years of age) shall be present and supervising children in care at all times.
- (b) The total number of children (including "related" children under nine years of age) shall not exceed 12. (See Chapter 1240-04-04-.01 for definition of "related".)
- (c) A family day care home shall comply with one of the following two options at all times.
  1. Family Day Care Homes with One Caregiver:
    - (i) The total number of children in a family day care home with one caregiver shall not exceed seven, including 'related' children under nine years of age, and
    - (ii) In a home with one caregiver, the number of children under two years of age shall not exceed four.
  2. Family Day Care Homes with More than Seven Children:
    - (i) If the number of children, including the primary caregiver's "related" children (See Chapter 1240-04-04-.01 for definition of "related"), exceeds seven, one of the following options shall be met at all times:

Option	Group Size and Ages	Caregivers Required
A	More than 7 children (including "related" children under age 9), no more than 4 under age 2.	2
B	More than 7 children (including "related" children under age 9), with more than 4 under age 2.	3

- (d) If any child's physical or mental condition requires special care, or when a field trip is taken off premises, the number of caregivers required (any option) shall be increased by one.

**Authority:** T.C.A. §§4-5-201 et seq., 4-5-209, 71-1-105, 71-3-501 et seq., 71-3-502(a)(2), 71-3-508(c), Acts 2000, ch. 981, §§8 and 14 and Acts 2003, Ch. 412, § 2. **Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed October 28, 1976; effective January 14, 1977. Repeal filed March 17, 1980; effective June 29, 1980. New rule filed December 6, 1983; effective January 5,

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1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed July 1, 1993; effective September 14, 1993. Amendment filed September 29, 2000; effective December 13, 2000. Amendment filed September 29, 2003; effective December 13, 2003.

#### 1240-04-04-.04 EQUIPMENT.

- (1) General.
  - (a) All equipment shall be well made and safe with no sharp edges, splinters, or other conditions which present a hazard for children.
  - (b) Unsafe equipment shall be repaired or removed from the day care home or play yard at once.
  - (c) Babies and toddlers shall have additional equipment for comfort and safety, such as cribs, high chairs, etc.
  - (d) School-aged children shall have educational materials such as puzzles, craft items, etc., and equipment suitable for their size, interests, and needs.
- (2) Indoor Play Equipment.
  - (a) The day care home shall have play equipment for active and quiet play, suitable for the children's ages and interests and for children with special needs, and for all activities required in the Program Section. (See Chapter 1240-04-04-.05.)
  - (b) Play materials and equipment shall be in sufficient quantity to provide twice as many activities as there are children at a given time.
  - (c) Play materials and equipment shall be placed in such a way that children can get it and return it when needed, so that they can grow in independence.
- (3) Outdoor Play Equipment.
  - (a) Enough play equipment shall be provided so that each child can take part in many kinds of play each day.
  - (b) Equipment shall be placed to avoid accidents, for example, swings placed out of traffic paths.
  - (c) If there are climbers or swings, they shall be placed on a resilient surface and not over concrete, asphalt, or a similar surface such as hard-packed dirt.
  - (d) Climbers, swings, and other large equipment shall be securely anchored.
  - (e) If used, retainer structures for loose material, such as sand or pea gravel, shall be placed at least six (6) feet from the perimeter of play structures.

**Authority:** T.C.A. §§71-1-105(12) and 71-3-501 et seq. **Administrative History:** Original rule filed June 10, 1974. Repeal and new rule filed October 28, 1976; effective January 14, 1977. Repeal filed March 17, 1980; effective June 29, 1980. New rule filed December 6, 1983; effective January 5, 1984. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed April 30, 1996; effective July 14, 1996.

(Rule 1240-04-04-.05, continued)

**1240-04-04-.05 PROGRAM.**

(1) Activities.

- (a) A balanced daily program of developmentally appropriate activities shall be provided which includes some of the following: reading to and talking with children; art and music activities; building and manipulating toys; and dramatic play activities such as doll play, housekeeping, and role play. Children shall also be allowed to participate in age-appropriate home-type activities, such as cooking, cleaning, gardening, and washing clothes as a meaningful learning experience.
- (b) There shall be a written and posted schedule of daily routine activities.
- (c) Children shall be given opportunity to make their own choices in some activities. Other play activities shall be planned by the caregiver.
- (d) Children shall not spend all day in one room, unless the room has at least 30 square feet of usable play space per child.
- (e) Television, video tapes, and movies shall be limited to two hours per day and to programs designed for children's education and/or enjoyment. Programs/movies with violent or adult content (including "soap operas") shall not be permitted in children's presence. Other activities shall be available to children during television/movie viewing.
- (f) Except when the weather is extremely bad, children of all ages (including infants and toddlers) shall have outdoor play each day.

(2) Discipline.

- (a) Discipline techniques used shall be positive, appropriate to the age level and needs of children in care; designed to help children learn and maintain self-control and self-esteem; and shall not involve physical punishment, or deprivation of food, rest, or toileting. (Physical or corporal punishment is the infliction of bodily pain as a penalty for the child's behavior of which the punisher disapproves.)
- (b) Praise and encouragement of good behavior shall be used instead of noticing only unacceptable behavior.
- (c) Punishment which is shaming, humiliating, frightening, or injurious to children shall not be used.

(3) Physical Care And Naps.

- (a) Preschool children shall have a reclining rest period according to their individual needs. School-aged children shall be allowed to nap if needed but not forced to do so.
- (b) Each toddler who is able to walk and each preschooler shall have individual napping space, something soft and at least two inches thick to sleep on, and clean bedding. (Examples: couch with cover thick sleeping bag or foam pad, family bed with cover, or cot with cover.)
- (c) Each child under 15 months of age and any child unable to walk shall have his/her own crib or playpen and bedding for napping.

(Rule 1240-04-04-.05, continued)

- (d) Because of the risk of Sudden Infant Death Syndrome (SIDS), sleeping infants (under 13 months) shall be checked every 30 minutes by touching them. If a child appears not to be breathing, emergency medical assistance shall be sought immediately.
  - (e) Each child shall have his or her own clean sheet and coverlet.
  - (f) After a child has rested for a reasonable period, she/he shall be allowed to get up.
- (4) Physical Care - Toilet Training.
- (a) Toilet training shall never be started until a child has been in the day care home long enough to feel comfortable.
  - (b) Toilet training shall not be started until a child is able to understand, to do what is asked of them, and to let their need to use the bathroom be known.
  - (c) Children shall not be made to sit on the potty or toilet for more than five minutes.
  - (d) Children shall be diapered or cleaned when needed in a safe, sanitary manner.
- (5) Personal Safety Curriculum.
- (a) For ages three (3) through school-age, a curriculum shall be offered that shall include instruction, at least once a year, in personal safety.
  - (b) Personal Safety Curriculum Components and Guidelines.
    - 1. The personal safety curriculum shall include a Department-recognized component for the prevention of child abuse, including, for children four (4) years of age and older, a child sexual abuse prevention component.
    - 2. The curriculum shall be based upon curriculum guidelines provided by the Department to the child care provider in any suitable format. The child care provider may choose terminology and instructional methods for this curriculum with a goal of providing clear, effective and appropriate instruction to the children in personal safety, including the prevention of all forms of child abuse.
  - (c) Personal Safety Instruction Requirements for School-Age Children.
    - 1. For school-age children, the curriculum shall include instruction for reporting physical, sexual or verbal abuse.
    - 2. Children of school-age shall not be required to receive personal safety instruction from the child care agency if they annually receive personal safety instruction as required by this paragraph (5) in the curriculum of their local public education agency, or, if they receive such instruction in any other educational setting, as approved, in either circumstance, by the Department.
    - 3. Documentation of Personal Safety Instruction in Educational Settings.
      - (i) Written documentation, in a form and manner approved by the Department, verifying that annual personal safety instruction as required by this paragraph (5) is being provided in a public educational setting to each child enrolled in the child care agency, shall be maintained on file with the Department.

(Rule 1240-04-04-.05, continued)

- (ii) For children who do not attend public schools, the child care provider shall secure and maintain documentation, in a form and manner approved by the Department, verifying that each school-age child enrolled in the child care agency is receiving annual personal safety instruction as required by this paragraph (5).
- (d) Beginning October 1, 2008, the personal safety curriculum used by a child care agency shall be made available by the child care agency to parents and legal guardians for review. The child care agency shall use a standard notification form developed by the Department that will be provided to the parents or legal guardians by the child care agency to confirm that the parents/guardians have been notified of the curriculum to be used and of their opportunity to review the personal safety curriculum.
- (e) The record of each enrolled child shall include a copy of the signed notification form acknowledging that parents/legal guardians have been provided an opportunity to review the agency's personal safety curriculum, and have been notified of the sexual abuse/personal safety curriculum for their child.
- (f) If parents/legal guardians have questions regarding the personal safety curriculum, a representative of the child care agency shall meet with the parents/legal guardians to discuss the curriculum.

**Authority:** T.C.A. §§4-5-202; 4-5-209, 71-1-105(12) 71-3-501 et seq., 71-3-502, 71-3-502(l) and 2008 Tenn. Pub. Acts 1032. **Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed October 28, 1976; effective January 14, 1977. Repeal filed March 17, 1980; effective June 29, 1980. New rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Public necessity rule filed October 1, 2008; effective through March 15, 2009. Amendment filed December 29, 2008; effective March 14, 2009.

#### 1240-04-04-.06 HEALTH AND SAFETY.

- (1) Children's Health Records.
  - (a) Before a preschool child older than eight weeks is accepted for care, he/she shall have proof of being age-appropriately immunized against the following diseases: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, Rubella, and Hemophilus Influenza Type "B" by having a certification form signed or stamped by a certified health care provider. (Children of six through eight weeks of age may be enrolled before immunizations are begun.)
  - (b) Records of children older than 18 months shall state whether immunizations required for care are complete, and if not complete, when future immunizations will be given. If immunizations are not continued on time by the parent, the child shall not remain in care. If a child has any known allergies, they shall be indicated in the child's health record. Foreign-born children shall also present evidence of Tuberculosis (TB) screening. (See Appendix B for information about TB screening.)
  - (c) A copy of each infant/toddler's or preschool child's immunization record shall be on file in the day care home and available to appropriate staff. (Children of six through eight weeks of age may be enrolled before Immunizations are begun.)
  - (d) Before a school-aged child is accepted for care, the caregiver shall have on file a statement from the parent (or school) that the child's immunizations are current and that their health record is on file at the specified school which the child attends.

(Rule 1240-04-04-.06, continued)

- (e) If children with mental, physical or sensory impairment or with a medical disorder are enrolled, their health records shall include a physician's statement which identifies the disabling condition and which gives the physician's special instructions for the child's care.
  - (f) Before infants or toddlers aged 30 months and under are enrolled, they shall have proof of a physical examination within three months prior to admission, signed or stamped by a physician or health care agency. Each infant shall have on file an official health record of the first medical check-up at eight weeks of age.
  - (g) Exceptions to the above requirements in this section shall be made when:
    - 1. The child's physician or the Department of Health provides a signed and dated statement, giving a medical reason why the child should not be given a specified immunization; or
    - 2. The child's parent provides a written statement that such immunizations conflict with his/her religious tenets and practices.
    - [3. Care for children of homeless families and/or children in state custody is needed before documentation of immunizations can be confirmed. Care without documentation of immunizations shall not exceed thirty days.]
  - (h) Accidents and injuries to children shall be noted in their records (including date and time occurred) description of circumstances and action taken by caregivers.
- (2) Children's Health Requirements.
- (a) Children shall be checked upon arrival and observed for signs of communicable disease during the day. Every sign of illness or injury shall be reported to the parent as soon as possible but no later than the end of the day in which it occurred.
  - (b) Parents of every child enrolled shall be notified if one of the following communicable diseases has been introduced into the day care home: Hepatitis A, food borne outbreaks (food poisoning), Salmonella, Shigella, Measles, Mumps, Rubella, Pertussis, Polio, Hemophilus Influenza Type B, Meningococcal meningitis. Providers shall report the occurrence of the above diseases to local health department.
  - (c) Prescribed and nonprescribed, internal and external medication shall not be administered to a child except under the direction of a physician or with the parent's written authorization. Medications or drugs shall be labeled with the child's name and specific instructions for administering them. Administration of medications and noticeable side effects shall be charted and reported to parents. Medication shall not be handled by children and shall be stored so as to be inaccessible to children.
  - (d) Good hygiene shall be practiced, such as frequent handwashing; one-time use of tissues, napkins, and washcloths; proper storage and use of personal articles; and hygienic diapering techniques.
- (3) Caregiver's Health Requirements.
- (a) Before beginning to work, each caregiver shall have written evidence of a physical examination and statement that the caregiver's general physical and mental condition will permit the individual to direct and actively participate in the activities of a group of young children. The form or statement shall be signed or stamped by a physician.

(Rule 1240-04-04-.06, continued)

- (b) An updated statement of each caregiver's physical health shall be obtained every third year or more often, if deemed necessary by the Department. A statement of a caregiver's mental or emotional health shall be obtained from a psychiatrist or clinical psychologist, when deemed necessary by the Department.
  - (c) Each caregiver (whether employed full-time or part-time), volunteers, and others who are in contact with the children 30 or more calendar days per year shall have on file evidence of a tuberculin skin test or chest X-ray with negative results, in accordance with Department of Health recommendations. (See guidelines in Appendix B.)
  - (d) Caregivers shall not smoke while physically interacting with the children. Parents shall be informed if anyone in the home smokes.
  - (e) For the protection of children and adults, caregivers and helpers shall wash their hands immediately after changing a child's diaper, or aiding in toileting, before changing or aiding another child.
  - (f) For the protection of children and adults, when blood is to be handled (e.g., resulting from injury to a child or adult, from nosebleed or from spillage), vinyl or latex gloves shall be used and properly disposed of following use with/by one individual.
  - (g) Following a diaper change or blood spillage, surfaces shall be cleaned and sanitized with a solution of 1/4 cup chlorine bleach to one gallon of water.
- (4) Safety.
- (a) The primary caregiver shall have evidence of completing, or being currently enrolled in, a pediatric First Aid course (a minimum of three hours) taught by a qualified instructor. (See Recommendations.)
  - (b) The primary caregiver shall have evidence of completing, or being currently enrolled in, a pediatric CPR course (a minimum of three hours) taught by a qualified instructor. (See Recommendations.)
  - (c) First aid information shall be posted, and caregivers and helpers shall be familiar with it.
  - (d) A First Aid kit shall be available to staff. The contents shall include a digital thermometer, bandages, and other items listed in "Appendix C".
  - (e) The home shall have a working telephone accessible to caregivers for incoming and outgoing calls.
  - (f) These telephone numbers shall be posted near the telephone: Fire Department, Law Enforcement, Hospital, Child Abuse Hotline, Civil Defense/Emergency Management, and numbers where parents may be reached. Rescue Squad, Ambulance and Poison Control Center numbers shall also be posted if available in the community.
  - (g) All homes shall annually present a child sexual abuse prevention program to children enrolled in and cared for by the home.
  - (h) Suspected abuse or neglect of a child shall be reported immediately to the local DHS office. Failure to do so is, by itself, grounds to deny or revoke the agency's license.

(Rule 1240-04-04-.06, continued)

- (i) The primary caregiver shall be reasonably prepared to protect children in the event of a disaster by knowing who to contact and how to cooperate with the local Emergency Management Plan.
- (j) Emergency transportation shall be planned for and shall be provided as needed.
- (k) Firearms and other deadly weapons or tools on the premises shall be secured in such a way that they are inaccessible to children.
- (l) Use of swimming pools shall comply with Environmental Sanitation Regulations in "Appendix E". Wading pools which have not been approved by the environmentalist shall not be used.
- (m) Pets shall be vaccinated in accordance with a Veterinarian's recommendation. Unconfined pets and children shall not be together on a regular basis. An adult shall be present while pets are with children. Animals and birds shall not be allowed in areas of food storage preparation, or service.

**Authority:** T.C.A. §§71-1-105(12), 71-3-501 et seq., and 37-1-603(b)(1)(A). **Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed October 28, 1976; effective January 14, 1977. Repeal filed March 17, 1980; effective June 29, 1980. New rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992.

#### 1240-04-04-.07 TRANSPORTATION.

- (1) Management Responsibility, Loading\Unloading and Verification Procedures; Staff Qualifications.
  - (a) Management Responsibility.
    - 1. Existing child care agencies, or those applying or re-applying for licenses, that provide transportation services, must provide a written statement to the Department describing:
      - (i) The type(s) of transportation that will be offered, e.g., from the child's home to the child care agency, from the child care agency to the child's school, etc.;
      - (ii) The types of vehicles that will be used for the transportation of children, e.g., a 1999 fifteen (15) passenger Ford van;
      - (iii) Any contracts, agreements or arrangements with any third parties for the provision of transportation services;
      - (iv) The provider's plan for maintaining compliance with the transportation time limits set forth in 1240-04-04-.07(6);
      - (v) The provider's policy and procedures for maintaining compliance with the transportation verification procedures set forth in 1240-04-04-.07(1)(b);
      - (vi) The provider's policy and procedures for attaining and maintaining compliance with child restraint procedures required by: these rules; Tennessee Code Annotated, Title 55, Chapter 9, Part 6; applicable Federal Motor Vehicle Safety Standards relative to child safety restraints, and; the

(Rule 1240-04-04-.07, continued)

child restraint and vehicle manufacturer's design requirements for the type of child restraints and vehicles used to transport children; and

(vii) The provider's policy and procedures for the emergency evacuation of the vehicle.

2. The child care home's management shall be fully responsible for the transportation of children between home and the child care home, to or from school, and/or on field trips on any vehicle which it operates, for which it contracts or which is otherwise under its direction or control.
3. Vehicles used to transport children and which are owned or operated by, contracted for or which are otherwise under the direction and control of the child care agency, shall carry automobile liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by Rule 1240-04-04-.02(7).

(b) Loading\Unloading and Verification Procedures.

1. The driver of the vehicle or any other designated staff person riding on the vehicle shall use a passenger log to record the name of each individual child received for transport as the child enters the vehicle. No child shall be accounted for by use of a single entry in the log that would include all, or part, of a group of other siblings or relatives with the same last name and with whom the child is being transported. For example, three (3) siblings with the same last name, e.g., "Doe", who are transported on the same vehicle shall not be recorded by the single entry "Doe" which only records the group's last name and is used by the child care home to signify that all three (3) "Doe" children are accounted for. Each child shall, instead, be separately listed by first and last name.
2. During transportation, the passenger log shall be used to take roll each time the vehicle makes a stop as each child is loaded or unloaded.
3. Whenever children being transported are released from the vehicle to their parent or other designated person, the passenger log shall immediately be updated to reflect which children have been released.
4. Immediately upon unloading the last child/children from the vehicle, and to ensure that all the children being transported have been unloaded, the driver and any other staff members riding on the vehicle shall immediately deliver the passenger log to the person designated by the child care home in part 5 and shall immediately:
  - (i) physically walk through the vehicle; and
  - (ii) inspect all seat surfaces, under all seats in all compartments or recesses in the vehicle's interior.
5. Additional caregiver/staff review and verification requirements.
  - (i) The child care home shall also designate a caregiver or management level staff person, other than the person responsible for the recording in the passenger log on the vehicle, who shall provide additional review and additional verification that the children have been unloaded from the vehicle and properly accounted for.

(Rule 1240-04-04-.07, continued)

- (ii) When unloading children at the child care home or field trip destinations, or when, prior to being parked at the child care home or other location, and to ensure that all children have been unloaded, the person designated pursuant to subpart (i) of this part 5 shall also immediately request the passenger log from the person on the vehicle responsible for maintaining the log and shall immediately:
    - (I) reconcile the passenger log with the children's attendance records; and
    - (II) conduct the same inspection as required in subparts (1)(b)4(i) and (ii) above.
  - (iii) Verification of the passenger logs and attendance records required by this subparagraph (b) shall be made by having the printed name of the persons who complete the logs and records written or printed on the passenger log and attendance record accompanied by the handwritten initials of such persons. Passenger logs and attendance records shall be maintained for a period of one (1) year or until the next re-evaluation of the family child care home for an annual license, whichever is first.
6. The driver or any accompanying staff member shall assure that every child is received by a parent or other designated person.
7. When children are transported to school, they shall be released in accordance with the following procedures:
- (i) the children shall be unloaded only at the location designated by the school;
  - (ii) the children are only allowed to unload from the family child care home's vehicle at the time the school is open to receive them;
  - (iii) the driver/caregiver shall watch the children who are unloaded from the vehicle walk through the entrance door designated by the school for the children; and
  - (iv) any additional procedures established by the school.
8. The provisions of this subparagraph (b) apply to child care agency staff and to personnel operating vehicles for any contracted transportation service for a licensed or approved child care agency or for any other transportation service that is under the direction or control of a child care agency, that provides such services for children enrolled in the child care agency.
- (c) Transportation Staff Qualifications.
1. Driver License Requirements.
- (i) All persons responsible, or who may in the course of their duties become responsible, at any time, for driving a vehicle that transports children enrolled in the child care agency, shall hold, at a minimum, a current Tennessee driver license with an "F" ("for hire") endorsement pursuant to T.C.A. § 55-50-102(20)(F) unless such persons already have an endorsement or hold a license which the Department of Safety recognizes as inclusive of the "F" endorsement requirements, or shall hold such other

(Rule 1240-04-04-.07, continued)

license or endorsement provided for by State law or regulation governing driver qualifications for the type or size of vehicle used, or which may otherwise govern driver qualifications, for transportation of children enrolled by licensed or approved child care agencies.

- (ii) Effective January 1, 2004, all persons subject to this part 1 shall obtain a certification document from the Department of Safety to signify that they have passed additional written or skills tests required for persons who may, in the course of their duties drive a vehicle that transports children enrolled in a child care agency.
- (iii) Effective January 1, 2004, all persons subject to this part 1 shall be required to obtain annual training that is utilized for school bus drivers offered by the Department of Safety or such other equivalent training as the Department of Safety may determine is appropriate.
- (iv) Evidence of completion of the requirements in subparts (i)-(iii) for each person employed or otherwise utilized by the agency under any contract or any other arrangement shall be maintained in the records of the child care agency. Failure to obtain or timely exhibit completion of this additional certification when requested shall result in ineligibility of the person from any further driving duties for the child care agency until such requirements are fulfilled.

2. Health Examinations and Drug Screenings.

(i) Health Examinations.

All persons driving vehicles at any time for the transportation of children enrolled in the child care agency shall annually provide to the Department a health statement or statements, based upon an examination of the individual, that are signed by the examining licensed physician, licensed psychologist, licensed clinician, Nurse Practitioner, or Physician's Assistant, verifying that the individual is physically, mentally and emotionally capable in all respects of safely and appropriately providing transportation for children.

(ii) Drug Screenings.

- (l) Any person, in accordance with procedures established by the Department, shall pass a drug screen:
  - I. Prior to such person being employed as a full or part-time employee with a licensed or approved child care agency for a position which has any duties involving driving any vehicle utilized by the child care agency to transport children enrolled in that child care agency; or
  - II. Prior to such person being employed, in any position which has any duties involving driving any vehicle utilized to transport children enrolled in any child care agency, as a full-time or part-time employee by a contractor of a licensed or approved child care agency, or by any other persons or entities, any of which transports, for any compensation, children enrolled in the care of the child care agency as part of the agency's

(Rule 1240-04-04-.07, continued)

transportation program or service for such children offered by such child care agency; or

- III. Prior to the assumption, at anytime, of any driving duties by an existing full-time or part-time employee of the licensed or approved child care agency, or, of an existing full-time or part-time employee of a contractor or other person or entity providing transportation, for compensation, to the child care agency as part of such child care agency's transportation program or service.
  - (II) Effective January 1, 2004, all existing drivers who have been previously assigned by the child care agency or its contractors or by any other person or entity as a driver of any vehicle providing child care transportation for a licensed or approved child care agency, under any arrangement and who have not been tested as required by item (I), shall have a drug screen in accordance with procedures established by the Department.
  - (iii) The child care agency shall immediately review the results of the drug screen upon receipt, and upon receipt by the child care agency of a positive drug screen result for an employee of the child care agency, or upon receipt of notification of such result for a tested individual from a contractor or other person or entity providing transportation, for compensation, to the child care agency as part of such child care agency's transportation program or service, the child care agency shall immediately:
    - (I) Notify the Department and prohibit, or require its contractor or other entity providing transportation for compensation to the child care agency as part of the child care agency's transportation program to prohibit, the individual from any driving duties involving any transportation of children enrolled in the child care agency; and
    - (II) Enter into a safety plan approved by the Department that excludes the individual from driving for the child care agency until the individual passes a drug screen test and is otherwise approved, in writing, by the Department, to provide driving duties involving the transportation of children for the child care agency.
3. Prior to assuming their duties, all persons responsible, or who may in the course of their duties become responsible, at any time, for transporting children (including drivers and monitors) shall complete Department of Human Services-recognized pre-service transportation training in:
  - (i) The proper daily safety inspection of the vehicle set forth in subparagraph (2)(b) below;
  - (ii) The proper use of child safety restraints required by these rules, Tennessee Code Annotated, Title 55, Chapter 9, Part 6, applicable Federal Motor Vehicle Safety Standards relative to child safety restraints, and; the restraint and vehicle manufacturer's design requirements for the type of child restraints and vehicles used to transport children;
  - (iii) The proper use of the verification procedures set forth in subparagraph (1)(b) above;

(Rule 1240-04-04-.07, continued)

- (iv) The proper use of a blood borne pathogen kit;
    - (v) The proper procedures for the evacuation of the vehicle based upon the type of vehicle and the ages of the children served; and
    - (vi) The developmentally appropriate practices applicable to the behavior management of children during transportation.
  4. Following the completion of pre-service transportation training, all persons responsible at any time for the transportation of children (including drivers and monitors), shall complete Department of Human Services-recognized transportation training that includes the subject matter set forth in 1240-04-04-.07(1)(c)3, above, a minimum of every six (6) months.
  5. Emergency Aid Training.
    - (i) All persons responsible, or who may in the course of their duties become responsible at any time, for the transportation of children shall hold current certification in Infant/Pediatric Cardiopulmonary Resuscitation (CPR) from the American Red Cross, the American Heart Association, or other certifying organization, as recognized by the Department.
    - (ii) Effective July 1, 2004, all persons responsible, or who may in the course of their duties become responsible at any time, for the transportation of children shall complete a first aid course sponsored or approved by the American Red Cross, or other first aid course, as recognized by the Department.
  6. The provisions of this subparagraph (c) apply to child care agency staff and to personnel operating vehicles for any contracted transportation service for a licensed or approved child care agency or for any other transportation service under the direction or control of a child care agency.
  7. The requirements of 1240-04-04-.07(1)(c) do not apply to individuals who provide transportation services exclusively for occasional field trips.
- (2) Vehicle Inspections; Passenger Limitations; Vehicle Design Requirements; Child Seating Space Requirements; Emergency Equipment; Prohibition of Firearms or other Weapons on Vehicles.
  - (a) The requirements of this paragraph (2) include vehicles used at anytime for the regular child care vehicle(s) and those used as back-up vehicles. Exception: The requirements of this paragraph (2) do not apply to vehicles operated solely for the purpose of providing transportation for occasional field trips.
  - (b) The child care agency shall maintain, and shall require providers of transportation services for children under contract to the agency or under the agency's direction or control to maintain, documentation that designated child care, contractor, or other entity staff perform daily the following inspections, followed by any necessary repairs or other appropriate actions, before beginning transportation of children for the child care agency:
    1. A visual inspection of the vehicle's tires for wear and adequate pressure;
    2. A visual inspection for working headlights and taillights, signals, mirrors, wiper blades and dash gauges;

(Rule 1240-04-04-.07, continued)

3. An inspection for properly functioning child and driver restraints;
  4. An inspection for properly functioning doors and windows;
  5. An inspection for the presence of safety equipment required by these rules or any other provisions of law or regulations, and repair or replacement as necessary based upon visual evidence of the need do so;
  6. A determination that the vehicle has adequate fuel; and
  7. An inspection for, and cleaning of, debris from the vehicle's interior.
- (c) The child care agency shall maintain, and shall require providers of transportation services for children under contract to the agency or under the agency's direction or control to maintain, documentation that the vehicles used to transport children receive regular inspections and maintenance by a certified mechanic in accordance with the maintenance schedule recommended by the vehicle manufacturer, and, in addition shall have the following vehicle equipment certified as inspected at least every four thousand (4,000) miles if not covered by, and/or serviced in accordance with the manufacturer's maintenance schedule:
1. Brakes;
  2. Steering;
  3. Oil levels, coolant, brake, windshield washer and transmission fluids;
  4. Hoses and belts.
- (d) Beginning January 1, 2004, the Department of Safety will conduct annual vehicle safety inspections on all vehicles used by the child care agency directly, under contract, or under the control or direction of the agency designed by the vehicle manufacturer to carry ten (10) or more passengers. Any necessary maintenance or repair to the vehicles disclosed by the inspections shall be the sole responsibility of the child care agency.
- (e) All documentation of the child care agency or providers of transportation services for children under contract to the agency or under the agency's direction or control shall be made available upon request to Department staff.
- (f) No vehicle which does not pass the inspections required in subparagraphs (b), (c) or (d) shall be used by the child care agency or by its contractors, or others subject to the agency's direction and control, to provide transportation services until necessary repairs, as determined by the Department, have been made.
- (g) Passenger Restraints, Capacity Limitations and Cargo Requirements.
1. All children and adults riding in a vehicle used to transport a child to and from a child care agency, to and from school, or to and from field trips must be restrained by separate passenger restraint devices in the vehicle's seating area, at a minimum, as required by state or federal law or regulation, or, as otherwise required by these rules.

(Rule 1240-04-04-.07, continued)

2. The total number of adults and children in vehicles used for the transportation of children enrolled in a licensed or approved child care agency shall never exceed the manufacturer's rated passenger capacity.
  3. In a vehicle being used for the transportation of children enrolled in a licensed or approved child care agency, all cargo, luggage or equipment of any type shall be adequately secured at all times in such manner as to protect the passengers in case of accident or emergency maneuvers.
  4. The provisions of this subparagraph (g) also apply to vehicles operated by any contracted transportation service for a licensed or approved child care agency, or for any other transportation service under the direction or control of a child care agency.
- (h) Requirements for Child Care Transportation Vehicles Effective January 1, 2007.
1. Effective January 1, 2007 all vehicles that the child care agency operates, for which it contracts, or which are otherwise under its direction or control, that are designed to carry ten (10) or more passengers must conform to all Federal Motor Vehicle Safety Standards (FMVSS) governing either "large" school buses or "small" school buses, as applicable, in accordance with the provisions of the FMVSS described in 49 Code of Federal Regulations Part 571, or as such Part may be amended.
  2. Effective January 1, 2007, if buses in either the "large" or "small" classes of school buses under the FMVSS are used, they must have factory-installed passenger restraint anchorages and passenger restraints that are suitable for use in transporting children of any age who are to be transported on either a "large" or "small" school bus.
  3. The requirements of this subparagraph (h) do not apply to vehicles used exclusively for the provision of occasional field trips.
- (i) A minimum of ten (10) inches seat space per child is required in a vehicle transporting children.
- (j) A vehicle used to transport children shall have fire extinguishers, emergency reflective triangles, a first aid kit and a blood-borne pathogenic clean-up kit, and an adult familiar with the use of this equipment on board. Emergency exiting procedures shall be practiced on a regular basis by all staff responsible for transporting children.
- (k) The carrying, possession or storage of firearms or other weapons is prohibited in vehicles used to transport children.
- (3) Vehicle Signage Requirements; Exceptions.
- (a) The requirements of this paragraph (3) are effective March 1, 2003, and are applicable to all vehicles used for the transportation of children enrolled in a child care agency licensed or approved by the Department, including vehicles operated by a contractor of the agency or vehicles operated by any other provider of services under the direction or control of the child care agency, unless specifically exempted by the provisions of subparagraph (e) below.
  - (b) All vehicles used for the transportation of children enrolled in the child care agency must, as determined by the Department, clearly and readily identify to the driving public that the vehicle is used for the transportation of children who are in child care.

(Rule 1240-04-04-.07, continued)

1. On each side of the vehicle the following information shall be displayed:
  - (i) The full name of the child care agency and emergency contact number for the agency in any font or color, including the agency's current logo and lettering scheme; provided that the lettering is not less than one and one-half inches (1½") in height and is clearly readable at a distance of fifty feet (50') on a stationary vehicle in daylight conditions; and
  - (ii) The words "Child Care Transportation Complaints" followed by the Department of Human Services' toll-free Child Care Transportation Complaint phone number in black lettering in a block font, not less than one and one-half inches (1½") in height. This text shall appear on a clearly contrasting background that is clearly readable at a distance of fifty feet (50') on a stationary vehicle in daylight conditions.
2. On the rear of the vehicle the following information shall be displayed:
  - (i) The full name of the child care agency and the words "Child Care Transportation Complaints" followed by the Department of Human Services toll-free Child Care Transportation Complaint phone number in black letters in a block font not less than one inch (1") in height on a clearly contrasting background that is clearly readable at a distance of forty feet (40') on a stationary vehicle in daylight conditions.
  - (ii) The provisions of this part (2) shall not apply to passenger automobiles (excluding minivans) used for transportation by the child care agency with a manufacturer's rated seating capacity of six (6) or fewer passengers.
- (c) The information required in subparagraph (b) must be applied to the vehicle in one of the following formats:
  1. Painted directly on the vehicle in accordance with the paint manufacturer's instructions using paint recommended by the paint manufacturer as appropriate for use on a vehicle; or
  2. A weather-resistant sign securely fastened to the vehicle. The term "securely fastened" includes magnetic signs and signs bolted to the vehicle. The term does not include adhesives such as tape or glue unless recommended by the adhesive manufacturer as being appropriate for outdoor use on a vehicle.
- (d) Special Requirements for Centralized Transportation.
  1. Central operators or any other entity that may own or operate more than one child care agency and which may provide centralized transportation services for its child care agencies; and/or
  2. Contractors, or other transportation service providers under the direction or control of the child care agency, which may provide centralized transportation services to more than one child care agency may substitute for the name and phone number of the child care agency required by parts 1240-04-04-.07(3)(b)1 and 2 above the full name and emergency contact number of the central operator, contractor or other transportation service providers under the direction or control of the child care agency. If the name on the vehicle does not clearly designate the agency or entity as one providing child care transportation, words such as "Child Care Transportation Vehicle" or "Child Care Transportation

(Rule 1240-04-04-.07, continued)

Services", or similar language approved by the Department, must be displayed on the vehicle in a manner that demonstrates, as determined by the Department, that the vehicle is providing child care transportation.

- (e) Exceptions to Vehicle Identification Requirements.
  - 1. Vehicles used exclusively for the provision of occasional field trips; and
  - 2. Vehicles used exclusively for the limited provision of emergency transportation, e.g., as a result of the mechanical breakdown of the regular child care vehicle.
  - 3. The Department may, in its discretion, determine if exceptions to the requirements of this paragraph (3) may be made for child care agencies owned, operated, or under the direction or control of a public agency. For purposes of this subparagraph (e), a "public agency" is any entity controlled, owned or operated by a state, county or local entity, or a political subdivision of the State of Tennessee.
  - 4. The Department may, in its discretion, determine if certain child care agencies may be exempted from any or all of the requirements of this paragraph (3) due to facts which may clearly warrant such exemptions.
- (4) Child Safety Restraints.
  - (a) The provisions of this paragraph (4) shall apply to any vehicle used to transport children as of the effective date of these rules, unless stated otherwise by the rule. Any vehicle whether:
    - 1. A passenger car;
    - 2. A stock or custom van or sport utility vehicle;
    - 3. A school bus classified as a "small" or "large" bus as required in FMVSS contained in 49 Code of Federal Regulations Part 571; or
    - 4. Any other vehicle must be properly equipped with the child passenger restraints required by subparagraphs (c)—(f) below and must comply with all other provisions of this paragraph (4).
  - (b) Children under four (4) years of age shall never be placed in the front seat of the vehicle.
  - (c) Children who weigh less than twenty pounds (20 lbs.) shall be placed to face the rear of the vehicle. Children who weigh twenty pounds (20 lbs.) or more shall be placed to face the front of the vehicle unless the special needs of a disabled child otherwise require the child to face the rear of the vehicle.
  - (d) Children who weigh less than forty pounds (40 lbs.) shall be restrained in a Federally-approved child restraint device in accordance with the child restraint device manufacturer's instructions. The child restraint device shall be secured to the vehicle in accordance with the child restraint device manufacturer's instructions.
  - (e) Children Between Forty Pounds (40 lbs.) and Eighty Pounds (80lbs.).
    - 1. Children who weigh between forty pounds (40 lbs.) and eighty pounds (80 lbs.) may be restrained in a belt-positioning booster seat (BPBS) that has been

(Rule 1240-04-04-.07, continued)

- secured in accordance with the vehicle and restraint manufacturers' instructions. BPBS devices shall always be secured to the vehicle in accordance with the vehicle and the restraint device manufacturer's instructions. If, however, a BPBS restraint device is not used, the child shall be restrained in both a lap belt and a shoulder belt if available in the vehicle. If a lap and shoulder belt restraint system is not available in the vehicle, the child shall be restrained by a lap belt.
2. Effective January 1, 2007, children who weigh between forty pounds (40 lbs.) and eighty pounds (80 lbs.) shall be restrained in a belt-positioning booster seat (BPBS) in accordance with the BPBS manufacturer's instructions. BPBS devices shall always be secured to the vehicle in accordance with the vehicle and the restraint device manufacturer's instructions.
- (f) Children Weighing More Than Eighty (80 lbs.) or Who are Taller Than Four Feet Nine Inches (4'9").
1. Children who weigh more than eighty pounds (80 lbs.) or who are taller than four feet nine inches (4'9") may be restrained in an adult lap belt and shoulder belt that has been secured in accordance with the vehicle manufacturer's instructions. If, however, an adult lap belt and shoulder belt is not used, the child shall be restrained by a lap belt.
  2. Effective January 1, 2007, children who weigh more than eighty pounds (80 lbs.) or who are taller than four feet nine inches (4'9") shall be restrained in an adult lap belt and shoulder belt in accordance with the vehicle manufacturer's instructions.
- (g) Passenger air bags shall remain turned off unless an adult or a child fifteen (15) years of age or older is riding in the front passenger seat of the vehicle.
- (h) No child shall ride on the floor of a vehicle and no child shall be placed with another child in the same restraint device.
- (i) Notwithstanding the provisions of this paragraph (4), until January 1, 2007, children of school-age (in kindergarten or any grade level above) shall not be required to use child restraints when being transported in school buses classified in the "large" category under FMVSS.
- (5) Supervision of Children During Transportation.
- (a) An adult must be in the vehicle whenever a child is in the vehicle.
  - (b) Adult Monitor Requirements for Child Care Transportation.
    1. An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more children ages six (6) weeks through five (5) years of age, who are not in kindergarten, if the entire vehicle route exceeds forty-five (45) minutes.
    2. An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more non-ambulatory children (permanent or temporary) of any age.
    3. On field trips off premises, the number of adults at the destination shall be double the requirements on the adult:child ratio charts in paragraph (2) of subchapter 1240-04-04-.03, Caregiver to Child Ratios and Supervision; provided, however,

(Rule 1240-04-04-.07, continued)

the adult monitor referenced in parts 1 and 2 of this subparagraph (b) may be used for purposes of this requirement.

- (6) Limits on Time Children Are Transported/Transportation Waivers.
  - (a) Children shall not spend more than forty-five (45) minutes traveling one way; provided, however, this provision is not applicable for occasional field trips.
  - (b) If extended transportation beyond the limits in subparagraph (a) is necessary in special circumstances, or as may be required by geographic factors, an individualized plan shall be established and signed by the parent(s) and the child care agency and approved by the Department prior to providing such transportation.
- (7) Except as otherwise exempted, the provisions of paragraphs (4)-(6) shall apply to all vehicles used for the transportation of children enrolled in a child care agency licensed or approved by the Department, including vehicles provided by a contractor of the agency or vehicles operated by any other provider of services under the direction or control of the child care agency.

**Authority:** T.C.A. §§4-5-202, 4-5-209, 55-50-102(11) and (20), 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), 71-3-508(c), Acts of 2003, Public Chapter 412, §§1(c), 2, and 3, and 49 Code of Federal Regulations Part 571. **Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed October 28, 1976; effective January 14, 1977. Repeal filed March 17, 1980; effective June 29, 1980. New rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed November 21, 2002; effective February 4, 2003. Amendment by Acts of 2003, Public Chapter 412, §§1(c) and 3 filed June 25, 2003; effective July 1, 2003. Amendment filed September 29, 2003; effective December 13, 2003. Amendment filed October 18, 2004; effective January 1, 2005.

#### 1240-04-04-.08 FOOD.

- (1) Nutritional Needs.
  - (a) For children in the home at least four hours, one snack (defined as two of these four choices: fluid milk; meat or meat alternate; fruit, vegetable or full-strength juice; or whole grain or enriched bread) shall be provided, unless the four-hour period covers a normal meal hour, in which case a meal shall be provided.
  - (b) Snacks provided shall be nourishing and planned as a part of the day's food allowances. Carbonated drinks, fruit-flavored drinks, imitation milk drinks, and candy shall not be served as snack foods. Powdered milks shall be used only in a cooked food product. (Real juice will be labeled "100% juice" or "full-strength juice". Powdered milk does not meet the requirement.) (See Appendix D for suggested food pattern for snacks.)
  - (c) For children in the home five to 10 hours, one meal (defined as meat or meat alternate, vegetable and/or fruit, bread or bread product, and milk) and one or two snacks shall be provided, two snacks if the period is as much as seven hours. (See Appendix D for suggested meal patterns.)
  - (d) For those in the home longer than 10 hours, two meals and two snacks shall be furnished.
  - (e) Breakfast (defined as fruit, vegetable or full-strength juice; cereal or bread product; and milk) shall be offered to children who arrive before 7:00 a.m. and who have not had breakfast at home.

(Rule 1240-04-04-.08, continued)

- (f) Diets of infants and other special diets shall be prepared as prescribed by a physician.
  - (g) The week's menus shall be planned and posted by the First day of each week and remain posted until the following week, so that parents can be aware of the food their children are receiving. These menus shall be followed, although reasonable substitutions are permissible if the substituted food contains the same nutrients. The change shall be documented in advance of the meal. (information on menu planning is available upon request.)
- (2) Meal Service.
- (a) Caregivers and children shall wash their hands before eating or prior to any preparation of food.
  - (b) High chairs and tables on which food is served shall be washed with soap and water prior to and after snacks and meals.
  - (c) Napkins and forks and/or spoons shall be provided for children who feed themselves.
  - (d) All formulas and food brought from home shall be labeled with the child's name. Milk shall be placed immediately in the refrigerator. Previously opened baby food jars shall not be accepted by caregivers. All formulas remaining in bottles after feeding shall be discarded.
  - (e) When children are capable of using a high chair, they shall be allowed to do so and to experiment with food, with feeding themselves, and to eat with fingers or spoon.
  - (f) Bottles shall not be propped or given to children who are lying flat.
  - (g) Solid foods shall not be given in a bottle, or with infant feeders, to children of normal eating abilities.
  - (h) All infant's feeding schedule shall be made and adapted to child's need rather than on the hour.
  - (i) Weaning shall not be started immediately after enrollment, but after parents and caregivers have communicated to establish consistency in the weaning process and after a child has become familiar with a cup or glass.
  - (j) Introduction of new foods to infants and toddlers shall be gradual, one at a time, over a five to seven-day period with parents' approval.
  - (k) The size of servings shall be adequate to meet children's needs. (Portion size depends on child's age. See Appendix D for chart of age/portion size.)
  - (l) Food, including dessert, shall not be forced on or withheld from a child.
  - (m) Floors under tables and high chairs on which food has been served shall be swept and/or vacuumed after each meal and mopped as needed.

**Authority:** T.C.A. §§71-1-105(12) and 71-3-501 et seq. **Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed October 28, 1976; effective January 14, 1977. Repeal filed March 17, 1980; effective June 29, 1980. New rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992;

(Rule 1240-04-04-.08, continued)

effective June 6, 1992. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-04-.07).

#### 1240-04-04-.09 PHYSICAL FACILITIES.

- (1) Family day care homes shall be inspected and approved annually for Fire Safety and Environmental Health by the Licensing Counselor. Requirements in Appendices E and F shall be met before a license can be issued.
- (2) Physical facilities shall continue to meet all standards in Appendices E and F and any updated fire prevention and environmental standards which are applicable.
- (3) The home shall have at least two exits directly to the outside.
- (4) The home shall not be located in a building used for other purposes, which would be hazardous or would limit outdoor play.
- (5) If the number of children (including "related") exceeds seven at one time, the living area of the home shall provide 30 square feet per child of usable play space.
- (6) The areas where children play or are cared for shall be properly maintained. These areas shall be free of hazardous items or materials unless adequately protected by storage, inaccessibility, proper supervision, or other safety procedures. These areas shall present no conditions which are hazardous to children. All such areas shall be free of all animal wastes.
- (7) When infants are in care, the diapering area shall be located as close to a handwashing lavatory as possible but not in the kitchen.

**Authority:** T.C.A. §§71-1-105(12) and 71-3-501 et seq. **Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed October 28, 1976; effective January 14, 1977. Repeal filed March 17, 1980; effective June 29, 1980. New rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-04-.08).

#### 1240-04-04-.10 CARE OF CHILDREN WITH DISABILITIES.

- (1) When children with disabilities are enrolled the home shall provide those children equal opportunity to participate in the same program activities as their peers.
- (2) Adaptations to the environment shall be directed toward normalizing the lifestyle of the child with a disability by helping him/her become independent and develop self-help skills.
- (3) Any efforts to provide specialized services (e.g., speech/hearing therapy, physical therapy, psychological evaluation, or services for mentally retarded), either directly or by referral, shall be conducted only with written permission by parent and documented in the child's record. Any informational exchange regarding these services shall also be documented.
- (4) The home shall have a written individualized evacuation plan, which has been approved by the Licensing Counselor and is practiced in every monthly fire drill, for every child enrolled who requires more assistance to evacuate the facility than other children of the same age or in the same group.

**Authority:** T.C.A. §§71-1-105(12), and 71-3-501 et seq. **Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed October 28, 1976; effective January 14, 1977. Repeal filed

(Rule 1240-04-04-.10, continued)

March 17, 1980; effective June 29, 1980. New rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-04-.09).

#### 1240-04-04-.11 APPENDICES.

- (1) The following Appendices referenced in the foregoing rules are incorporated in these rules by reference:
  - (a) Appendix A - I. Summary of Applicable Laws  
II. Questions and Answers About Day Care Licensing
  - (b) Appendix B - Guidelines for TB Screening
  - (c) Appendix C - Contents of First Aid Kit
  - (d) Appendix D - Meal/Snack Patterns and Portion Sizes
  - (e) Appendix E - Environmental Standards for Family Child Care Homes
  - (f) Appendix F - Fire Safety Inspection Report
- (2) Any conflict between summaries of the language of statutes or regulations in the Appendices and official statutes and regulations will be resolved by reference to the language of the official statutes or regulations.

**Authority:** T.C.A. §§4-5-202, 55-50-102(11) and (20), 71-1-105(5), 71-3-502(a)(2), and 49 Code of Federal Regulations Part 571. **Administrative History:** Original rule filed November 21, 2002; effective February 4, 2003.

#### APPENDIX A

##### I. Summary Of Applicable Laws.

- A. *Child Welfare Agencies (TCA §71-3-501 et seq.) (A complete copy of the licensing law is available upon request.)*
  1. Specifies the types of agencies that DHS has a mandate to license. Licensing of day care (less than 24-hour care) begins with five children. (Care for one to four children is exempt.)
  2. Provides for development of standards, based on certain criteria by a 16 member "Standards Committee" appointed by the Commissioner. Standards are to be reviewed (and revised, if needed) every five years.
  3. Requires DHS to provide applicants or licensees with assistance in meeting standards.
  4. Requires annual application for a license and an application processing fee.
  5. Upon receiving fire safety and environmental sanitation approval, provides that DHS will issue a 90-day conditional license if no apparent hazards to the children in care are present.
  6. Provides for denial, suspension, or revocation of license and a waiting period ranging from 60 days to one year prior to reapplication.

(Rule 1240-04-04-Appendix A, continued)

7. Provides for appeals and hearings before the Board of Review, which includes representatives from the Departments of Health, Education, of the "Advisory Board" of DHS, from the appropriate Standards Committee, and three at-large members selected by the others. Appeals from the Board's decision may be made to Chancery Court.
  8. Imposes a misdemeanor penalty of imprisonment for six months and a fine of \$500 or both for each offense (day) of operating without a license.
  9. Requires public agencies to meet the same standards as other child welfare agencies and a method of reporting to the public any uncorrected deficiencies.
  10. Requires DHS to regularly inspect agencies without prior notice and grants the Department access to facilities and records in order to make an evaluation of the "kind and quality of work done" and to make recommendations regarding licensure.
  11. Requires DHS to investigate reports of noncompliance.
  12. Allows DHS to impose civil penalty (\$25 - \$150) for substantial noncompliance and probation for continued noncompliance.
  13. Contains specified and defined exemptions for Parents' Day Out programs, Kindergartens, and "Drop-in" programs. Also provides a waiver of adult to child ratios and group size requirements for certain Montessori schools.
  14. Requires screening for criminal violations of persons applying to work with children through the registry maintained by the Tennessee Bureau of Investigation (TBI).
  15. Allows DHS to investigate all reports of abuse, neglect, or sexual abuse (even in exempt agencies) and enables DHS to revoke the license of a licensed agency and to enjoin an unlicensed person or agency from continuing to provide child care where abuse of children occurs.
- B. *Access to Public Records (TCA §10-7-503 and 10-7-504).*
- Requires public bodies to provide any citizen of Tennessee access to public records except for specified confidential records (e.g., medical records, TBI investigative records, students' records). DHS' records on child welfare agencies are public records except as they may contain information obtained in the course of child abuse or neglect investigations.
- C. *Child Protective Services (TCA §§37-1-401 et seq. and 37-1-601 et seq.).*
1. Requires any individual or organization (such as Day care agency, Hospital, or School) having knowledge of suspected child abuse or neglect to report it to a juvenile judge, the Department of Human Services, or a Law Enforcement Official. (Look in your telephone book under "Child Abuse" or call the county DHS office or local law enforcement.)
  2. Requires the identity of a reporting person to be kept confidential, subject to disclosure only by consent of the person or by judicial process. Provides immunity from civil or criminal liability if reports are made in good faith.
  3. Gives DHS authority and responsibility to investigate reports of abuse or neglect.
  4. Requires that all written records and information regarding investigations be confidential. Release of information is permissible to certain specified persons and to

(Rule 1240-04-04-.11, Appendix A, continued)

those having responsibility for administration of the law. Persons found not guilty of severe child abuse or child sexual abuse shall have their names expunged from the TBI's abuse registry.

5. Charges DHS with the responsibility of conducting a continuing publicity and education program to encourage reporting and to strengthen and improve child sexual abuse detection, prevention, and treatment efforts.

D. *Federal Funding.*

Section 504 of the Rehabilitation Act of 1973 and Title VI of the Civil Rights Act of 1964 require agencies receiving federal funding to employ nondiscriminatory policies and practices. Persons receiving federal funding such as reimbursement from the USDA Child/Adult Care Food Program, DHS vendor or Transitional Child Care payments, Social Services Block Grants (SSBG), Dependent Care Grant funds for school-age child care, etc.; and persons receiving federal support in the form of space, staff, services, equipment, etc., are required to comply with the following:

1. Title VI of the Civil Rights Act of 1964 by ensuring that no person (child, parent, or employee) in your agency "shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance"; and by employing nondiscriminatory policies and practices and advertising such.
2. Section 504 of the Rehabilitation Act of 1973 by ensuring that no otherwise qualified handicapped person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any program activity solely on the basis of a handicap (applies to children, parents, and employees); and by making reasonable accommodations to serve or hire an otherwise qualified individual with a handicapping condition.

E. *Child Passenger Protection and Safety Belt Use (Transportation) (TCA §55-9-601 et seq.).*

1. Requires any person transporting a child under the age of four years in a motor vehicle to provide for children's protection by providing and properly using a federally approved child restraint system (manufactured after January 1, 1981). Violation is subject to a \$50 fine or 30 days in jail or both.
2. Specifies that no one is to operate a motor vehicle unless all persons four and older in the front seat are properly restrained by a safety belt.
3. Imposes a fine of \$50 or 30 days in jail or both for each violation after the first; however, the violator can be cited or arrested only after being cited or arrested for another violation of law.
4. TCA §§55-50-102(11) and 55-50-102(12)(B) requires the driver of a vehicle designed to carry 15 or more passengers (including the driver) to have a commercial driver's license.

F. *Administrative Rules and Procedures (TCA §4-5-301 et seq. and Chapter 1240-5-11 et seq.).*

1. Provides for an administrative hearing of any contested cases (i.e., on denial or revocation of licenses or on notice of intent to put an agency on probation) after proper notice which includes references to particular statutes and rules involved.

(Rule 1240-04-04-.11, Appendix A, continued)

2. Requires that hearings before the members of the Board of Review to be conducted by the administrative judge or a hearing officer, who rules on admissibility of evidence and other matters and otherwise ensures that proceedings are properly carried out.
3. Allows the contesting licensee to be represented (at licensee's own expense) by counsel.
4. Allows the judge or hearing officer at his/her discretion or upon request of licensee or the Department of Human Services to schedule a prehearing conference in order to simplify or expedite the disposition of the appeal action.
5. Requires that the hearing be open to the public.
6. Requires the final order be entered by the Board of Review. The final order shall include conclusions of law, factual findings, prescribed remedy, and procedures and time limits for seeking judicial review.
7. Provides that while an application for a license is pending, an existing license does not expire until disposition of the application has been finally determined, unless the license must be summarily suspended pending completion of the proceedings because the Department determines that "public health, safety, or welfare imperatively requires" emergency action, and notifies licensee of that finding "pending proceedings for revocation or other action".

## II. Questions And Answers About Day Care Licensing.

### A. *How does a person get information about opening a child care agency?*

The local county office of the Tennessee Department of Human Services will furnish information; a licensing representative will provide assistance free of charge to an individual or a group that is planning to provide child care.

### B. *How many children am I allowed to care for?*

In Tennessee, a person without a license may care for no more than four children. To care for five to seven children, in addition to "related" children, you must be licensed as a "family child care home" operator. To have eight - 12 children in care, you must be licensed as a "group child care home" operator. (Under certain conditions, a group day care home may have up to 15 children.)

### C. *How is a license obtained?*

1. After a completed application and the required fee are received, arrangements will be made for a representative to visit your facility and evaluate the day care operation and/or facility in accordance with the required standards in this booklet.
2. Before a day care home can be licensed, it must pass fire safety and environmental sanitation inspections. The licensing representative will explain the procedure for getting inspected.

### D. *What types of licenses are issued?*

1. An "annual license" is granted when compliance with licensure requirements is confirmed by the Department.

(Rule 1240-04-04-.11, Appendix A, continued)

2. A "conditional license" is granted to a new agency for 90 days when it does not meet all the required standards, but there is evidence that an effort is being made to comply with the requirements and it has first met fire safety and environmental sanitation approval.
- E. *Who determines whether a license is issued?*
- The Commissioner has ultimate responsibility for issuance or denial, based upon an evaluation and recommendation by a licensing representative of the Department.
- F. *Is the license permanent?*
- No, it is issued for up to one year. Prior to its expiration, an evaluation is made to determine whether compliance with requirements is being maintained and reissuance should be recommended.
- G. *Is there a fee?*
- Yes, the fee is payable upon application and is nonrefundable. The fee for day care homes is \$5 for a family day care home and \$10 for a group day care home.
- H. *Where is the license kept?*
- It must be posted in a conspicuous place in the day care home during business hours.
- I. *Are licenses transferable?*
- No. The license applies only to the agency, organization, and person(s) to whom it is issued. It also applies only to the building approved.
- J. *Does the same license for "day care" cover (1) nighttime care, (2) "drop-in" children, and (3) sick children?*
1. Yes. An agency that provides less than 24-hour care to children during nighttime hours receives the same license as a child care agency operating during daytime hours, and one license covers both programs in the same agency. An agency cannot provide continuous 24-hour care for two or more children without a residential license. If not licensed for day care, a residential license is needed for more than one child. Ask a licensing counselor about the procedure for obtaining a residential license.
  2. "Drop-in" children are counted in the ratio and group and can be cared for only if required records are on file before they are cared for.
  3. The day care home license also includes care of mildly ill children. Only mildly ill children (i.e., not "contagious") should be cared for in a day care home and only then if staffing is adequate. Mild illnesses are generally those in a recuperative stage (e.g., getting over Mumps or Influenza).
- K. *Who enforces licensure requirements for a child care system?*
- If homes are approved as an extension of a child welfare agency's license, the central operator (the licensee) is responsible for monitoring compliance. The Department of Human Services monitors the agency's compliance as well as licensed homes within a system.
- L. *What is the procedure when a license is revoked, denied, or suspended?*

(Rule 1240-04-04-.11, Appendix A, continued)

The Department may deny, suspend, or revoke a license at any time by giving the owner, operator, or board a written notice by listing the specific reason or reasons for the action. Specified time periods are provided in the law. Any conduct or condition which might immediately jeopardize the safety of children, shall be cause for immediate suspension of the license, pending the outcome of revocation procedures.

M. *How can an operator or applicant appeal such action?*

The licensing law provides for a board of review. If a license is denied or revoked by the Department, a request may be made for a hearing before the review board. An appeal of the decision from the review board may be judicially reviewed. The periods of time allowed for the appeals are set out in the law.

N. *Where do I call to file a complaint or get a license?*

1. If you have a question about these standards, or if you want to report an unlicensed facility or a facility that is violating licensing requirements, call the DHS county office. It is listed in the telephone directory under Tennessee State Government - Human Services Department. Someone there will refer you to the licensing unit in your area.

If you want to open a child care facility, call that office before you do anything. You cannot care for a group of five or more children without a license.

2. If you have a question or concern about these standards or the licensing procedure, call or write:

Day Care Licensing Coordinator  
Tennessee Department of Human Services  
Citizens Plaza Building  
400 Deaderick Street  
Nashville, TN 37248-9800  
Phone: (615) 313-4778

## APPENDIX B

### RECOMMENDATIONS FOR TUBERCULOSIS SCREENING OF PROGRAMS UNDER THE SUPERVISION OF THE DEPARTMENT OF HUMAN SERVICES<sup>1</sup>

Programs that provide care for periods less than 24 hours per day.

A. Employees.

Employees should be screened for tuberculosis within 90 days prior to but no later than two weeks after employment. The screening examination should include a Tuberculin test<sup>2</sup> and if it is positive, a chest X-ray and, if necessary, other specific tests. Prospective or current employees who are known to have a positive tuberculin reaction or who refuse to have a Tuberculin skin test shall receive a chest X-ray to rule out infectious Tuberculosis. If infectious Tuberculosis is ruled out, no further screening is necessary during their employment unless persistent pulmonary symptoms develop or there is contact with Tuberculosis.

B. Children.

(Rule 1240-04-04-Appendix B, continued)

1. *Foreign-born.*

All foreign-born children should present evidence of a Tuberculin skin test<sup>3</sup> performed in the United States. This test performed in the United States may have been done at any time after 12 months of age. Any child with a positive Tuberculin skin test should be referred to a physician for evaluation. After the initial evaluation, future periodic screening is not required unless the child develops persistent pulmonary symptoms or there is contact with Tuberculosis.

2. *Native-born.*

Special screening of children born in the United States is not required unless there is history of contact to Tuberculosis or there are symptoms and/or physical findings suggestive of Tuberculosis.

If the Tuberculin test is negative, no future screening is required unless persistent pulmonary symptoms develop or there is contact with Tuberculosis. If the Tuberculin skin test is positive, the child should be referred to a physician for evaluation.

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<sup>1</sup> Tuberculosis screening is not recommended for programs providing care for less than two weeks.

<sup>2</sup> The preferred method is the Mantoux technique using 5 TU PPD.

<sup>3</sup> Ibid.

(Rule 1240-04-04-Appendix B, continued)

### APPENDIX C

#### INVENTORY FOR THE FIRST AID KIT

Every child care setting should have a first aid kit stocked with items on the list below. You can buy the supplies for the first aid kit at drug stores or at hospital or medical supply stores.

Each first aid kit should be large enough to hold all the necessary supplies for first aid in the child care setting. Use a container that will close tightly. It should be stored where adults can reach it easily, but it must be stored out of reach of children. You should arrange the contents so you can reach items easily without emptying the kit. You should be sure that the contents are wrapped tightly and are sanitary. You should restock the kit after each use.

A first aid kit should contain the following items:

- |  |   |
|--|---|
| II First aid cards*  | II Commercial cold pack or plastic bag for ice cubes  |
| II Adhesive strip bandages (1/2", 3/4", 1" strips)                   | II Clean cloth  |
| II Gauze bandages (4"x4", nonstick, sterile)                         | II Soap   |
| II Rolled flexible or stretch gauze                                  | II Small plastic cup  |
| II Bandage tape  | II Sealed packages of cleansing wipes   |
| II Nonstick, sterile pads (different sizes)                          | II Syrup of ipecac (1-ounce bottle)   |
| II Triangular bandages   | II Special items for children with specific health problems (such as bee sting kit or an inhaler for a child with asthma) |
| II Small splints   | II Emergency Telephone Guide  |
| II Eye dressing or pad   | II Emergency contact information (phone numbers of the children's parents)  |
| II Scissors  | II Change for pay phone   |
| II Tweezers  | II Pen or pencil and note pad   |
| II Safety pins   |   |
| II Thermometer   |   |
| II Flashlight with fresh batteries                                   |   |
| II Disposable latex gloves   |   |
| II Three-ounce rubber bulb syringe (to rinse out eyes, wounds, etc.) |   |

\* Can be purchased from American Red Cross; give first aid instructions.

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"Appendix C"  
 American Red Cross Child Care Course  
 Infant and Child First Aid

## APPENDIX D

## MEAL PATTERN/PORTION SIZE REQUIREMENTS

If needed, the caregiver should ask for help in planning meals from a nutritionist or dietitian. For homes on the Child and Adult Care Food Program (CACFP), the DHS staff nutritionist is available. The Department of Health, local colleges, and hospitals are also possible resources.

The minimum amounts of food components to be served are as follows:

## BREAKFAST

Food Components	Age 1 and 2	Age 3-5	Age 6-12 <sup>1</sup>
<i>Milk</i> milk, fluid	1/2 cup <sup>2</sup>	3/4 cup	1 cup
<i>Vegetables and Fruits</i> Vegetable(s) and/or fruit(s) or full-strength vegetable or fruit juice or an equivalent quantity or any combination of vegetable(s), fruit(s) and juice	1/4 cup 1/4 cup	1/2 cup 1/2 cup	1/2 cup 1/2 cup
<i>Bread and Bread Alternates</i> <sup>3</sup> bread or cornbread, biscuits, rolls, muffins, etc. or cold dry cereal <sup>4</sup>  or cooked cereal or cooked pasta or noodle products or an equivalent quantity of any combination of bread/bread alternate	1/2 slice 1/2 serving 1/4 cup or 1/3 oz. 1/4 cup 1/4 cup	1/2 slice 1/2 serving 1/3 cup or 1/2 oz. 1/4 cup 1/4 cup	1 slice 1 serving 3/4 cup or 1 oz. 1/2 cup 1/2 cup

<sup>1</sup> Children age 12 and up may be served adult-sized portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities for children age 6 to 12.

<sup>2</sup> A cup means a standard 8 ounce measuring cup.

<sup>3</sup> Bread, pasta or noodle products, and cereal grains shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain or enriched or fortified.

<sup>4</sup> Either volume (cup) or weight (oz.), whichever is less.

(Rule 1240-04-04-Appendix D, continued)

**LUNCH OR SUPPER**

Food Components	Age 1 and 2	Age 3-5	Age 6-12
<i>Milk</i> milk, fluid	1/2 cup	3/4 cup	1 cup
<i>Vegetables and Fruits</i> Vegetable(s) and/or fruit(s) <sup>1</sup>	1/4 cup total	1/2 cup total	3/4 cup total
<i>Bread and Bread Alternates</i> bread or cornbread, biscuits, rolls, muffins, etc. or cooked pasta or noodle products or cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate	1/2 slice 1/2 serving 1/4 cup 1/4 cup	1/2 slice 1/2 serving 1/4 cup 1/4 cup	1 slice 1 serving 1/2 cup 1/2 cup
<i>Meat and Meat Alternates</i> lean meat or poultry or fish <sup>2</sup> or cheese or eggs or cooked dry beans or peas or peanut butter, or other nut or seed butters or peanuts or soy nuts <sup>3</sup> or an equivalent quantity of any combination of meat/meat alternate	1 oz. 1 oz. 1 egg 1/4 cup 2 Tbsp. ½ oz. = 50%	1-1/2 oz. 1-1/2 oz. 1 egg 3/8 cup 3 Tbsp. 3/4 oz. = 50%	2 oz. 2 oz. 1 egg 1/2 cup 4 Tbsp. 1 oz = 50%

(See footnotes from breakfast pattern.)

<sup>1</sup> Serve 2 or more kinds of vegetable(s) and/or fruit(s). Full strength vegetable or fruit juice may be counted to meet not more than 1/2 of this requirement.

<sup>2</sup> Edible portion as served.

<sup>3</sup> No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purposes of determining combinations, (1) ounce of nuts or seeds is equal to (1) ounce of cooked lean meat, poultry, or fish.

(Rule 1240-04-04-Appendix D, continued)

**SUPPLEMENTAL FOOD (SNACKS)**

Select two of the following four components. Juice may not be served when milk is served as the only other component. Milk and yogurt are too similar in nutritional value to be used together in the same supplement.

Food Components	Age 1 and 2	Age 3-5	Age 6-12 <sup>1</sup>
<i>Milk</i> milk, fluid	1/2 cup	1/2 cup	1 cup
<i>Vegetables and Fruits</i> Vegetable(s) and/or fruit(s) or full strength vegetable or fruit juice or an equivalent quantity or any combination of vegetable(s), fruit(s) and juice	1/2 cup 1/2 cup	1/2 cup 1/2 cup	3/4 cup 3/4 cup
<i>Bread and Bread Alternates</i> bread or cornbread, biscuits, rolls, muffins, etc. or cold dry cereal or cooked cereal or cooked pasta or noodle products or an equivalent quantity of any combination of bread/bread alternate	1/2 slice 1/2 serving 1/4 cup or 1/3 oz. 1/4 cup 1/4 cup	1/2 slice 1/2 serving 1/3 cup or 1/2 oz. 1/4 cup 1/4 cup	1 slice 1 serving 3/4 cup or 1 oz. 1/2 cup 1/2 cup
<i>Meat and Meat Alternates</i> lean meat or poultry or fish or cheese or eggs or cooked dry beans or peas or peanut butter, or other nut or seed butters or peanuts or soy nuts or yogurt, plain, or sweetened and flavored <sup>1</sup> or an equivalent quantity of any combination of meat/meat alternate	1/2 oz. 1/2 oz. 1/2 egg 1/8 cup 1 Tbsp. 1/2 oz. 2 oz. or 1/4 cup	1/2 oz. 1/2 oz. 1/2 egg 1/8 cup 1 Tbsp. 1/2 oz. 2 oz. or 1/4 cup	1 oz. 1 oz. 1/2 egg 1/4 cup 1 Tbsp. 1 oz. 4 oz. or 1/2 cup

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(See footnotes from breakfast and lunch patterns.)

<sup>1</sup> Yogurt means commercially coagulated milk products obtained by fermentation that meet milk fat or milk solid requirements to which flavoring foods or ingredients may be added. These products are covered by the FDA's standard of identity for yogurt, lowfat yogurt, and nonfat yogurt.

## APPENDIX E

## ENVIRONMENTAL STANDARDS FOR FAMILY CHILD CARE HOMES

I. *Building.*

The building foundation, roof, and walls shall be free of visible cracks and unsealed openings. Gutters and downspouts shall be kept in good repair. Visible cracks in walls and around window frames and doors shall be sealed. Buildings shall be painted inside and outside when necessary.

All doors and windows shall be kept clean and in good repair (this includes screens when used). Window space shall be equal to at least 10 percent of the floor area except in rooms which are air-conditioned and which have artificial light amounting to at least 25 foot candles. Windows shall be openable unless the room is air-conditioned. All outside doors and windows shall be screened unless building is air-conditioned.

II. *Lighting.*

Lighting shall be adequate for normal activities that would be expected to be conducted in a Family Child Care Home. Fixtures and window blinds shall be clean, operative and properly adjusted.

III. *Heating and Ventilation.*

A temperature at child height not lower than 68° nor higher than 75° shall be maintained. Stoves, fireplaces, hot radiators, steam and hot water pipes or other objects and electrical outlets in rooms used by the children shall be adequately protected by screens, guards, insulation, or suitable measures that will protect children from coming in contact with them. All heating, ventilation, and air conditioner units shall be kept clean.

IV. *Toilets.*

There shall be at least one flush toilet and one handwashing lavatory. Such facilities shall be approved and in good repair, clean and conveniently located. Toilet tissue shall be provided at each commode.

A tightly covered container with plastic liner shall be used for diaper disposal and stored inaccessible to children. This container shall be emptied by closing the liner and disposing of it into an outside garbage receptacle.

V. *Handwashing.*

Soap and individual sanitary towels shall be available wherever a handwashing lavatory is provided. Proper adult supervision shall be exercised for use of toilet and handwashing facilities.

There shall be sufficient hot water to supply the needs of a Family Child Care Home.

Personnel shall exercise good handwashing practices following diaper changes, the assistance of children in toilet use, and personal toileting.

VI. *Bedding.*

Where provisions are made for staying overnight, each occupant shall be provided an individual bed with acceptable mattress and waterproof cover, springs, clean linen, and clean cover. Where children are kept at least six hours but not overnight, individual cots or other approved bedding

(Rule 1240-04-04-Appendix E, continued)

shall be provided and kept clean and in good repair. Spacing shall be adequate to promote freedom of movement, approximately two feet between cots and mats.

VII. *Sewage Disposal.*

Connection to a public sewage disposal system shall be made where possible. The use of a private sewage disposal system shall have the approval of the local health department and it shall be operating satisfactorily.

Plumbing shall be installed and maintained in such a manner as to prevent the possibility of cross-connection or back siphonage. There shall be no sewage leaks.

VIII. *Water Supply.*

The water supply shall be adequate, of a safe, sanitary quality, and from an approved public or private water-supply system which is constructed, protected, operated, and maintained in conformance with applicable State and local laws, ordinances, and regulations. Water from a public supply shall be utilized where possible.

IX. *Drinking Facilities.*

An approved drinking fountain or individual paper cups shall be provided in rooms or adjacent to rooms regularly occupied by the children. Fountains shall be clean and in good repair.

X. *Garbage and Refuse.*

All garbage and rubbish shall be kept in leakproof, nonabsorbent containers which shall be kept covered with tight fitting lids. Refuse shall be picked up at least twice a week and disposed of in such a manner as to prevent a nuisance. All garbage containers and the immediate area shall be kept clean. Containers shall be kept in good repair. Garbage shall be removed from the building daily.

XI. *Insect and Rodent Control.*

All parts of the building shall be reasonably free from flies and other insects. Approved screens in good repair shall be provided for all doors and windows unless the building is air-conditioned and then such doors and windows shall be kept closed during fly seasons. The facility shall be free of rodents. Proper supervision and caution shall be exercised according to label instructions when applying approved insecticides and rodenticides.

XII. *Safety.*

Only such poisonous and toxic materials as are required to maintain sanitary conditions and for sanitation purposes shall be used and stored in an approved manner. All insecticides, medicines, polishes, disinfectants, and cleaning compounds shall be stored in an area separate from food and paper storage and shall be inaccessible to children.

Sturdy safety rails shall be provided for both sides of all steps or ramps. When bathtubs are used by children, safety strips or mats shall be provided. There shall be no broken mirrors, windows or other glass objects in any part of the building. All furniture and the building shall be of durable construction, free of sharp projecting corners or surfaces and kept clean and in good repair. Glass in hazardous locations shall be suitably shielded or safety glass used in these sections.

Grounds shall be free of excessive growth of grass or weeds and hazards that are likely to cause falls. There shall be no unprotected, abandoned well, cistern, refrigerator box, or similar hazards.

(Rule 1240-04-04-Appendix E, continued)

Fencing or other acceptable barriers shall be provided for hazardous drainage ditches, cliffs, traffic, or like hazards. The grounds shall have adequate drainage.

Swimming pools shall comply with state law and regulations for public pools. There shall be adequate supervision by an adult who can swim. Pools shall be enclosed by a fence four feet in height.

### XIII. *Food.*

Facilities located in counties or municipalities which have an adopted food service code, ordinance, or regulation shall comply with such code, ordinance, or regulation, where applicable; otherwise the following standards shall be met for food sanitation:

1. All food shall be from sources approved or considered satisfactory. The use of hermetically sealed containers (home canned food) is prohibited.
2. All milk including dry milk powder shall be from a Grade A pasteurized source.
3. Raw fruits and vegetables shall be washed before use.
4. Stuffing, poultry, and pork products shall be thoroughly cooked before being served.
5. Milk and food used in family style feeding shall not be placed on eating table longer than 15 minutes prior to beginning of meal. All food left over from the table in family-style feeding shall be discarded.
6. Potentially hazardous foods requiring cold storage shall be maintained at 45°F or below, and accurate thermometers shall be kept in the refrigerators. Potentially hazardous food requiring hot storage shall be at an internal temperature of 140°F or above. Frozen foods shall be maintained at a temperature of 0°F or below. Thermometers shall be placed in all freezers.
7. Milk and other potentially hazardous foods shall be kept in the proper temperature ranges and be protected properly, except during the time of preparation.
8. All dry food supplies shall be stored in closed containers. These foods shall be stored in a manner to prevent possible contamination and to allow for proper cleaning of the storage area.
9. All food shall be protected from contamination during storage, preparation, transportation, and serving.
10. No poisonous or toxic materials except those required to maintain sanitary conditions and for sanitization purposes may be used or stored in a food-service area of a facility.
11. Poisonous and toxic materials shall be identified, stored, and used only in such a manner and under such conditions as will not contaminate food or constitute a hazard to the population of a facility.
12. All equipment and utensils shall be so designed and constructed of such material and workmanship as to be smooth, easily cleanable, and durable, and shall be in good repair.
13. The food-contact surfaces or equipment and utensils shall be easily accessible for cleaning, nontoxic, corrosion resistant, and relatively nonabsorbent; exceptions may be made to the above materials requirements for equipment such as cutting boards, blocks, and bakers' tables.

(Rule 1240-04-04-Appendix E, continued)

14. All equipment shall be installed and maintained to facilitate the cleaning thereof and of all adjacent areas.
15. Equipment in use at the time of adoption of this standard that does not meet fully the above requirements may be continued in use if it is in good repair, capable of being maintained in a sanitary condition, and the food-contact surfaces are nontoxic.
16. All eating and drinking utensils shall be thoroughly cleaned and sanitized after each use with the exception of single-service utensils which shall be discarded following use.
17. Single-service articles shall be made from nontoxic materials and shall be stored, handled, and dispensed in a sanitary manner.
18. All utensils and food-contact surfaces or equipment used in the preparation, transportation, service, display, or storage of potentially hazardous food shall be thoroughly cleaned and sanitized prior to such use.
19. Cooking surfaces of equipment shall be cleaned at least once a day.
20. All kitchenware and food-contact surfaces of equipment, exclusive of cooking surfaces of equipment, used in the preparation or serving of food or drink, and all food-storage utensils, shall be thoroughly cleaned after each use.
21. Nonfood contact surfaces of equipment shall be cleaned at such intervals as to keep them in a clean and sanitary condition.
22. After cleaning and until use, all food-contact surfaces of equipment and utensils shall be stored and handled as to be protected from contamination.
23. In facilities defined by the Department of Human Services as existing, a two-compartment sink can be used for washing and rinsing utensils, provided an additional container or sink is used for sanitation of the utensils.

Domestic type dishwashing machines are acceptable provided the temperature at the utensil surface is 160°F after the end of one complete cycle. If 160° is not obtained at the end of one complete cycle, an additional sanitizing rinse for utensils shall be provided in a separate container or sink.

Facilities which do not have adequate and effective facilities for cleaning and sanitizing utensils shall use single-service articles.

#### XIV. *Housekeeping.*

All portions of the building shall be maintained in a clean condition. All rooms shall be maintained in an orderly manner. Grounds shall be kept clean.

## APPENDIX F

TENNESSEE DEPARTMENT OF HUMAN SERVICES  
FIRE SAFETY INSPECTION REPORT

## FAMILY CHILD CARE HOMES INSPECTED BY THE DEPARTMENT OF HUMAN SERVICES

Name of facility: \_\_\_\_\_

Street address: \_\_\_\_\_ Telephone number: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip code: \_\_\_\_\_

Age range of children: \_\_\_\_\_

If this facility does not meet the State Building Code Requirements for a new building, all of the following questions must be answered "Yes".

- (01) Is wood frame construction restricted to two stories in height? ...  Yes  No (01)
- (02) Are children housed only on the first floor level?.....  Yes  No (02)
- (03) Does each room used for child care purposes have access to two outside exits? (One exit shall be through a window unless the room has a door directly to the outside). .....  Yes  No (03)
- (04) Is every closet door latch such that children can open the door from the inside? .....  Yes  No (04)
- (05) If this building is used for purposes not under the control of the operator, are all rooms and spaces used for child care purposes separated from the rest of the rooms by one-hour fire-rated walls and solid core doors?.....  Yes  No (05)
- (06) Does this facility have at least one unannounced fire drill monthly? .....  Yes  No (06)
- (07) Are all employees informed of their duties during a fire drill? .....  Yes  No (07)
- (08) Does the facility have one UL smoke detector for each room occupied by children? .....  Yes  No (08)
- (09) Does the facility have an approved A-B-C rated extinguisher near the kitchen? (at least 2-1/2 lb. rated) .....  Yes  No (09)
- (10) Do electrical outlets within children's reach have protective coverings? .....  Yes  No (10)
- (11) Are all approaches to exists kept continuously free of all obstructions? .....  Yes  No (11)
- (12) Is the building free of all unvented fuel-burning heaters? .....  Yes  No (12)
- (13) Are all fuel-burning heaters, fireplaces, wall heaters, and portable space heaters provided with a protective screen

(Rule 1240-04-04-Appendix F, continued)

- attached securely to substantial supports? .....  Yes  No (13)
- (14) Are all stairways, hallways, and other means of exit kept adequately lighted at all times when the building is occupied? ...  Yes  No (14)
- (15) Does the space used for child care purposes have at least one window in each room which will raise up or swing out for emergency exit? .....  Yes  No (15)
- (16) If space is partially below grade on all four sides, is there an exit with a maximum of three steps or less leading directly to the outside? .....  Yes  No (16)
- (17) Does the hot water heater have a safety relief valve installed? ...  Yes  No (17)
- (18) Are combustible materials, gasoline, or flammable liquids (paint, thinner, oil, other chemicals, etc.) properly stored outside of the building occupied by children? .....  Yes  No (18)
- (19) Does visual inspection reveal the absence of electrical hazards (overloaded electrical panel/master junction box), excessive extension cords or frayed wiring? .....  Yes  No (19)
- (20) Does every bathroom door lock permit opening of the locked door from the outside? .....  Yes  No (20)
- On this date, I found this facility to be reasonably fire safe. (Check No if Item 1, 12, or 16 above is checked No.).....  Yes  No
- Referred to local inspector.....  Yes  No

\_\_\_\_\_ Date

\_\_\_\_\_ Counselor

Received by: \_\_\_\_\_

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

**NOTE:** In areas where the local Fire Department or Human Services official has responsibility for fire safety inspections, the appropriate person shall complete this form. (Human Services officials inspecting only those facilities that have seven children or less shall use this form.)

This form applies only to one- and two-family houses, garden apartments, or condominiums when each unit has access directly to the outside. Family Child Care Homes located in other types of dwelling shall meet the additional requirements listed in Family Child Care Home Standards.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services on 09/15/2016, 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: 07/01/16

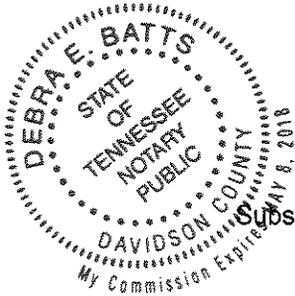
Rulemaking Hearing(s) Conducted on: (add more dates). 8/24/16

Date: 09/15/16

Signature: *CM Hewlett*

Name of Officer: Catrina Hewlett

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: September 15 2016

Notary Public Signature: *Debra E. Battis*

My commission expires on: May 8, 2018

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.

*Herbert H. Slatery III*

Herbert H. Slatery III  
Attorney General and Reporter

9/26/2016  
Date

**Department of State Use Only**

Filed with the Department of State on: 9/28/16

Effective on: 12/27/16

*Tre Hargett*

Tre Hargett  
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee

DIVISION:

SUBJECT: Classification of Students as In-State or Out-of-State

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 49-9-105 and 49-9-209

EFFECTIVE DATES: December 15, 2016 through June 30, 2017

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: In response to recent state legislation, Public Chapter 219 (2015), the University's rule on classifying students as in-state or out-of-state is to be amended by this proposed rule as follows:

- Removes the language, "has not been dishonorably discharged from the U.S. Armed Forces or the national guard";
- Adds the language, "any individual entitled to the veteran's educational benefits," to the types of persons eligible for the waiver of out-of-state tuition and fees;
- Increases the time for a veteran to enroll and qualify for in-state tuition from two (2) years to three (3);
- Changes the grace period for a veteran to demonstrate objective evidence of residency to three (3) years from the date of discharge (previously, the veteran had one (1) year from the date of enrollment); and
- Removes voter registration as a single method of demonstrating residency.

**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 Regulatory Flexibility Addendum is not applicable.

### **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 University of Tennessee anticipates that this rule change will have no impact on local governments.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

In response to recent state legislation, Public Chapter 219 (2015), the University's rule on classifying students as state or out-of-state must be amended as follows:

- Remove the language, "has not been dishonorably discharged from the U.S. Armed Forces or the national guard;"
- Add the language, "any individual entitled to the veteran's educational benefits," to the types of persons eligible for the waiver of out-of-state tuition and fees;
- Increase the time for a veteran to enroll and qualify for in-state tuition from two (2) years to three (3);
- Change the grace period for a veteran to demonstrate objective evidence of residency to three (3) years from the date of discharge (previously, the veteran had one (1) year from the date of enrollment); and
- Remove voter registration as a single method of demonstrating residency.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

None.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Students of the University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule.

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

None.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

Not significant.

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

Matthew Scoggins  
Deputy General Counsel  
University of Tennessee

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

Matthew Scoggins  
Deputy General Counsel  
University of Tennessee

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Matthew Scoggins  
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865-974-3245

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

None.

**Department of State**  
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**For Department of State Use Only**

Sequence Number: 09-19-16  
 Rule ID(s): 6304  
 File Date: 9/16/16  
 Effective Date: 12/15/16

## 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.*

<b>Agency/Board/Commission:</b>	University of Tennessee
<b>Division:</b>	
<b>Contact Person:</b>	Matthew Scoggins, Deputy General Counsel
<b>Address:</b>	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
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**Revision Type (check all that apply):**

- Amendment  
 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
1720-01-01	Classifying Students In-State And Out-of-State
Rule Number	Rule Title
1720-01-01-.04	Out-of-State Students Who Are Not Required To Pay Out-of-State Tuition

**RULES OF  
THE UNIVERSITY OF TENNESSEE (ALL CAMPUSES)**

**CHAPTER 1720-01-01  
CLASSIFYING STUDENTS  
IN-STATE AND OUT-OF-STATE  
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1720-01-01-01	Intent	1720-01-01-06	Evidence to Considered for Establishment of Domicile
1720-01-01-02	Definitions	1720-01-01-07	Appeal
1720-01-01-03	Rules for Determination of Status	1720-01-01-08	Effective Date for Reclassification for Pay Out-of-State Tuition
1720-01-01-04	Out-of-state Students Who Are Not Required	1720-01-01-09	Repealed
1720-01-01-05	Presumption		

**1720-01-01-01 INTENT.**

- (1) It is the intent that the public institutions of higher education in the State of Tennessee shall apply uniform rules, as described in these regulations and not otherwise, in determining whether students shall be classified "in-state" or "out-of-state" for fees and tuition purposes and for admission purposes.

**1720-01-01-02 DEFINITIONS.** Wherever used in these regulations.

- (1) "Public higher education institution" shall mean a university or community college supported by appropriations made by the Legislature of this State.
- (2) "Residence" shall mean continuous physical presence and maintenance of a dwelling place within this State, provided that absence from the State for short periods of time shall not affect the establishment of a residence.
- (3) "Domicile" shall mean a person's true, fixed, and permanent home and place of habitation; it is the place where he or she intends to remain, and to which he or she expects to return when he or she leaves without intending to establish or having established a new domicile elsewhere. Undocumented aliens cannot establish domicile in Tennessee, regardless of length of residence in Tennessee.
- (4) "Emancipated person" shall mean a person who has attained the age of eighteen (18) years and whose parents have entirely surrendered the right to the care, custody, and earnings of such person and are no longer under any legal obligation to support or maintain such person.
- (5) "Parent" shall mean a person's father or mother. If there is a non-parental guardian or legal custodian of an unemancipated person, then "parent" shall mean such guardian or legal custodian; provided, that there are not circumstances indicating that such guardianship or custodianship was created primarily for the purpose of conferring the status of an in-state student on such emancipated person.
- (6) "Continuous enrollment" or "continuously enrolled" shall mean enrollment at a public higher educational institution or institutions of this State as a full-time student, as such term is defined by the governing body of said public higher education institution or institutions, for a normal academic year or years or the appropriate portion or portions thereof since the beginning of the period for which continuous enrollment is claimed. Such person need not enroll in summer sessions or other such inter-sessions beyond the normal academic year in order that his or her enrollment be deemed continuous. Enrollment shall be deemed continuous notwithstanding lapses in enrollment occasioned solely by the scheduling of the commencement and/or termination of the academic years, or appropriate portion thereof, of the public higher educational institutions in which such person enrolls.

- (7) "U.S. Armed Forces" shall mean the U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard.
- (8) "Veteran" means:
  - (a) a former member of the U.S. Armed Forces; or
  - (b) a former or current member of a reserve or Tennessee national guard unit who was called into active military service of the United States, as defined in Tennessee Code Annotated § 58-1-102.

**1720-01-01-.03 RULES FOR DETERMINATION OF STATUS.**

- (1) Every person having his or her domicile in this State shall be classified "in-state" for fee and tuition purposes and for admission purposes.
- (2) Every person not having his or her domicile in this State shall be classified "out-of-state" for fee and tuition purposes and for admission purposes.
- (3) The domicile of an unemancipated person is that of his or her parent, except as provided in paragraph (4) of this Section .03. Unemancipated students of divorced parents shall be classified "in-state" when one (1) parent, regardless of custodial status, is domiciled in Tennessee, except as provided in paragraph (4) of this Section .03.
- (4) A student shall be classified as "in-state" for fee and tuition purposes if the student is a citizen of the United States, has resided in Tennessee for at least one (1) year immediately prior to admission, and has:
  - (a) Graduated from a Tennessee public secondary school;
  - (b) Graduated from a private secondary school that is located in Tennessee; or
  - (c) Earned a Tennessee high school equivalency diploma.
- (5) The spouse of a student classified as "in-state" shall also be classified "in-state."
- (6) All classifications shall be subject to the Eligibility Verification for Entitlements Act, Tennessee Code Annotated § 4-58-101 *et seq.*

**1720-01-01-.04 OUT-OF-STATE STUDENTS WHO ARE NOT REQUIRED TO PAY OUT-OF-STATE TUITION.**

- (1) An unemancipated, currently enrolled student shall be reclassified out-of-state should his or her parent, having theretofore been domiciled in the State, remove from the State. However, such student shall not be required to pay out-of-state tuition nor be treated as an out-of-state student for admission purposes so long as his or her enrollment at a public higher educational institution or institutions shall be continuous.
- (2) An unemancipated person whose parent is not domiciled in this State but is a member of the armed forces and stationed at Fort Campbell pursuant to military orders shall be classified out-of-state, but shall not be required to pay out-of-state tuition. Such a person, while in continuous attendance toward the degree for which he or she is currently enrolled, shall not be required to pay out-of-state tuition if his or her parent thereafter is transferred on military orders.
- (3) Part-time students who are not domiciled in this State but who are employed full-time in the State shall be classified out-of-state but shall not be required to pay out-of-state tuition. This shall apply to part-time students who are employed in the State by more than one employer, resulting in the

equivalent of full-time employment.

- (4) A member of the U.S. Armed Forces on active duty for more than thirty (30) days and who has a permanent duty station in the State of Tennessee (or the spouse or dependent child of such a member) who should be classified out-of-state in accordance with other provisions of these regulations will be classified out-of-state but shall not be required to pay out-of-state tuition. This provision shall continue to apply to such a member, spouse, or dependent child while continuously enrolled at that public higher education institution, notwithstanding a subsequent change in the permanent duty station of the member to a location outside the State.
- (5) A person who is domiciled in the Kentucky counties of Fulton, Hickman, or Graves shall be classified out-of-state and shall not be required to pay out-of-state tuition at The University of Tennessee at Martin if qualified for admission. This exemption is on condition that Murray State University in Murray, Kentucky, continues to admit Tennessee residents from selected Tennessee counties to enroll at that institution without payment of out-of-state tuition.
- (6) Any dependent child not domiciled in Tennessee but who qualifies and is selected to receive a scholarship under the "Dependent Children Scholarship Act" (T.C.A. § 49-4-704) because his or her parent is a law enforcement officer, fireman, or emergency medical service technician who was killed or totally and permanently disabled while performing duties within the scope of employment, shall be classified out-of-state but shall not be required to pay out-of-state tuition.
- (7) A veteran, or any individual entitled to the veteran's educational benefits, enrolled in any public institution of higher education in this State shall not be required to pay out-of-state tuition or any out-of-state fee, if the veteran or the eligible individual:
  - (a) ~~Has not been dishonorably discharged from a branch of the U.S. Armed Forces or the national guard;~~
  - ~~(b)~~(a) Is eligible for Post-9/11 GI Bill benefits or Montgomery GI Bill benefits; and
  - ~~(c)~~(b) Enrolls in a public institution of higher education, after satisfying all admission requirements, within three (3) years ~~twenty-four (24) months~~ after the date of discharge as reflected on the veteran's certificate of release or discharge from active duty, Form DD-214, or an equivalent document.

To continue to qualify for in-state tuition and fees after three (3) years have passed from the date of discharge as reflected on the veteran's certificate of release or discharge from active duty, Form DD-214, or an equivalent document, under this subsection, a veteran or eligible individual shall:

- (a) Maintain continuous enrollment (as defined by the public institution of higher education in which the veteran is enrolled); and
- (b) Demonstrate objective evidence of established residency in this State by presenting at least two (2) of the following:
  - (A) Proof of voter registration in this State;
  - (B) A Tennessee driver license;
  - (C) A Tennessee motor vehicle registration;
  - (D) Proof of established employment in this State; or
  - (E) Other documentation clearly evidencing domicile or residence in the state, as determined by THEC.

~~(e) Within one (1) year of enrolling in the public institution of higher education:~~

~~(1) Register to vote in the State of Tennessee; or~~

~~(2) Demonstrate by objective evidence intent to be a resident of the State of Tennessee by obtaining at least two (2) of the following:~~

~~(-) A Tennessee driver's license;~~

~~(-) A Tennessee motor vehicle registration;~~

~~(-) Proof of established employment in the State of Tennessee; or~~

~~(-) Other documentation clearly evidencing domicile or residence in this State, as determined by the Tennessee Higher Education Commission.~~

(8) Students not domiciled in Tennessee but who are selected to participate in institutional undergraduate honors programs specified by the public higher education institution in which the student is enrolled shall be classified out-of-state but shall not be required to pay out-of-state tuition.

(9) A "covered individual" under the federal Veterans Access, Choice, and Accountability Act of 2014, Public Law 113-146, who maintains continuous enrollment at the same public institution of higher education.

**1720-01-01-05 PRESUMPTION.** Unless the contrary appears from clear and convincing evidence, it shall be presumed that an emancipated person does not acquire domicile in this State while enrolled as a full-time or part-time student at any public or private higher educational institution in this State, as such status is defined by such institution.

**1720-01-01-06 EVIDENCE TO BE CONSIDERED FOR ESTABLISHMENT OF DOMICILE.** If a person asserts that he or she has established domicile in this State he or she has the burden of proving that he or she has done so. Such a person is entitled to provide to the public higher educational institution by which he seeks to be classified or reclassified in-state, any and all evidence which he or she believes will sustain his or her burden of proof. Said institution will consider any and all evidence provided to it concerning such claim of domicile but will not treat any particular type or item of such evidence as conclusive evidence that domicile has or has not been established.

**1720-01-01-07 APPEAL.** The classification officer of each public higher educational institution shall be responsible for initially classifying students "in-state" or "out-of-state." Appropriate procedures shall be established by each such institution by which a student may appeal his or her initial classification.

**1720-01-01-08 EFFECTIVE DATE FOR RECLASSIFICATION.** If a student classified out-of-state applies for in-state classification and is subsequently so classified his or her in-state classification shall be effective as of the date on which reclassification was sought. However, out-of-state tuition will be charged for any semester during which reclassification is sought and obtained unless application for reclassification is made to the classification officer on or before the last day of regular registration of that semester.

**1720-01-01-09 REPEALED.**

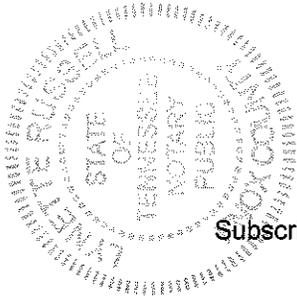
University of Tennessee Rules  
 Chapter 1720-01-01-.04 Out-of-State Students Who Are Not Required To Pay Out-of-State Tuition

\* 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)
Governor Bill Haslam				X	
Commissioner Julius Johnson	X				
Commissioner Candice McQueen				X	
Dr. Joe DiPietro	X				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.				X	
Jalen Blue	X				
Shannon Brown	X				
George E. Cates				X	
Spruell Driver, Jr.	X				
Dr. William E. Evans	X				
John N. Foy	X				
Crawford Gallimore	X				
Dr. David Golden	X				
Vicky B. Gregg				X	
Raja J. Jubran	X				
Brad A. Lampley	X				
James L. Murphy, III	X				
Sharon J. Miller Pryse	X				
Dr. Jefferson S. Rogers (non-voting)					
Miranda N. Rutan (non-voting)					
Rhedona Rose	X				
John Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

University of Tennessee Rules  
Chapter 1720-01-01-.04 Out-of-State Students Who Are Not Required To Pay Out-of-State Tuition

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 04/01/2016, 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 ninety (90) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.



Date: 07/01/2016

Signature: [Handwritten Signature]

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 7-1-16

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

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.

[Handwritten Signature]  
Herbert H. Slatery III  
Attorney General and Reporter  
7/27/2016 Date

Department of State Use Only

Filed with the Department of State on: 9/16/16

Effective on: 12/15/16

[Handwritten Signature]  
Tre Hargett  
Secretary of State

RECEIVED  
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PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee

DIVISION:

SUBJECT: Student Housing Regulations; Differentiated Housing, Judicial Proceedings, Safety Regulations

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-9-209

EFFECTIVE DATES: August 1, 2017 through June 30, 2018

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: Student affairs and housing officials in the University of Tennessee System (UT) have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

**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 Regulatory Flexibility Addendum is not applicable.

**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 University of Tennessee anticipates that this rule change will have no impact on local governments.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Student affairs and housing officials in The University of Tennessee System have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

None.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Students of the University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule.

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

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

Not significant.

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

Matthew Scoggins  
Deputy General Counsel  
University of Tennessee

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

Matthew Scoggins  
Deputy General Counsel  
University of Tennessee

University of Tennessee Rules  
Chapter 1720-05-04 Student Housing Regulations

- (H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Matthew Scoggins  
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[scoggins@tennessee.edu](mailto:scoggins@tennessee.edu)  
865-974-3245

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

None.

**Department of State  
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower  
Nashville, TN 37243  
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**For Department of State Use Only**

Sequence Number: 09-20-16  
Rule ID(s): 6305  
File Date: 9/16/16  
Effective Date: 8/1/17

## 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.*

<b>Agency/Board/Commission:</b>	University of Tennessee
<b>Division:</b>	
<b>Contact Person:</b>	Matthew Scoggins, Deputy General Counsel
<b>Address:</b>	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
<b>Zip:</b>	37996-0170
<b>Phone:</b>	865-974-3245
<b>Email:</b>	scoggins@tennessee.edu

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

- Amendment  
 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
1720-05-04	Student Housing Regulations
Rule Number	Rule Title
1720-05-04-.01	Housing Requirement
1720-05-04-.02	Classification (For Housing Purposes Only)
1720-05-04-.03	Types of Differentiated Housing
1720-05-04-.04	Separate Accommodations By Sex
1720-05-04-.05	Judicial Proceedings
1720-05-04-.06	Room Painting
1720-05-04-.07	Period of Occupancy
1720-05-04-.08	Residence Hall Safety Regulations
1720-05-04-.09	Termination of Housing Contract
1720-05-04-.10	Pregnancy
1720-05-04-.11	Repealed

**RULES  
OF  
THE UNIVERSITY OF TENNESSEE AT MARTIN**

**CHAPTER 1720-5-4  
STUDENT HOUSING REGULATIONS**

**TABLE OF CONTENTS**

1720-5-4-.01	Housing Requirement	1720-5-4-.07	Period of Occupancy
1720-5-4-.02	Classification (For Housing Purposes Only)	1720-5-4-.08	Residence Hall Safety Regulations
1720-5-4-.03	Types of Differentiated Housing	1720-5-4-.09	Termination of Housing Contract
1720-5-4-.04	Separate Accommodations By Sex	1720-5-4-.10	Pregnancy
1720-5-4-.05	Judicial Proceedings	1720-5-4-.11	Repealed
1720-5-4-.06	Room Painting		

~~1720-5-4-.01 HOUSING REQUIREMENT.~~ In view of the educational advantages and academic needs on campus and the desire to provide campus housing at a minimum cost to students, The University of Tennessee at Martin requires all single freshmen and sophomores, except those living with their parents, to live on campus.

~~Authority: T.C.A. §49-9-209(e). Administrative History: Original rule filed September 15, 1976; effective October 15, 1976. Amendment filed August 22, 1980; effective December 1, 1980. Repeal and new rule filed May 27, 1986; effective August 12, 1986. Repeal and new rule filed November 10, 2005; effective March 30, 2006.~~

~~1720-5-4-.02 CLASSIFICATION (FOR HOUSING PURPOSES ONLY).~~ For housing policy purposes (but not for academic classification purposes), a freshman is defined as a student with less than two completed semesters of work (fewer than 30 hours), a sophomore as one with two but less than four semesters (fewer than 60 hours), a junior as one with four but less than six semesters, and a senior as one with six or more semesters completed. A graduate student is a student taking course work beyond the bachelor degree level. Summer semester work may be counted in computing the number of semesters.

~~Authority: §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule filed November 10, 2005; effective March 30, 2006.~~

~~1720-5-4-.03 TYPES OF DIFFERENTIATED HOUSING.~~

Three types of on-campus housing are available for single students:

- (a) ~~TYPE I: No Visitation.~~ Available to all single students, with preference to freshmen, followed by sophomores, juniors, and seniors. Quiet hours are enforced between 8:00 p.m. and 8:00 a.m. Sunday through Thursday and from 12:00 a.m. until 8:00 a.m. Friday and Saturday. During examination week, quiet hours are in effect 24 hours daily. Hall clerks are on duty 24 hours daily. Resident Assistants on each floor provide counseling and aid in maintaining order. Emergency message service is available at the central desk.
- (b) ~~TYPE II: Limited Visitation.~~ Available to all single students, with preference to freshmen, followed by sophomores, juniors and seniors. Quiet hours are enforced between 8:00 p.m. and 8:00 a.m. Sunday through Thursday and from 12:00 a.m. until 8:00 a.m. Friday and Saturday. During examination weeks, quiet hours are in effect 24 hours daily. Sunday through Thursday, visitation is permitted between 12:00 p.m. and 12:00 a.m. Friday and Saturday visitation is between 12:00 p.m. and 2:00 a.m. Hall clerks are on duty 24 hours daily. Resident Assistants on each floor provide counseling and aid in maintaining order. Emergency message service is available at the central desk.

(Rule 1720-5-4-.03, continued)

- (e) ~~TYPE III: Available to all single students living in apartments. Open visitation 24 hours daily. Minimal supervision and regulations. Students must conform to all Student Handbook policies.~~

~~Authority: §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Repeal and new rule filed November 10, 2005; effective March 30, 2006.~~

~~1720-5-4-.04 SEPARATE ACCOMMODATIONS BY SEX. Co-educational housing of single students in the same suites, rooms or apartments is not permitted at UTM.~~

~~Authority: §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule filed November 10, 2005; effective March 30, 2006.~~

~~1720-5-4-.05 JUDICIAL PROCEEDINGS. Standards of conduct expected of students are published in the Student Handbook, and specific regulations pertaining to residence halls are posted on bulletin boards or announced in hall meetings. Students who are accused of violations may have their cases handled in either of two ways:~~

- (1) ~~Administratively by the Hall Director or Student Affairs staff; or~~
- (2) ~~By the student court.~~

~~After hearing a case, a judgment of guilt or innocence is made and a penalty is assessed where appropriate. The penalties that may be assessed are loss of privilege, disciplinary warning, disciplinary probation, and suspension. In addition, these penalties may include dismissal from the residence hall or apartment. The student has the option to appeal to the Disciplinary Hearing Board or the University Council.~~

~~Authority: §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Repeal and new rule filed November 10, 2005; effective March 30, 2006.~~

~~1720-5-4-.06 ROOM PAINTING. Interested residents should visit the Housing Facilities Office and discuss room painting with the Paint Supervisor.~~

~~Authority: §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule filed November 10, 2005; effective March 30, 2006.~~

~~1720-5-4-.07 PERIOD OF OCCUPANCY. Students having assignments may occupy their rooms on the date specified by the Office of Housing. Normally the dates begin the day preceding registration period and end on the last day of the final examination period, except for certain university holidays such as Thanksgiving and Easter. If a student fails to occupy the assigned room by the date specified without giving the Office of Housing prior notification of delayed arrival, the room may be reassigned to another student. Delayed arrival does not relieve the student of the responsibility for accepting available accommodation.~~

- (1) ~~Soliciting is not permitted in the non-public areas of the residence halls. It may be permitted in the public areas by registered student organizations depending on space, circumstances and provisions of the Student Handbook.~~
- (2) ~~Windows and Screens: Window screens must not be unfastened or removed. In addition, the following rules also apply:~~
  - (a) ~~Food may not be stored between windows and screens or outside of the windows at anytime.~~
  - (b) ~~Displays in windows which are deemed inappropriate by the hall head staff and not removed by the resident(s), will be removed by the staff and the resident(s) billed for this service.~~

(Rule 1720-5-4-.07, continued)

- (e) ~~Under no circumstances will the throwing of objects from any windows in the residence halls be tolerated. Such conduct poses a danger to the health and safety of other residents. Residents assigned to a room from which an object is thrown will be subject to administrative eviction from the university residence halls in accordance with the terms and conditions of the Housing Contract.~~
- (3) ~~Business from Residents' Rooms: Residents are not permitted to carry on any organized business for remunerative purposes from their apartments or rooms, inscribe or affix any sign, object, advertisement, or notice on any part of the inside or outside of the building or premises, or use their room phone numbers for business purposes.~~
- (4) ~~Open House and Visitation: At no time may a member of the opposite sex be in a non-public area unless the guest is in compliance with the open house or visitation policies of that unit. Resident Assistants are able to define these areas specifically for the hall, including but not limited to corridor of a living unit, resident's room, etc.~~
- (5) ~~Guests: Residents may have overnight guests of the same sex only; it is the host's responsibility to arrange for sleeping facilities, including linens, permission from another roommate for use of his/her bed, etc. Unless extraordinary arrangements have been made with the Hall Director or Assistant Hall Director, no keys will be issued to guests, and no resident may have a guest in the hall when the resident will not be present to act as his/her host.~~

  - (a) ~~Guests are discouraged during weekday nights and during the last week of each semester when final exams are being given. The maximum length of any visit is 3 days and 3 nights, with extensions granted only by the Hall Director or Assistant Hall Director.~~
  - (b) ~~University officials can require guests to produce proof that they are legitimate guests. Guests must complete a Guest Registration Card available at the main desk of each hall. The information on this card may aid in contacting the guest and/or his/her designee should the need arise. The guest's copy of the card will also serve as an identification card during his/her stay on campus.~~
  - (c) ~~All guests are governed by university and residence hall rules and regulations. For a violation of rules by an off-campus guest, the host is responsible for any damages caused by the guest.~~
  - (d) ~~No individual will be permitted to sleep in the main or floor lounges of university residence halls. Night clerks and hall staff will ask such persons to leave the hall or to return to their assigned rooms. If a non-resident does not comply with the request to leave, Campus Security will be called to remove them.~~
- (6) ~~Pets: For health reasons, pets are not permitted in the halls. Cats, dogs and other pets present a multitude of problems in a residence hall and are not permitted on the premises. (The only exceptions to this policy are (1) guide dogs accompanying blind persons and (2) fish which live completely submerged in water.)~~
- (7) ~~Attachments: Residents should not install any of the following in their rooms:~~

  - (a) ~~Locks;~~
  - (b) ~~Decals or transfer pictures;~~
  - (c) ~~Outside antenna for radio or television;~~

(Rule 1720-5-4-.07, continued)

- (d) Additional electrical wiring;
  - (e) Attachments to the telephone;
  - (f) Shades, blinds, awnings or window guards;
  - (g) Air conditioning or heating units.
- (8) ~~Noise Level: Residents are expected to show consideration for others at all times and should avoid excessive noise. They are requested to refrain from unnecessary noise; congregating in the hall, bath, or elevator areas; loud talking or laughing; and loud playing of electronic equipment. For obvious (audible) reasons, musical instruments may be played only in areas provided for this purpose. Abuse of these standards may result in the instrument or appliance being stored until it can be removed from the campus. Radios, stereos or other electronic equipment should not be placed in or near windows, as the noise may distract others whose windows may be open.~~

~~Beyond this, residence hall associations may establish specific quiet hours within their respective halls.~~

- (9) ~~Furniture: All university property is inventoried according to location and is not to be moved or dismantled except with written permission of the Hall Director. Removal of furniture from its assigned location, except with permission, is grounds for disciplinary action. Residents will also be charged for any furniture or facilities assigned to their rooms and found missing at the time of checkout.~~
- (10) ~~Water Furniture: Water furniture, including beds and chairs, are not permitted in residents' rooms.~~
- (11) ~~Bicycles: Racks are provided for bikes in front of each hall. Off street parking is provided for motorized bikes in designated areas. Motorized bikes are not allowed inside residence halls. Although non-motorized bikes may be kept in residents' rooms, they are not to be left unattended, ridden, or chained in common areas of the halls such as hallways, stairwells, lobbies, study rooms, etc. Bikes found in such areas will be removed at the owner's expense, stored for a short time, and then disposed of. (Bikes may not be stored in luggage or other storage rooms due to lack of space.)~~
- (12) ~~Stairwells: Under no circumstances will the dropping of objects or fireworks down stairwells be tolerated. Such conduct poses obvious danger to the health and safety of other residents. Persons involved in such actions will be subject to eviction from university residence halls, in accordance with the terms and conditions of the Housing contract.~~
- (13) ~~The University Of Tennessee Reserves The Right To Make Other Policies From Time To Time Deemed Necessary And Appropriate For The Safety And Cleanliness Of The Premises, And For Securing The Comfort And Convenience Of All Residents.~~

~~Authority: §49-9-209(c). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule file November 10, 2005; effective March 30, 2006.~~

#### ~~1720-5-4-.08 RESIDENCE HALL SAFETY REGULATIONS.~~

- (1) ~~Flammable Items: Items which are flammable, such as fuel, etc., may not be stored in residents' rooms.~~

(Rule 1720-5-4-.08, continued)

- (2) ~~Open Flames: Items which require an open flame to operate or which produce heat (i.e., Bunsen burners, lighted candles, alcohol burners) are not allowed in residents' rooms. Candles must have the wicks removed and may be used for decorative purposes.~~
- (3) ~~Decorations: Decorative items, such as fishnets, parachutes, and other such items which are flammable are not permitted in residents' rooms, unless they have been fireproofed. Only Underwriters' Laboratory (U.L.) approved lights may be used to decorate rooms.~~
- (4) ~~Cooking: Hall kitchens and other facilities are provided for residents to use for cooking. Cooking with open coil appliances is not permitted in student rooms.~~
- (5) ~~Electrical Appliances: In residence halls, U.L. approved microwaves, George Forman type grills, closed coil only popcorn poppers and coffee makers may be in student rooms.~~
- (6) ~~Fires And Fire Drills: Fire evacuation plans are posted in each resident's room. A resident will be subject to disciplinary action for tampering with or activating fire alarm or control equipment except in case of a fire or for failure to evacuate the building during an evacuation and safety drill. A safety exit drill will be conducted in each residence hall once per month in compliance with state law. A resident who sees or suspects a fire should immediately notify a staff member who will activate the fire alarm system if necessary.~~
- (7) ~~Fire Lanes: Several halls have nearby emergency lanes which are strictly reserved for use by emergency vehicles only. Unauthorized vehicles parked in these areas will be towed away by Public Safety at the owner's risk and expense.~~
- (8) ~~Safety Equipment: The University of Tennessee at Martin, through the Office of Housing, hereby advises all students that the University will not tolerate the irresponsible behavior of persons whose actions jeopardize the safety and welfare of others. Tampering with, vandalizing, or otherwise abusing elevator, fire, or safety equipment in the university residence halls will constitute reason for eviction from the residence halls and possible suspension from The University of Tennessee at Martin.~~

~~Authority: §49-9-209(c). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule filed November 10, 2005; effective March 30, 2006.~~

**1720-5-4-.09 TERMINATION OF HOUSING CONTRACT.** ~~When considered in the best interest of the university, a resident can be asked to move from the hall. An appeal can be made by the student through the established administrative and judicial procedures.~~

~~Authority: §49-9-209(c). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule filed November 10, 2005; effective March 30, 2006.~~

**1720-5-4-.10 PREGNANCY.** ~~UTM Housing Office policies do not permit assignment of single student rooms to pregnant students during the third trimester of pregnancy. This policy does not prevent a pregnant woman from enrolling in the university provided off campus housing and medical arrangements can be made by the enrolling student and her family. The primary concern of this university policy is that the prospective mother be in an environment where the necessary service and care be provided for her and her baby. Alternative housing will be offered. Refund of the customary portion of rent paid would be made.~~

~~Authority: §49-9-209(c). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Repeal and new rule filed November 10, 10, 2005; effective March 30, 2006.~~

**1720-5-4-.11 REPEALED.**

(Rule 1720-5-4-.08, continued)

~~*Authority:* §49-9-209(c). *Administrative History:* Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999. Repeal filed November 10, 2005; effective March 30, 2006.~~

University of Tennessee Rules  
Chapter 1720-05-04 Student Housing Regulations

The University of Tennessee at Martin  
Chapter 1720-05-04  
Student Housing Regulations

Repeal

Chapter 1720-05-04 Student Housing Regulations is repealed in its entirety.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

\*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)
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.				X	
Shannon Brown	X				
George E. Cates	X				
Dr. Susan C. Davidson (non-voting)					
Spruell Driver, Jr.				X	
Dr. William E. Evans	X				
John N. Foy	X				
Crawford Gallimore	X				
Vicky B. Gregg				X	
Raja J. Jubran	X				
Brad A. Lampley	X				
James L. Murphy, III	X				
Sharon J. Miller Pryse	X				
Dr. Jefferson S. Rogers	X				
Rhedona Rose	X				
Miranda N. Rutan	X				
John Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

University of Tennessee Rules  
Chapter 1720-05-04 Student Housing Regulations

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/23/2016, 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 ninety (90) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 07/01/2016

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

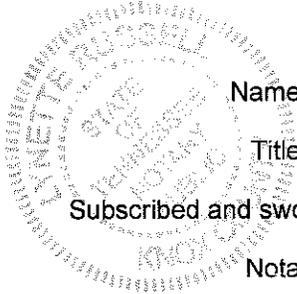
Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 7-1-16

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

My commission expires on: 12-4-18



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.

Herbert H. Slattery III  
Herbert H. Slattery III  
Attorney General and Reporter  
7/27/2016  
Date

**Department of State Use Only**

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

9/16/16

Effective on: \_\_\_\_\_

8/1/17

Tre Hargett

Tre Hargett  
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee

DIVISION:

SUBJECT: Student Housing Regulations; Safety Inspections, Violations, Housing Contracts

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-9-209

EFFECTIVE DATES: August 1, 2017 through June 30, 2018

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: Student affairs and housing officials in the University of Tennessee System (UT) have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

**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 Regulatory Flexibility Addendum is not applicable.

### **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 University of Tennessee anticipates that this rule change will have no impact on local governments.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Student affairs and housing officials in The University of Tennessee System have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

None.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Students of the University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule.

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

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

Not significant.

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

Matthew Scoggins  
Deputy General Counsel  
University of Tennessee

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

Matthew Scoggins  
Deputy General Counsel  
University of Tennessee

University of Tennessee Rules  
Chapter 1720-03-06 Student Housing Regulations

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Matthew Scoggins  
Deputy General Counsel  
University of Tennessee  
719 Andy Holt Tower  
Knoxville, TN 37996-0170  
[scoggins@tennessee.edu](mailto:scoggins@tennessee.edu)  
865-974-3245

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

None.

**Department of State  
Division of Publications**

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

**For Department of State Use Only**

Sequence Number: 09-21-16  
Rule ID(s): 6306  
File Date: 9/16/16  
Effective Date: 8/1/17

## 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.*

<b>Agency/Board/Commission:</b>	University of Tennessee
<b>Division:</b>	
<b>Contact Person:</b>	Matthew Scoggins, Deputy General Counsel
<b>Address:</b>	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
<b>Zip:</b>	37996-0170
<b>Phone:</b>	865-974-3245
<b>Email:</b>	scoggins@tennessee.edu

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

- Amendment  
 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
1720-03-06	Student Housing Regulations
Rule Number	Rule Title
1720-03-06-.01	General Rules and Regulations
1720-03-06-.02	Safety Inspection
1720-03-06-.03	Violations
1720-03-06-.04	Housing Contracts

**RULES  
OF  
THE UNIVERSITY OF TENNESSEE, HEALTH SCIENCE CENTER**

**CHAPTER 1720-3-6  
STUDENT HOUSING REGULATIONS**

**TABLE OF CONTENTS**

1720-3-6-.01	General Rules and Regulations	1720-3-6-.03	Violations
1720-3-6-.02	Safety Inspection	1720-3-6-.04	Housing Contracts

**~~1720-3-6-.01 GENERAL RULES AND REGULATIONS.~~**

- ~~(1) Room Damages — Student Housing recognizes the residents' desire to personalize their room with items such as pictures, lamps, etc. When the use or hanging of these items damages the walls, floors, ceilings or furnishings of a room or apartment, charges for repair or replacement will be the responsibility of the resident.~~
- ~~(2) Possession of alcohol and drugs in residence halls is prohibited.~~
- ~~(3) Possession of explosive or firearms in residence halls is prohibited.~~
- ~~(4) Pets are prohibited in the residence halls and on the premises. The only exception to this policy is trained guide dogs accompanying individuals with visual impairment.~~
- ~~(5) Cooking in the residence halls is allowed in designated kitchen areas. Appliances approved for use in student rooms are: Electric coffee pots, coffee warmer, electric hot pots and microwave ovens. All other appliances are prohibited. No appliances with an open flame or exposed heating element are allowed.~~

~~*Authority:* Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5 and Public Acts of Tennessee, 1807, Chapter 64. *Administrative History:* Original rule filed September 15, 1976; effective October 15, 1976. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December 30, 1995.~~

**~~1720-3-6-.02 SAFETY INSPECTION.~~**

- ~~(1) Fire drills are conducted a minimum on 4 times each year. All residents are required to participate. Persons in the hall who fail to exit the building when a fire alarm sounds, shall be subject to disciplinary action.~~
- ~~(2) Safety inspections are conducted monthly to check smoke detectors and check for other fire or safety violations. A notice of the scheduled inspection will be posted in visible areas of the residence halls 24 hours before the scheduled inspection. Residents violating safety rules and regulations are subject to disciplinary action.~~
- ~~(3) Smoke Detectors have been installed in each residence hall room according to Tennessee Fire Code. These detectors are placed in the room to alert the residents to the presence of smoke. UT, Health Science Center staff members inspect the smoke detectors monthly to assure that they are operating properly. Removal or tampering with smoke detectors or other fire safety equipment is prohibited.~~

~~*Authority:* Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5 and Public Acts of Tennessee, 1807, Chapter 64. *Administrative History:* Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December 30, 1995.~~

(Rule 1720-3-6-.02, continued)

**1720-3-6-.03 VIOLATIONS.** Any violation of these regulations is punishable by those penalties set forth in the Student Rights and Responsibilities section of the UT Health Science Center Student Handbook.

*Authority:* ~~Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5 and Public Acts of Tennessee, 1807 Chapter 64. Administrative History: New rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December 30, 1995.~~

**1720-3-6-.04 HOUSING CONTRACT:**

- (1) ~~The Housing Acceptance Agreement Form (Housing Contract) is a binding contract. Signing of the agreement constitutes a legal contract between The University of Tennessee, Health Science Center and the resident to fulfill the terms of the contract.~~
- (2) ~~Contract Period: The Housing Acceptance Agreement Form, unless otherwise stated on the agreement, is for the full academic year from July 1 through June 30.~~
- (3) ~~Release from Contract: Release from the contract will be granted for any of the following reasons. Marriage during a term, end of term, university assignment to an out of town rotation, withdrawal or suspension. Residents are required to submit a notice of cancellation to the Office of Student Housing thirty (30) days before the date they plan to cancel the contract. Providing the request for release meets the terms of the contract residents will be held responsible for 30 days rent from the date cancellation notice is received.~~
  - (a) ~~New assignments—A contract may be cancelled with no penalty providing the Office of Student Housing is notified in writing by the cancellation date shown on the contract. A contract cancelled after the contract cancellation date through the first day of registration will be accepted providing the student has not checked in the residence hall. This cancellation will result in forfeiture of the \$50.00 advance rent deposit.~~
  - (b) ~~Current residents/End of term—A resident may cancel the upcoming portions of a contract by submitting a written notice of cancellation to the office of Student Housing 30 days before the end of any term. A resident who fails to check out at the end of the term may be held responsible for rent for the next term.~~
  - (c) ~~Assignment to out of town rotation—A resident who receives an out of town assignment will be released by submitting a 30 day notice of cancellation.~~
  - (d) ~~Marriage during Contract—A resident will be released with 30 day notice and proof of marriage.~~
  - (e) ~~Withdrawal, Suspension or Dismissal—A resident who withdraws from the university or is suspended or dismissed from the University is expected to vacate the residence halls within 24 hours of completing university withdrawal or official notification of suspension or dismissal.~~

*Authority:* ~~T.C.A. §4-9-209(e). Administrative History: Original rule filed August 31, 1995; effective December 30, 1995. Amendment filed November 17, 2000; effective March 30, 2001.~~

University of Tennessee Rules  
 Chapter 1720-03-06 Student Housing Regulations

The University of Tennessee, Health Science Center  
 Chapter 1720-03-06  
 Student Housing Regulations

Repeal

Chapter 1720-03-06 Student Housing Regulations is repealed in its entirety.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

\*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)
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.				X	
Shannon Brown	X				
George E. Cates	X				
Dr. Susan C. Davidson (non-voting)					
Spruell Driver, Jr.				X	
Dr. William E. Evans	X				
John N. Foy	X				
Crawford Gallimore	X				
Vicky B. Gregg				X	
Raja J. Jubran	X				
Brad A. Lampley	X				
James L. Murphy, III	X				
Sharon J. Miller Pryse	X				
Dr. Jefferson S. Rogers	X				
Rhedona Rose	X				
Miranda N. Rutan	X				
John Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

University of Tennessee Rules  
Chapter 1720-03-06 Student Housing Regulations

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/23/2016, 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 ninety (90) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 07/01/2016

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

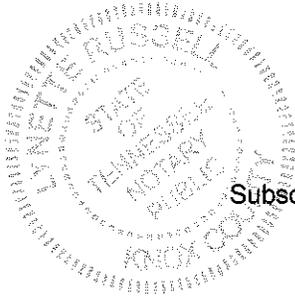
Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 7-1-16

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

My commission expires on: 12-4-18



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.

Herbert H. Slattery III  
Herbert H. Slattery III  
Attorney General and Reporter  
8/4/2016  
Date

**Department of State Use Only**

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

9/16/16

Effective on: \_\_\_\_\_

8/1/17

Tre Hargett

Tre Hargett  
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee

DIVISION:

SUBJECT: Student Housing Regulations; Residence Requirements, Contractual Arrangements, Room Changes

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-9-209

EFFECTIVE DATES: August 1, 2017 through June 30, 2018

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: Student affairs and housing officials in the University of Tennessee System (UT) have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

**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 Regulatory Flexibility Addendum is not applicable.

**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 University of Tennessee anticipates that this rule change will have no impact on local governments.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Student affairs and housing officials in The University of Tennessee System have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

None.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Students of the University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule.

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

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

Not significant.

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

Matthew Scoggins  
Deputy General Counsel  
University of Tennessee

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

Matthew Scoggins  
Deputy General Counsel  
University of Tennessee

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Matthew Scoggins  
Deputy General Counsel  
University of Tennessee  
719 Andy Holt Tower  
Knoxville, TN 37996-0170  
[scoggins@tennessee.edu](mailto:scoggins@tennessee.edu)  
865-974-3245

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

None.

**Department of State  
Division of Publications**

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**For Department of State Use Only**

Sequence Number: 09-22-16  
Rule ID(s): 6307  
File Date: 9/16/16  
Effective Date: 8/1/17

## 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.*

<b>Agency/Board/Commission:</b>	University of Tennessee
<b>Division:</b>	
<b>Contact Person:</b>	Matthew Scoggins, Deputy General Counsel
<b>Address:</b>	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
<b>Zip:</b>	37996-0170
<b>Phone:</b>	865-974-3245
<b>Email:</b>	scoggins@tennessee.edu

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

- Amendment  
 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
1720-02-02	Student Housing Regulations
Rule Number	Rule Title
1720-02-02-.01	Residence Requirements
1720-02-02-.02	Differentiated Housing
1720-02-02-.03	Contractual Arrangements
1720-02-02-.04	Damage
1720-02-02-.05	Room Changes
1720-02-02-.06	Check Out
1720-02-02-.07	Inspection and Search Policy
1720-02-02-.08	Residence Hall Regulations

**RULES  
OF  
THE UNIVERSITY OF TENNESSEE AT CHATTANOOGA**

**CHAPTER 1720-2-2  
STUDENT HOUSING REGULATIONS**

**TABLE OF CONTENTS**

1720-2-2-.01	Residence Requirements	1720-2-2-.05	Room Changes
1720-2-2-.02	Differentiated Housing	1720-2-2-.06	Cheek-Out
1720-2-2-.03	Contractual Arrangements	1720-2-2-.07	Inspection and Search Policy
1720-2-2-.04	Damage	1720-2-2-.08	Residence Hall Regulations

**~~1720-2-2-.01 RESIDENCE REQUIREMENTS.~~**

- ~~(1) Single out-of-town students attending the University are expected to live in University housing when space is available unless they commute from their homes in nearby towns.~~
- ~~(2) They may not live off-campus when residence hall space is available without permission from the Housing Office.~~

~~*Authority:* TCA § 49-9-209(e). *Administrative History:* Original rule filed September 15, 1976; effective October 15, 1976. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 19, 2006; effective October 27, 2006.~~

**~~1720-2-2-.02 DIFFERENTIATED HOUSING.~~**

- ~~(1) The concept of Differentiated Housing at The University of Tennessee at Chattanooga campus offers students, with parental involvement, the choice of the housing facility and living atmosphere in which he or she will live. The plans available are:
  - ~~(a) TYPE A—Visitation privileges are allowed in the living dining area from 12:00 noon until 12:00 midnight.~~
  - ~~(b) TYPE B—This plan involves minimal rules, regulations, and supervision. This option is available to upper class students only.~~~~

~~*Authority:* TCA § 49-9-209(e). *Administrative History:* Original rule filed September 15, 1976; effective October 15, 1976. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December 30, 1995. Amendment filed June 19, 2006; effective October 27, 2006.~~

**~~1720-2-2-.03 CONTRACTUAL ARRANGEMENTS.~~**

~~Contractual Arrangements—Each resident student signs an individual contract with the University for the premises he/she will occupy. This agreement covers occupancy for the entire academic year unless specifically indicated otherwise on the contract itself. Any student who for any reason wishes to alter the terms of his/her contract, must apply in writing to the University Housing Office at least thirty days prior to the anticipated change. If the contract is modified, notification will be sent in writing to all parties concerned prior to the effective date of action. Unless written exception is granted by the University, he/she is liable for the full extent of the original statement.~~

~~*Authority:* TCA § 49-9-209(e). *Administrative History:* Original rule filed September 15, 1976; effective October 15, 1976. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 19, 2006; effective October 27, 2006.~~

**1720-2-2-.04 DAMAGE.**

- (1) ~~The student is responsible for the condition and proper care of the accommodations assigned and shall reimburse the University for all damages done within or to said accommodations in which he/she is housed, for all damages to Resident Hall non public areas, and all damage to, or loss of University fixtures, furnishings, or property furnished under the contract. Charges for damages and/or necessary cleaning will be assessed against the student, or students, by the University and must be paid promptly. Failure to pay assessment will result in a hold on a student's registration, graduation and/or transcript.~~
- (2) ~~Non public areas refer to the studies, lounges and restroom facilities, hallways and other areas of a floor of the residence hall which are provided primarily for the use of students having accommodations on that floor.~~

~~*Authority:* TCA § 49-9-209(e). *Administrative History:* Original rule filed September 15, 1976; effective October 15, 1976. Amendment filed July 9 1983; effective October 14, 1983. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 19, 2006; effective October 27, 2006.~~

**1720-2-2-.05 ROOM CHANGES.**

- (1) ~~The University expects students to continue residency in the room to which they are assigned. However, it realizes that changes are sometimes mutually beneficial.~~
- (2) ~~Through regularly scheduled procedures, room changes may be made. With the prior written approval of the Resident Director and the Housing Office one change that is mutually agreeable may be made without charge during the semester. After the first charge, a \$5.00 fee will be assessed any time a student is allowed to move. Failure to obtain the written prior approval of both the Resident Director and the Housing Office will result in a minimum \$5.00 assessment for administrative costs and also could result in the imposition of disciplinary sanctions.~~

~~*Authority:* TCA § 49-9-209(e). *Administrative History:* Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December 30, 1995. Amendment filed June 19, 2006; effective October 27, 2006.~~

~~**1720-2-2-.06 CHECK OUT.** Check Out. When a student is assigned specific accommodations, the University assumes occupancy by that student until notified otherwise. When vacating the premises, either for another on-campus facility or to leave University housing it is the occupant's responsibility to check out in person with a staff member of the residence hall. At that time, an evaluation of the facility is made in the occupant's presence and a report is completed on deficiencies or damages for which the student is responsible. Failure to check out in the prescribed manner will result in the occupant's being held liable for any or all deficiencies or damages found, as well as for the cost to replace keys, locks or other such items that affect the appearance or security of the unit. He/she will also be assessed administrative costs incurred by this failure to check out.~~

~~*Authority:* TCA § 49-9-209(e). *Administrative History:* Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 19, 2006; effective October 27, 2006.~~

**1720-2-2-.07 INSPECTION AND SEARCH POLICY.**

- (1) ~~Entry by University authorities into occupied rooms in residence halls will be divided into three categories: inspection, search, and emergency. Inspection is defined as the entry into an occupied room or apartment by University authorities in order to ascertain the health and safety conditions in the areas, or to check the physical condition of the area, or to make repairs on facilities, or to perform cleaning and janitorial operations. Search is defined as the entry into an occupied room by on-campus authorities for the purpose of investigating suspected violations of campus regulations and/or city,~~

## Rule 1720-2-2-.07, continued

~~state, or federal law. An emergency situation exists when the delay necessary to obtain search authorization constitutes a danger to persons, property, or the building itself.~~

- ~~(a) Inspection: Scheduled inspection by on-campus authorities with the exception of daily janitorial operations, shall be preceded, if possible, by twenty-four hours notice to the residents.~~
- ~~(b) During the inspection, there will be no search of drawers or closets or personal belongings.~~
- ~~(c) Search: On-campus authorities will not enter a room for purposes of search except in compliance with state law or with the permission of the resident or the written permission of the Vice Chancellor for Student Development or his/her representative. University authorities shall have, if possible, the Resident Director of the hall or his/her designee accompany them on the search.~~
- ~~(d) For purposes of maintenance, and fire and safety evaluation, rooms will be inspected periodically by the University staff. Normally the resident assistant will be involved in this part of the program and will work out arrangements with the individual occupant beforehand.~~

~~Authority: TCA § 49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 19, 2006; effective October 27, 2006.~~

**1720-2-2-.08 RESIDENCE HALL REGULATIONS.**

- ~~(1) Telephone Services. Telephones have been installed in the rooms of all residence halls and apartments. Each phone may be reached directly from without the University as well as within it by merely dialing its assigned number. There is no additional charge for local service. However, long distance calls may be made or accepted collect only by those persons who have an official charge card number from the UTC Telephone Services, or a private company or the Bell Telephone Company. No calls may be charged to the telephone number that is listed on the telephone instrument. No collect calls will be accepted and extensions are prohibited.~~
- ~~(2) Safety Prohibitions.
 
  - ~~(a) Perculators, hot plates, immersion heaters, and popcorn poppers are prohibited in dorm rooms.~~
  - ~~(b) No candles, open flames, or incense burning is allowed.~~
  - ~~(c) Light bulbs should not be touching or near clothing or other flammables.~~
  - ~~(d) Extension cords must be underwriter laboratory approved or equal. Covering must be in good condition. Plugs and cords must be the same size or larger than appliance wire and not hidden under rugs, trash, paper, clothing, or books, nor near heat sources.~~
  - ~~(e) Storage of gasoline, other fuels or vehicles containing them is prohibited.~~
  - ~~(f) Hot plates or other cooking equipment may not be used in dormitory rooms because of fire regulations and sanitary reasons.~~
  - ~~(g) Cooking in individual rooms is prohibited.~~~~
- ~~(3) Fire Drills. Each dormitory must have at least one fire drill per month. These are conducted so that each resident can vacate the building quickly and safely in case of emergency. The drills are planned and supervised by the Housing Office, the Security Office, and the Resident Directors. Anytime that~~

(Rule 1720-2-2-.08, continued)

~~the fire alarm is sounded in a University building every occupant of the building is required to evacuate immediately. The University police will assist with the evacuation to see that the building is totally vacated and no one will be allowed to re-enter prior to the expressed consent of the security officers on duty. Reports are filed with the offices concerned.~~

- ~~(4) Guests. Residents may have overnight guests of the same sex only, if prior arrangements have been made with roommate(s). The maximum length of any visit is three days and three nights. All guests are governed by the University and residence hall regulations, and it is the host's responsibility to make guests aware of this. In cases where the guest is in violation of University regulations, disciplinary action may be brought against the host.~~
- ~~(5) Alcohol and Drugs. The possession or use of alcoholic beverages, other illegal drugs or intoxicants of any kind is prohibited on campus.~~
- ~~(6) Pets. Only fish tanks no larger than 10 gallons are allowed. Otherwise, no animals are permitted.~~
- ~~(7) Weapons or Explosives, Fireworks. The possession of firearms, hunting knives, fireworks or other type of weapons and explosives is not allowed in the residence halls or on the University property.~~
- ~~(8) Keys. Misuse or loss of them may jeopardize the safety of others and constitutes grounds for disciplinary action. There is a charge for lost keys and other security measures that must be taken due to the loss of such keys.~~
- ~~(9) Quiet Hours. If a student consistently violates Quiet Hours, he/she will be subject to disciplinary action.~~

*Authority: TCA § 49-9-209(e) Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December 30, 1995. Amendment filed June 19, 2006; effective October 27, 2006.*

The University of Tennessee at Chattanooga  
 Chapter 1720-02-02  
 Student Housing Regulations

Repeal

Chapter 1720-02-02 Student Housing Regulations is repealed in its entirety.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

\*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)
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.				X	
Shannon Brown	X				
George E. Cates	X				
Dr. Susan C. Davidson (non-voting)					
Spruell Driver, Jr.				X	
Dr. William E. Evans	X				
John N. Foy	X				
Crawford Gallimore	X				
Vicky B. Gregg				X	
Raja J. Jubran	X				
Brad A. Lampley	X				
James L. Murphy, III	X				
Sharon J. Miller Pryse	X				
Dr. Jefferson S. Rogers	X				
Rhedona Rose	X				
Miranda N. Rutan	X				
John Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/23/2016, 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 ninety (90) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 07/01/2016

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

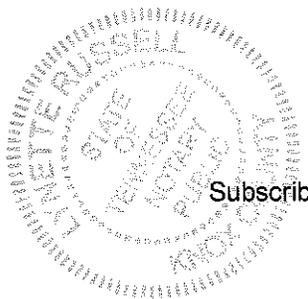
Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 7-1-16

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

My commission expires on: 12-4-18



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.

Herbert H. Slatery III  
Herbert H. Slatery III  
Attorney General and Reporter  
8/17/2016 Date

**Department of State Use Only**

Filed with the Department of State on: 9/16/16

Effective on: 8/1/17

Tre Hargett

Tre Hargett  
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee

DIVISION:

SUBJECT: Student Housing Regulations; Housing/Food Services General, Open House and Visitation Procedures, Termination of Housing Contract

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-9-209

EFFECTIVE DATES: August 1, 2017 through June 30, 2018

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: Student affairs and housing officials in the University of Tennessee System (UT) have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

**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 Regulatory Flexibility Addendum is not applicable.

**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 University of Tennessee anticipates that this rule change will have no impact on local governments.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Student affairs and housing officials in The University of Tennessee System have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

None.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Students of the University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule.

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

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

Not significant.

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

Matthew Scoggins  
Deputy General Counsel  
University of Tennessee

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

Matthew Scoggins  
Deputy General Counsel  
University of Tennessee

University of Tennessee Rules  
Chapter 1720-04-04 Student Housing Regulations

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Matthew Scoggins  
Deputy General Counsel  
University of Tennessee  
719 Andy Holt Tower  
Knoxville, TN 37996-0170  
[scoggins@tennessee.edu](mailto:scoggins@tennessee.edu)  
865-974-3245

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

None.

**Department of State  
Division of Publications**

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Nashville, TN 37243  
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**For Department of State Use Only**

Sequence Number: 09-23-16  
Rule ID(s): 6308  
File Date: 9/16/16  
Effective Date: 8/1/17

## 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.*

<b>Agency/Board/Commission:</b>	University of Tennessee
<b>Division:</b>	
<b>Contact Person:</b>	Matthew Scoggins, Deputy General Counsel
<b>Address:</b>	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
<b>Zip:</b>	37996-0170
<b>Phone:</b>	865-974-3245
<b>Email:</b>	scoggins@tennessee.edu

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

- Amendment  
 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
1720-04-04	Student Housing Regulations
Rule Number	Rule Title
1720-04-04-.01	Housing/Food Services General
1720-04-04-.02	Differentiated Housing
1720-04-04-.03	Open House and Visitation Procedures
1720-04-04-.04	Residence Hall Regulations
1720-04-04-.05	Residence Hall Safety Regulations
1720-04-04-.06	Termination of Housing Contract

**RULES  
OF  
THE UNIVERSITY OF TENNESSEE, KNOXVILLE**

**CHAPTER 1720-4-4  
STUDENT HOUSING REGULATIONS**

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1720-4-4-.01	Housing/Food Services-General	1720-4-4-.04	Residence Hall Regulations
1720-4-4-.02	Differentiated Housing	1720-4-4-.05	Residence Hall Safety Regulations
1720-4-4-.03	Open House and Visitation Procedures	1720-4-4-.06	Termination of Housing Contract

**~~1720-4-4-.01 HOUSING/FOOD SERVICES-GENERAL.~~**

- (1) ~~Freshman Students: All single freshmen students, who do not commute from the home of their parent or legal guardian, are required to live in University Residence Halls.~~

~~**Authority:** T.C.A. §49-9-209(e). **Administrative History:** Now rule filed May 27, 1986; effective August 12, 1986. (For history prior to August 12, 1986 see pages (iii)-(i).) Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed August 31, 1995; effective December 30, 1995. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule filed October 30, 2007; effective February 28, 2008.~~

**~~1720-4-4-.02 DIFFERENTIATED HOUSING.~~**

- (1) ~~The University maintains a differentiated housing concept begun Fall Quarter, 1971. Differentiated housing permits the student to select the type of facility in which he or she will live within the University's capability to offer such living arrangements. Students are encouraged to give considerable thought and attention to their housing selection.~~

~~**Authority:** T.C.A. §49-9-209(e). **Administrative History:** Now rule filed May 27, 1986; effective August 12, 1986. (For history prior to August 12, 1986 see pages (iii)-(i).) Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed August 31, 1995; effective December 30, 1995. Repeal and new rule filed October 30, 2007; effective February 28, 2008.~~

**~~1720-4-4-.03 OPEN HOUSE AND VISITATION PROCEDURES.~~**

- (1) ~~Hours of authorized visitation periods will be posted in the lobby of each residence hall.~~
- (2) ~~All guests of floor members participating in open houses/visitation periods must be escorted by an eligible host (a member of the participating floor) at all times in non-public (living) areas (i.e., rooms, floor corridors, floor study lounges, elevators and stairwells, etc. Resident Assistants are able to define these specifically for the hall). Guests of the opposite sex must stay on floors participating in open houses/visitation periods.~~
- (3) ~~Guests of the opposite sex must use the restroom provided in the hall main lobby area.~~
- (4) ~~Any resident who violates the policy shall be subject to disciplinary action and be asked to:~~
- (a) ~~Leave, if he or she is not a member of the floor.~~
- (b) ~~Escort his or her guest out and not participate in the remainder of the open house/visitation period if he or she is a resident of the floor.~~

(Rule 1720-4-4-.03, continued)

1. In the event of a floor violation, the Hall Director or Assistant Hall Director on duty may terminate the open house/visitation period at his/her discretion.
2. Hosts and their guests are responsible for the particulars of this policy and will be personally charged when violations occur. Hosts are responsible for the conduct of their guests and may be personally charged for a guests's violations.

**Authority:** T.C.A. §49-9-209(e). **Administrative History:** New rule filed May 27, 1986; effective August 12, 1986. (For history prior to August 12, 1986 see pages (iii) (i).) Amendment filed August 31, 1995; effective December 30, 1995. Repeal and new rule filed October 30, 2007; effective February 28, 2008.

#### 1720-4-4-.04 RESIDENCE HALL REGULATIONS.

- (1) ~~Soliciting: For the residents' protection against fraudulent sales and annoyance, soliciting is not permitted in the halls. Permission for any soliciting must be obtained through the Dean of Students.~~
- (2) ~~Windows and Screens: Window screens may not be unfastened or removed.~~
- (3) ~~Business from Resident's Rooms: Residents are not permitted to carry on any organized business for remunerative purposes from their apartments or rooms; inscribe or affix any sign, object, advertisement, or notice on any part of the inside or outside of the building or premises; or use their room phone numbers for business purposes.~~
- (4) ~~Pets: Pets are not permitted in the halls or on the premises. The only exceptions to this policy are fish, guide dogs accompanying sight-impaired persons or guide dogs in training.~~
- (5) ~~Attachments: Residents should not modify the room without prior, written approval of the Hall Director.~~
- (6) ~~Furniture and Fixtures: All University property is inventoried according to location and is not to be moved or dismantled except with written permission of the Hall Director.~~
- (7) ~~Water furniture: Water furniture, including beds and chairs, are not permitted in residents' rooms.~~
- (8) ~~Keys: Residence hall keys are the sole property of The University of Tennessee and may not be duplicated under any circumstances.~~
- (9) ~~Unauthorized Moving: Unauthorized room and hall changes are prohibited.~~

**Authority:** T.C.A. §49-9-209(e). **Administrative History:** New rule filed May 27, 1986; effective August 12, 1986. (For history prior to August 12, 1986 see pages (iii) (i).) Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed August 31, 1995; effective December 30, 1995. Repeal and new rule filed October 30, 2007; effective February 28, 2008.

#### 1720-4-4-.05 RESIDENCE HALL SAFETY REGULATIONS.

- (1) ~~Flammable Items: Items which are flammable, such as fuel, etc., may not be stored in residents' rooms.~~
- (2) ~~Open Flames: Items which require an open flame to operate or which produce heat are not allowed in residents' rooms.~~

(Rule 1720-4-4-.05, continued)

- (3) ~~Decorations: Decorative items which are flammable are not permitted in residents' rooms, unless they have been fireproofed. Only Underwriters' Laboratory (UL) approved lights may be used to decorate a room.~~
- (4) ~~Cooking: Hall kitchens and other facilities are provided for residents to use for cooking. Cooking meals is not permitted in student rooms except in the apartment style residence halls. Snack preparation is limited to the use of approved cooking appliances.~~
- (5) ~~Cooking Appliances: Underwriters' Laboratories (UL) approved, closed coil or hot air popcorn poppers, sealed unit coffee makers, and thermostatically controlled hot pots may be kept in student rooms. A student may use a microwave in the Apartment Residence Hall provided the microwave is UL approved and does not exceed 600 watts and provided that student must have prior roommate approval; only one microwave is permitted per room. Other appliances, including slow cookers, electric frying pans, and open coil appliances (including, but not limited to, toasters, toaster ovens, and hot plates) are prohibited except in the apartment style residence halls where kitchens are equipped with fire extinguishers.~~
- (6) ~~Fire Safety: Fire evacuation plans are posted in each resident's room. Tampering with, vandalizing, or misuse of fire safety equipment is prohibited and constitutes reason for eviction from the residence hall and possible suspension or expulsion from the University. Fire safety equipment includes, but is not limited to, alarms, extinguishers, smoke detectors, door closures, alarmed doors, and sprinklers. A Safety Exit Drill will be conducted regularly in each residence hall in accordance with state law.~~  
  
~~Failure to evacuate a building during such a Safety Exit Drill will be grounds for disciplinary action.~~
- (7) ~~Elevators: Tampering with, vandalism to, or other misuse of elevator equipment in the University residence halls is prohibited. Such action will constitute reason for disciplinary action, including eviction from the residence hall.~~
- (8) ~~Extension Cords and Multiple Plugs: An extension cord must be UL approved, 16 gauge, a polarized plug and a single outlet; it may not be placed under floor covering or furnishings and may not be secured by penetrating the insulation. Multiple outlets are prohibited; however, one UL approved 15 amp multiple outlet strip with a circuit breaker may be used in each room.~~
- (9) ~~Refrigerators: Refrigerators are prohibited in the residence halls except those provided by the Department of University Housing.~~

**Authority:** T.C.A. §49-9-209(e). **Administrative History:** New rule filed May 27, 1986; effective August 12, 1986. (For history prior to August 12, 1986 see pages (iii) (i).) Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed August 31, 1995; effective December 30, 1995. Repeal and new rule filed October 30, 2007; effective February 28, 2008.

#### **1720-4-4-.06 TERMINATION OF HOUSING CONTRACT.**

- (1) ~~The University may cancel a student's housing contract if the student fails to meet the full terms and conditions of his/her contract, or for violation of University or Residence Hall regulations.~~
- (2) ~~Hearings and/or appeals of disciplinary action are available through established University administrative and judicial procedures.~~

**Authority:** T.C.A. §49-9-209(e). **Administrative History:** New rule filed May 27, 1986; effective August 12, 1986. (For history prior to August 12, 1986 see pages (iii) (i).) Amendment filed October 18, 1989;

STUDENT HOUSING REGULATIONS

CHAPTER 1720-4-4

(Rule 1720-4-4-06, continued)

~~effective January 29, 1990. Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed August 31, 1995; effective December 30, 1995. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule filed October 30, 2007; effective February 28, 2008.~~

University of Tennessee Rules  
 Chapter 1720-04-04 Student Housing Regulations

The University of Tennessee, Knoxville  
 Chapter 1720-04-04  
 Student Housing Regulations

Repeal

Chapter 1720-04-04 Student Housing Regulations is repealed in its entirety.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

\*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)
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.				X	
Shannon Brown	X				
George E. Cates	X				
Dr. Susan C. Davidson (non-voting)					
Spruell Driver, Jr.				X	
Dr. William E. Evans	X				
John N. Foy	X				
Crawford Gallimore	X				
Vicky B. Gregg				X	
Raja J. Jubran	X				
Brad A. Lampley	X				
James L. Murphy, III	X				
Sharon J. Miller Pryse	X				
Dr. Jefferson S. Rogers	X				
Rhedona Rose	X				
Miranda N. Rutan	X				
John Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

University of Tennessee Rules  
Chapter 1720-04-04 Student Housing Regulations

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/23/2016, 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 ninety (90) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 07/01/2016

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

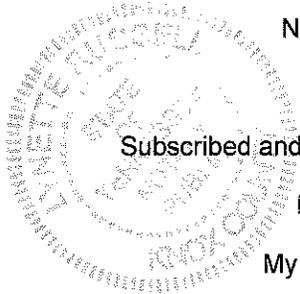
Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 7-1-16

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

My commission expires on: 12-4-18



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.

Herbert H. Stutz III  
Herbert H. Stutz III  
Attorney General and Reporter  
7/27/2016 Date

**Department of State Use Only**

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

9/16/16

Effective on: \_\_\_\_\_

8/1/17

Tre Hargett

Tre Hargett  
Secretary of State

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PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee

DIVISION:

SUBJECT: Student Housing Regulations; Residence Hall Agreements

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-9-209

EFFECTIVE DATES: August 1, 2017 through June 30, 2018

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: Student affairs and housing officials in the University of Tennessee System (UT) have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

**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 Regulatory Flexibility Addendum is not applicable.

**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 University of Tennessee anticipates that this rule change will have no impact on local governments.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Student affairs and housing officials in The University of Tennessee System have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

None.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Students of the University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule.

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

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

Not significant.

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

Matthew Scoggins  
Deputy General Counsel  
University of Tennessee

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

Matthew Scoggins  
Deputy General Counsel  
University of Tennessee

University of Tennessee Rules  
Chapter 1720-01-13 Student Housing

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Matthew Scoggins  
Deputy General Counsel  
University of Tennessee  
719 Andy Holt Tower  
Knoxville, TN 37996-0170  
[scoggins@tennessee.edu](mailto:scoggins@tennessee.edu)  
865-974-3245

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

None.

**Department of State  
Division of Publications**

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

**For Department of State Use Only**

Sequence Number: 09-24-16  
Rule ID(s): 6309  
File Date: 9/16/16  
Effective Date: 8/1/17

## 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.*

<b>Agency/Board/Commission:</b>	University of Tennessee
<b>Division:</b>	
<b>Contact Person:</b>	Matthew Scoggins, Deputy General Counsel
<b>Address:</b>	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
<b>Zip:</b>	37996-0170
<b>Phone:</b>	865-974-3245
<b>Email:</b>	scoggins@tennessee.edu

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

- Amendment  
 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
1720-01-13	Student Housing
Rule Number	Rule Title
1720-01-13-.01	General
1720-01-13-.02	Residence Hall Agreements
1720-01-13-.03	Definitions

RULES  
OF  
THE UNIVERSITY OF TENNESSEE

CHAPTER 1720-01-13  
STUDENT HOUSING

TABLE OF CONTENTS

<u>1720-01-13-.01</u>	<u>General</u>	<u>1720-01-13-.03</u>	<u>Definitions</u>
<u>1720-01-13-.02</u>	<u>Residence Hall Agreements</u>		

1720-01-13-.01 GENERAL.

- (1) The primary purpose of student housing at The University of Tennessee is to provide living accommodations and educational programming for undergraduate and graduate students enrolled at such campuses.
- (2) Subject to the general supervision of the President, Chancellors are authorized to exercise complete executive authority over student housing, including, without limitation, development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. Policies, procedures, and agreements shall be developed in consultation with appropriate system-level administrators (e.g., Chief Financial Officer, Office of the General Counsel) and shall be consistent with this Chapter 1720-01-13.
- (3) Chancellors are authorized to determine which categories of students (e.g., full-time; enrolled) are eligible to live in student housing and which categories of students are either required to live in student housing or are restricted from living in student housing, subject to federal and state law.

1720-01-13-.02 RESIDENCE HALL AGREEMENTS.

- (1) A student who applies to reside in a residence hall shall, as a condition to residing in the residence hall, sign an agreement prepared by the University that establishes the terms and conditions of the student's occupancy of the residence hall.
- (2) The agreement described in Section .02(1) should address the following subjects:
  - (a) Term of the agreement;
  - (b) Amounts, billing, payment, and refunds of housing fees, security; deposits, and damage and cleaning fees;
  - (c) Assignment and reassignment of rooms;
  - (d) Policies and procedures governing the use and safety of the residence hall and conduct within the residence hall, including, without limitation, policies governing the room within which the student is to reside (e.g., emergency procedures, animals, prohibited items, commercial solicitation);
  - (e) Rights of entry to rooms;
  - (f) Loss of or damage to the student's personal property;
  - (g) Loss of or damage to University property;
  - (h) Alterations, additions, or improvements to rooms;
  - (i) Animals;
  - (j) Prohibited activities;
  - (k) Visitation;
  - (l) Prohibition on assignment and subleasing by the student;

- (m) Termination of the agreement by either the student or the University, and options for the student to appeal the termination; and
- (n) Other reasonable and necessary subjects determined by the Chancellor.

(3) The agreement described in Section .02(1) may be in a paper or electronic format.

### 1720-01-13-.03 DEFINITIONS.

- (1) The term "campus" means The University of Tennessee at Chattanooga; The University of Tennessee Health Science Center; The University of Tennessee, Knoxville; The University of Tennessee Space Institute; The University of Tennessee at Martin; and/or The University of Tennessee Institute of Agriculture.
- (2) The term "Chancellor" means the person elected by the Board of Trustees for The University of Tennessee to serve as the Chancellor for a particular campus or institute, or the Chancellor's designee.
- (3) The term "fraternity house(s)" means a building located on University-controlled property that is leased to an organized national or local college or university fraternity.
- (4) The term "residence hall(s)" means student housing other than fraternity houses and sorority houses.
- (5) The term "sorority house(s)" means a building located on University-controlled property that is leased to an organized national or local college or university sorority.
- (6) The term "student" means a person admitted, enrolled or registered for study at the University of Tennessee, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, as well as non-degree seeking students.
- (7) The term "student housing" means University property primarily intended for use by University students as places to reside. Examples of student housing include, without limitation, residence halls, dormitories, apartments, hotels, fraternity houses, and sorority houses.
- (8) The terms "University" and "University of Tennessee" mean the campuses, centers, and institutes of the University of Tennessee, and all their constituent parts, and the University of Tennessee system.
- (9) The term "University property" means all land, buildings, houses, facilities, grounds, structures, or any other property owned, leased, used, maintained, or operated by the University of Tennessee.

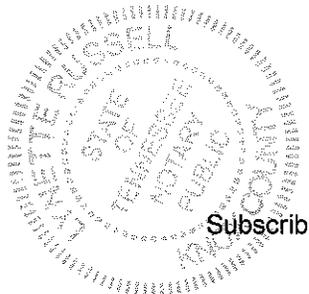
University of Tennessee Rules  
 Chapter 1720-01-13 Student Housing

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

\*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)
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.				X	
Shannon Brown	X				
George E. Cates	X				
Dr. Susan C. Davidson (non-voting)					
Spruell Driver, Jr.				X	
Dr. William E. Evans	X				
John N. Foy	X				
Crawford Gallimore	X				
Vicky B. Gregg				X	
Raja J. Jubran	X				
Brad A. Lampley	X				
James L. Murphy, III	X				
Sharon J. Miller Pryse	X				
Dr. Jefferson S. Rogers	X				
Rhedona Rose	X				
Miranda N. Rutan	X				
John Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/23/2016, 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 ninety (90) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.



Date: 07/01/2016

Signature: [Handwritten Signature]

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 7-1-16

Notary Public Signature: [Handwritten Signature]

My commission expires on: 12-4-18

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.

[Handwritten Signature]  
Herbert H. Slatery III  
Attorney General and Reporter  
7/27/2016 Date

**Department of State Use Only**

Filed with the Department of State on: 9/16/16

Effective on: 9/1/17

[Handwritten Signature]  
Tre Hargett  
Secretary of State

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PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: TennCare Medicaid - Covered Services Relating to Opiate Addiction.

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-202, 71-5-105, and 71-5-109

EFFECTIVE DATES: December 12, 2016 through June 30, 2017

FISCAL IMPACT: The promulgation of these rules is anticipated to increase state government expenditures for TennCare Medicaid and TennCare Standard by \$4,541,600, of which \$1,590,300 will be state appropriations. The supplemental appropriation for FY16 was included in the Appropriations Act, Public Chapter 758, effective April 21, 2016, which funds the FY17 budget.

STAFF RULE ABSTRACT: These rulemaking hearing rules are being promulgated to replace emergency rules which restored the fiscal year 2015-2016 budget reduction to the Bureau of TennCare, and which had reduced expenditures for Buprenorphine-containing products for treatment of opiate addiction for persons age 21 and older by imposing a lifetime coverage limit of 732 therapy days. This emergency rule amendment deletes the lifetime coverage limit and permits the Bureau to reinstate medically necessary treatment of opiate addiction for persons age 21 and older utilizing Buprenorphine.

## 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.

Comment: Commenter with the Tennessee Association of Alcohol, Drug and Other Addiction Services (TAADAS) stated in a letter that they wanted to offer comments on the proposed amendment to the TN Administrative Rules governing TennCare covered services and exclusions. The comments were as follows:

TAADAS is a statewide association of alcohol and drug abuse service professionals and providers that includes several providers of Buprenorphine. TAADAS represents over 63 treatment and recovery services providers statewide and over 15 individual member professionals.

TAADAS supports the elimination of the lifetime limits on buprenorphine in the proposed rules. Addiction is a chronic disease. Lifetime limits do not exist for other drugs used to treat other chronic diseases such as hypertension or diabetes.

TAADAS members have been staggered and overwhelmed by the ever increasing number of persons addicted to opioids. No longer is alcohol the drug of choice for Tennesseans. Instead, the drug of choice is now pills, and most of those are initially prescribed lawfully. Given the difficulty of treating those addicted to opioids, some of our members have seen the need for buprenorphine to assist our patients with the cravings brought on by opioid withdrawal—especially for those that are pregnant and using opiates. We appreciate and support the additional time permitted for pregnant women at the higher maximum daily dosage limits in the present rule. We recognize the lack of flexibility in amending a proposed rule but would advocate for additional consideration of a higher daily dose limit for pregnant women. We would hope that in the future the Bureau will consider a higher daily limit for pregnant women up to a maximum of 24mg per day on a case by case basis. Some of our advisors in the treatment community would see this higher limit as helpful for the treatment of addicted pregnant women. Buprenorphine dosing during pregnancy can be higher given that the woman is supporting the medication needs for herself and a fetus. Higher dosing is of particular concern for women who will have multiple births. Removing this limitation will remove a barrier to effective and accessible treatment for these women—many of whom were paying for the extra medication out of pocket or getting the extra doses either from a generous provider or from a dealer on the streets. Amerigroup, for example, is paying for additional Buprenorphine above the current dose limits for their pregnant Medication Assisted Treatment participants. Removing this dosage limitation improves the likelihood women will get appropriate dosing to maintain a healthy pregnancy while in recovery services.

Response: Thank you for your letter on the above-referenced rules pertaining to the TennCare program. We appreciate your comments in support of HCFA's decision to remove lifetime limits from the use of buprenorphine to treat opiate addiction in adults. Although your concerns about daily dosage limits during pregnancy are outside the scope of this rulemaking, they will be retained for future consideration. We appreciate the services that TAADAS and its member organizations provide for Tennesseans needing addiction treatment services, and we look forward to continuing to work with you as we seek to provide high-quality healthcare for TennCare enrollees.

## **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

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.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules are being promulgated to replace emergency rules which restored the fiscal year 2015-2016 budget reduction to the Bureau of TennCare, which had reduced expenditures for Buprenorphine-containing products for treatment of opiate addiction for persons age 21 and older by imposing a lifetime coverage limit of 732 therapy days. The emergency rule amendment also deleted the lifetime coverage limit and permits the Bureau to reinstate medically necessary treatment of opiate addiction for persons age 21 and older utilizing Buprenorphine.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The Rules are lawfully adopted by the Bureau of TennCare in accordance with §§ 4-5-202, 71-5-105 and 71-5-109.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The persons and entities most directly affected by these Rules are the TennCare enrollees, providers, and managed care contractors. The governmental entity most directly affected by these Rules is the Bureau of TennCare, Tennessee Department of Finance and Administration.

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

The Rules were approved by the Tennessee Attorney General. No additional opinion was given or requested.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The promulgation of these rules is anticipated to increase state government expenditures for TennCare Medicaid and TennCare Standard by \$4,541,600, of which \$1,590,300 will be state appropriations. The supplemental appropriation for FY16 was included in the Appropriations Act, Public Chapter 758, effective April 21, 2016, which funds the FY17 budget.

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

Donna K. Tidwell  
Deputy General Counsel

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

Donna K. Tidwell  
Deputy General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

310 Great Circle Road  
Nashville, TN 37243  
(615) 507-6852  
donna.tidwell@tn.gov

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

GW10216189

**Department of State  
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
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**For Department of State Use Only**

Sequence Number: 09-14-16  
Rule ID(s): 6301  
File Date: 9/13/16  
Effective Date: 12/12/16

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

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

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

- Amendments  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. 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

**RULES  
OF  
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE**

**CHAPTER 1200-13-13  
TENNCARE MEDICAID**

**1200-13-13-.04 COVERED SERVICES.**

- (1) Benefits covered under the managed care program
  - (c) Pharmacy

TennCare is permitted under the terms and conditions of the demonstration project approved by the federal government to restrict coverage of prescription and non-prescription drugs to a TennCare-approved list of drugs known as a drug formulary. TennCare must make this list of covered drugs available to the public. Through the use of a formulary, the following drugs or classes of drugs, or their medical uses, shall be excluded from coverage or otherwise restricted by TennCare as described in Section 1927 of the Social Security Act [42 U.S.C. §1396r-8]:

- 9. Buprenorphine products for opiate addiction treatment for persons aged 21 and older are restricted as follows:
  - (i) ~~Dosage shall not exceed sixteen milligrams (16 mg) per day for a period of up to six (6) months from the initiation of therapy. For enrollees who are pregnant while receiving this dosage, the six-month period does not begin until the enrollee is no longer pregnant. At the end of either six-month period, the covered dosage amount shall not exceed eight milligrams (8 mg) per day.~~
  - (ii) ~~Therapy shall be limited to a total lifetime period of coverage not to exceed a total of 732 therapy days, which do not have to be consecutive. For enrollees who are pregnant while receiving the sixteen milligrams (16 mg) per day dosage, the six-month period does not begin until the enrollee is no longer pregnant. on day 732 of treatment, the treatment may continue until the enrollee is no longer pregnant.~~
  - (iii) ~~Effective October 1, 2015, enrollees who have exceeded 549 days of treatment will receive coverage for an additional 183 days of therapy prior to exhaustion of their lifetime coverage limits. At the end of the six-month period described in subparts (i) and (ii), the covered dosage amount shall not exceed eight milligrams (8 mg) per day.~~

**1200-13-13-.10 EXCLUSIONS.**

- (3) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115 waiver program unless excepted by paragraph (2) herein. Some of these services may be covered under the CHOICES program or outside TennCare under a Section 1915(c) Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with the appropriate TennCare Home and Community Based Services rule.

- (a) Services, products, and supplies that are specifically excluded from coverage except as medically necessary for children under the age of 21.

18. Certain pharmacy items as follows:

- (vii) Buprenorphine-containing products used for treatment of opiate addiction in excess of the covered amounts listed below:

(I) Dosage of sixteen milligrams (16 mg) per day for a period of up to six (6) months (183 days) from the initiation of therapy or from the conclusion of pregnancy, if the enrollee is pregnant during this initial maximum dosage therapy; and

(II) Dosage of eight milligrams (8mg) per day after the sixth (6<sup>th</sup>) month (183<sup>rd</sup> day) of therapy;

~~(III) Total lifetime coverage of 732 therapy days (24 months), which do not have to be consecutive, but if the enrollee is pregnant on day 732 of therapy, treatment may continue until the conclusion of pregnancy; and~~

~~(IV) Effective October 1, 2015, enrollees who have exceeded 549 days (18 months) of therapy will receive coverage for an additional 183 days of therapy prior to exhaustion of their lifetime coverage limits.~~

GW10116131

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 08/18/2016 (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: 05/23/16

Rulemaking Hearing(s) Conducted on: (add more dates). 07/20/16

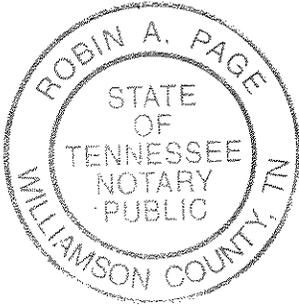
Date: 8/18/16

Signature: Wendy Long MD

Name of Officer: Wendy Long, M.D., M.P.H.

Director, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration



Subscribed and sworn to before me on: 8/18/16

Notary Public Signature: Robin A. Page

My commission expires on: 10/18/16

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.

Herbert H. Slattery III  
Herbert H. Slattery III  
Attorney General and Reporter

9/9/2016  
Date

**Department of State Use Only**

Filed with the Department of State on: 9/13/16

Effective on: 12/12/16

Tre Hargett  
Tre Hargett  
Secretary of State

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REGULATIONS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: TennCare Standard - Covered Services Relating to Opiate Addiction.

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-202, 71-5-105, and 71-5-109

EFFECTIVE DATES: December 12, 2016 through June 30, 2017

FISCAL IMPACT: The promulgation of these rules is anticipated to increase state government expenditures for TennCare Medicaid and TennCare Standard by \$4,541,600, of which \$1,590,300 will be state appropriations. The supplemental appropriation for FY16 was included in the Appropriations Act, Public Chapter 758, effective April 21, 2016, which funds the FY17 budget.

STAFF RULE ABSTRACT: These rulemaking hearing rules are being promulgated to replace emergency rules which restored the fiscal year 2015-2016 budget reduction to the Bureau of TennCare, and which had reduced expenditures for Buprenorphine-containing products for treatment of opiate addiction for persons age 21 and older by imposing a lifetime coverage limit of 732 therapy days. This emergency rule amendment deletes the lifetime coverage limit and permits the Bureau to reinstate medically necessary treatment of opiate addiction for persons age 21 and older utilizing Buprenorphine.

## 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.

Comment: Commenter with the Tennessee Association of Alcohol, Drug and Other Addiction Services (TAADAS) stated in a letter that they wanted to offer comments on the proposed amendment to the TN Administrative Rules governing TennCare covered services and exclusions. The comments were as follows:

TAADAS is a statewide association of alcohol and drug abuse service professionals and providers that includes several providers of Buprenorphine. TAADAS represents over 63 treatment and recovery services providers statewide and over 15 individual member professionals.

TAADAS supports the elimination of the lifetime limits on buprenorphine in the proposed rules. Addiction is a chronic disease. Lifetime limits do not exist for other drugs used to treat other chronic diseases such as hypertension or diabetes.

TAADAS members have been staggered and overwhelmed by the ever increasing number of persons addicted to opioids. No longer is alcohol the drug of choice for Tennesseans. Instead, the drug of choice is now pills, and most of those are initially prescribed lawfully. Given the difficulty of treating those addicted to opioids, some of our members have seen the need for buprenorphine to assist our patients with the cravings brought on by opioid withdrawal—especially for those that are pregnant and using opiates. We appreciate and support the additional time permitted for pregnant women at the higher maximum daily dosage limits in the present rule. We recognize the lack of flexibility in amending a proposed rule but would advocate for additional consideration of a higher daily dose limit for pregnant women. We would hope that in the future the Bureau will consider a higher daily limit for pregnant women up to a maximum of 24mg per day on a case by case basis. Some of our advisors in the treatment community would see this higher limit as helpful for the treatment of addicted pregnant women. Buprenorphine dosing during pregnancy can be higher given that the woman is supporting the medication needs for herself and a fetus. Higher dosing is of particular concern for women who will have multiple births. Removing this limitation will remove a barrier to effective and accessible treatment for these women—many of whom were paying for the extra medication out of pocket or getting the extra doses either from a generous provider or from a dealer on the streets. Amerigroup, for example, is paying for additional Buprenorphine above the current dose limits for their pregnant Medication Assisted Treatment participants. Removing this dosage limitation improves the likelihood women will get appropriate dosing to maintain a healthy pregnancy while in recovery services.

Response: Thank you for your letter on the above-referenced rules pertaining to the TennCare program. We appreciate your comments in support of HCFA's decision to remove lifetime limits from the use of buprenorphine to treat opiate addiction in adults. Although your concerns about daily dosage limits during pregnancy are outside the scope of this rulemaking, they will be retained for future consideration. We appreciate the services that TAADAS and its member organizations provide for Tennesseans needing addiction treatment services, and we look forward to continuing to work with you as we seek to provide high-quality healthcare for TennCare enrollees.

## **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

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.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules are being promulgated to replace emergency rules which restored the fiscal year 2015-2016 budget reduction to the Bureau of TennCare, which had reduced expenditures for Buprenorphine-containing products for treatment of opiate addiction for persons age 21 and older by imposing a lifetime coverage limit of 732 therapy days. The emergency rule amendment also deleted the lifetime coverage limit and permits the Bureau to reinstate medically necessary treatment of opiate addiction for persons age 21 and older utilizing Buprenorphine.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The Rules are lawfully adopted by the Bureau of TennCare in accordance with §§ 4-5-202, 71-5-105 and 71-5-109.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The persons and entities most directly affected by these Rules are the TennCare enrollees, providers, and managed care contractors. The governmental entity most directly affected by this Rule is the Bureau of TennCare, Tennessee Department of Finance and Administration.

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

The Rules were approved by the Tennessee Attorney General. No additional opinion was given or requested.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The promulgation of these rules is anticipated to increase state government expenditures for TennCare Medicaid and TennCare Standard by \$4,541,600, of which \$1,590,300 will be state appropriations. The supplemental appropriation for FY16 was included in the Appropriations Act, Public Chapter 758, effective April 21, 2016, which funds the FY17 budget.

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

Donna K. Tidwell  
Deputy General Counsel

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

Donna K. Tidwell  
Deputy General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

310 Great Circle Road  
Nashville, TN 37243  
(615) 507-6852  
donna.tidwell@tn.gov

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

GW10116189

**Department of State  
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Email: [publications.information@tn.gov](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 09-15-16  
Rule ID(s): 6302  
File Date: 9/13/16  
Effective Date: 12/12/16

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

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

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

- Amendments  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. 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

**RULES  
OF  
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE**

**CHAPTER 1200-13-14  
TENNCARE STANDARD**

**1200-13-14-.04 COVERED SERVICES.**

(1) Benefits covered under the managed care program

(c) Pharmacy

TennCare is permitted under the terms and conditions of the demonstration project approved by the federal government to restrict coverage of prescription and non-prescription drugs to a TennCare-approved list of drugs known as a drug formulary. TennCare must make this list of covered drugs available to the public. Through the use of a formulary, the following drugs or classes of drugs, or their medical uses, shall be excluded from coverage or otherwise restricted by TennCare as described in Section 1927 of the Social Security Act [42 U.S.C. §1396r-8]:

9. Buprenorphine products for opiate addiction treatment for persons aged 21 and older are restricted as follows:

(i) ~~Dosage shall not exceed sixteen milligrams (16 mg) per day for a period of up to six (6) months from the initiation of therapy. For enrollees who are pregnant while receiving this dosage, the six-month period does not begin until the enrollee is no longer pregnant. At the end of either six month period, the covered dosage amount shall not exceed eight milligrams (8 mg) per day.~~

(ii) ~~Therapy shall be limited to a total lifetime period of coverage not to exceed a total of 732 therapy days, which do not have to be consecutive. For enrollees who are pregnant while receiving the sixteen milligrams (16 mg) per day dosage, the six-month period does not begin until the enrollee is no longer pregnant. on day 732 of treatment, the treatment may continue until the enrollee is no longer pregnant.~~

(iii) ~~Effective October 1, 2015, enrollees who have exceeded 549 days of treatment will receive coverage for an additional 183 days of therapy prior to exhaustion of their lifetime coverage limits. At the end of the six-month period described in subparts (i) and (ii), the covered dosage amount shall not exceed eight milligrams (8 mg) per day.~~

**1200-13-14-.10 EXCLUSIONS.**

(3) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115 waiver program unless excepted by paragraph (2) herein. Some of these services may be covered under the CHOICES program or outside TennCare under a Section 1915(c) Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with the appropriate TennCare Home and Community Based Services rule.

- (a) Services, products, and supplies that are specifically excluded from coverage except as medically necessary for children under the age of 21.

18. Certain pharmacy items as follows:

- (vii) Buprenorphine-containing products used for treatment of opiate addiction in excess of the covered amounts listed below:
- (I) Dosage of sixteen milligrams (16 mg) per day for a period of up to six (6) months (183 days) from the initiation of therapy or from the conclusion of pregnancy, if the enrollee is pregnant during this initial maximum dosage therapy; and
  - (II) Dosage of eight milligrams (8mg) per day after the sixth (6<sup>th</sup>) month (183<sup>rd</sup> day) of therapy; and
  - ~~(III) Total lifetime coverage of 732 therapy days (24 months), which do not have to be consecutive, but if the enrollee is pregnant on day 732 of therapy, treatment may continue until the conclusion of pregnancy; and~~
  - ~~(IV) Effective October 1, 2015, enrollees who have exceeded 549 days (18 months) of therapy will receive coverage for an additional 183 days of therapy prior to exhaustion of their lifetime coverage limits.~~

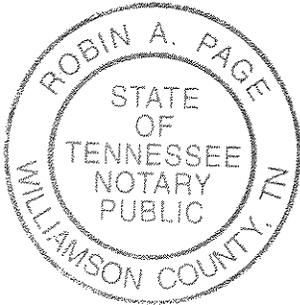
GW10216131

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 08/18/2016 (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: 05/23/16

Rulemaking Hearing(s) Conducted on: (add more dates). 07/20/16



Date: 8/18/16

Signature: Wendy Long MD

Wendy Long, M.D., M.R.H.  
Director, Bureau of TennCare

Name of Officer: Tennessee Department of Finance and Administration

Title of Officer: \_\_\_\_\_

Subscribed and sworn to before me on: 8/18/16

Notary Public Signature: Robin A. Page

My commission expires on: 10/18/16

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.

Herbert H. Slatery III  
Herbert H. Slatery III

Attorney General and Reporter

9/9/2016

Date

**Department of State Use Only**

Filed with the Department of State on: 9/13/16

Effective on: 12/12/16

Tre Hargett

Tre Hargett  
Secretary of State

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**G.O.C. STAFF RULE ABSTRACT**

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: TennCare Technical and Financial Eligibility

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-202, 71-5-105, and 71-5-109

EFFECTIVE DATES: December 13, 2016 through June 30, 2017

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rulemaking hearing rules are being promulgated to replace emergency rules which set out the requirements for eligibility for and enrollment in the TennCare and CoverKids programs.

## 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.

HCFA received comments from eight individuals or entities concerning these rules. The comments and HCFA's responses to the comments are summarized below.

Several commenters suggested that the definition of "disabled" in the rule be modified to clarify that individuals who are not currently receiving SSI benefits can be considered disabled for purposes of TennCare eligibility. HCFA modified the rule to make this clarification.

One commenter suggested that the definition of "nursing services" in the rule be modified to acknowledge that health care practitioners other than physicians may order nursing services when working under the supervision of a physician. HCFA made the requested clarification to the rule.

One commenter expressed concern about the use of the term "spend down" in the rule. In response, HCFA noted to the commenter that the term "spend down" as used in the rule applies only to the Medicaid categories for medically needy children and medically needy pregnant women.

One commenter suggested that the definition of "community spouse" in the rule be modified to specify the types of settings that may constitute medical institutions or nursing facilities. After reviewing the comment and determining that additional clarification was not needed, HCFA declined to make the requested modification to the rule.

One commenter suggested that the rule be modified to include a definition of the term "authorized representative." HCFA made the requested addition to the rule.

One commenter suggested that the definition of "application file date" be modified to clarify the use of the term "valid application." HCFA made a clarification to the rule.

One commenter suggested that the definition of "caretaker relative" in the rule be modified to include additional types of relatives. After reviewing the definition in the rule to confirm that it conforms to the definition specified in federal regulation, HCFA declined to make the requested modification to the rule.

One commenter suggested that the rule be modified to include additional definitions regarding certain information requests. After reviewing the comment and determining that additional clarification was not needed, HCFA declined to make the requested modifications to the rule.

Several commenters suggested that the rule be modified to clarify that a pregnant woman's period of presumptive eligibility lasts from the date of application through the end of the following month, or if a full Medicaid application is submitted before the end of the following month, coverage continues until a determination has been made on the full Medicaid application. HCFA made the requested clarification to the rule.

One commenter requested clarification regarding the applicability of a resource limit for couples for purposes of determining eligibility for the Institutional Medicaid category. After reviewing the comment, HCFA revised the rule to remove the reference to a resource limit for couples.

One commenter suggested modifying the rule to clarify that one third (1/3) of child support arrearage payments are excluded from income for purposes of TennCare eligibility in the same way that one third (1/3) of child support payments are excluded. HCFA made the requested clarification to the rule.

One commenter suggested that the rule specify that information about continuation of benefits be included in eligibility termination notices. After reviewing the comment and determining that additional clarification was not needed, HCFA declined to make the requested modification to the rule.

One commenter requested clarification regarding the effective date of eligibility for persons enrolled in the Institutional Eligibility category. After reviewing the comment and determining that additional clarification was not needed, HCFA declined to make the requested modification to the rule.

One commenter suggested that the language regarding trusts in the rule be modified to include trusts established solely for the benefit of an individual who has not attained the age of 65 and who is disabled. HCFA made the requested clarification to the rule.

Several commenters made suggestions regarding the application submission procedures and the effective date of eligibility outlined in the rule. The procedures in question are part of a mitigation plan approved by the Centers for Medicare & Medicaid Services (CMS). HCFA declined to make the requested modifications to the rule.

Several commenters suggested modifications to the sections of the rule concerning eligibility determinations, redeterminations, and disposition of applications. These suggested modifications included additional notification requirements, and providing additional time for applicants to provide verifications and respond to information requests. After reviewing the comments, HCFA declined to make the requested modifications to the rule.

One commenter suggested that the rule be modified to require HCFA to provide notice of receipt of application, and to provide for an alternative application date for applications received by mail. After reviewing the comment, HCFA declined to make the requested modification to the rule.

One commenter suggested that the rule be modified to include additional information about accommodations available to applicants and beneficiaries who self-identify with disabilities. After reviewing the rule and determining that no additional clarification was needed, HCFA declined to make the requested clarification to the rule.

One commenter suggested that the rule be modified to clarify that a person who qualifies as a responsible party may act on behalf of an individual for whom he is responsible. After reviewing the comment and determining that additional clarification was not needed, HCFA declined to make the requested modification to the rule.

One commenter suggested that the definition of "valid application" in the rule be modified to clarify that applications may be submitted by someone acting responsibly on behalf of the applicant. HCFA made the requested clarification to the rule.

One commenter suggested that the rule be modified to clarify that long-term care facilities, when acting in the appropriate capacity, may be included among the parties able to file applications on behalf of a beneficiary. HCFA made the requested clarification to the rule.

Several commenters suggested that the discussion of annuities in the rule be clarified. After reviewing their comments, HCFA has modified the section of the rule concerning annuities to provide additional clarity.

One commenter suggested that payments made pursuant to the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) be listed as a type of income excluded from TennCare eligibility determinations. HCFA made the requested clarification to the rule.

One commenter suggested that the rule be modified to include information about Achieving a Better Life Experience (ABLE) account contributions, earnings, and distributions. HCFA made the requested clarification to the rule.

One commenter suggested that funds received through a crime victim compensation program be listed as a type of income excluded from TennCare eligibility determinations. HCFA made the requested clarification to the rule.

One commenter suggested that the rule be modified to address income that an individual may be unable to access due to disability or incapacity. After reviewing the comment, HCFA declined to make the requested modification to the rule.

One commenter suggested that the rule be modified to include additional information about the types of transactions that constitute a transfer of assets at less than fair market value. HCFA has modified the rule to clarify the types of transactions considered transfers of assets.

One commenter suggested that the rule be modified to address appeals involving Community Spouse Resource Maintenance Allowance (CSRMA) determinations. After reviewing the rule and determining that no additional clarification was needed, HCFA declined to make the requested clarification to the rule.

One commenter suggested that the rule be modified so that an individual would not be determined ineligible because of a community spouse's refusal to disclose information about annuities. After reviewing the comment, HCFA declined to make the requested modification to the rule.

One commenter suggested the rule be modified so that home maintenance allowances may be included as an "Item D" deduction. After reviewing the comment, HCFA declined to make the requested modification to the rule.

One commenter suggested modifications to the rule concerning resource assessments for married institutionalized applicants. HCFA has modified the rule to clarify that the resource assessment may reflect countable assets owned by the couple at the time the individual enters a nursing facility, or at the time of application resulting in enrollment in an HCBS program.

One commenter suggested changes to rule concerning the exclusion of prepaid burial agreements or burial trusts for aged, blind, or disabled applicants. In response, HCFA clarified that the section of the rule being referenced pertains only to the optional Medicaid categories for medically needy children and qualified medically needy pregnant women.

One commenter expressed concern about the use of the abbreviation "MMNA" to refer to "Maximum Maintenance Needs Allowance." In response and to minimize the risk for confusion, HCFA modified the abbreviation for maximum maintenance needs allowance used in the rule.

Two commenters requested that the rule be modified to clarify that Tennessee residents receiving Supplemental Security Income (SSI) are eligible for TennCare. HCFA modified the rule to provide additional clarity.

One commenter suggested clarifications to the list of parties who may file applications in the rule. In response, HCFA made the requested clarification to the rule.

### **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The rule chapter is 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 rule chapter is not anticipated to have an impact on local governments.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule Chapter is being promulgated to replace an emergency rule Chapter which set out the requirements for applying for, obtaining and retaining eligibility for and enrollment in the TennCare <sup>and</sup> of CoverKids programs.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

This Rule Chapter is lawfully adopted by the Bureau of TennCare in accordance with T.C.A. §§ 4-5-202, 71-5-105, 71-5-106, 71-5-110, 71-5-111 and 71-5-117.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The persons and entities most directly affected by this Rule Chapter are the TennCare enrollees, providers, and managed care contractors. The governmental entity most directly affected by this Rule Chapter is the Bureau of TennCare, Tennessee Department of Finance and Administration.

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

The Rule Chapter was approved by the Tennessee Attorney General. No additional opinion was given or requested.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The adoption of this Rule Chapter is not anticipated to have an effect on state and local government revenues and expenditures.

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

Donna K. Tidwell  
Deputy General Counsel

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

Donna K. Tidwell  
Deputy General Counsel

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

310 Great Circle Road  
Nashville, TN 37243  
(615) 507-6852  
donna.tidwell@tn.gov

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

GW10116245.CR.ab

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Sequence Number: 09-16-16  
Rule ID(s): 6303  
File Date: 9/14/16  
Effective Date: 12/13/16

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

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

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

- Amendments  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1200-13-20	TennCare Technical and Financial Eligibility
Rule Number	Rule Title
1200-13-20-.01	Scope and Authority
1200-13-20-.02	Definitions and Acronyms
1200-13-20-.03	Delineation of Roles and Responsibilities
1200-13-20-.04	Technical Eligibility Requirements
1200-13-20-.05	General Application Requirements
1200-13-20-.06	Financial Eligibility Determinations
1200-13-20-.07	Family and Child Eligibility Groups
1200-13-20-.08	Aged, Blind or Disabled Categories
1200-13-20-.09	Redetermination and Termination

(Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to [http://sos.tn.gov/sites/default/files/forms/Rulemaking\\_Guidelines\\_August2014.pdf](http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf))

Rules of the Bureau of TennCare/Medicaid 1200-13, are amended by adding a new chapter 20 titled TennCare Technical and Financial Eligibility, as follows:

Rules  
of  
Tennessee Department of Finance and Administration  
  
Bureau of TennCare  
  
Chapter 1200-13-20  
TennCare Technical and Financial Eligibility

Table of Contents

1200-13-20-.01	Scope and Authority	1200-13-20-.06	Financial Eligibility Determinations
1200-13-20-.02	Definitions and Acronyms	1200-13-20-.07	Family and Child Eligibility Groups
1200-13-20-.03	Delineation of Roles and Responsibilities	1200-13-20-.08	Aged, Blind or Disabled Categories
1200-13-20-.04	Technical Eligibility Requirements	1200-13-20-.09	Redetermination and Termination
1200-13-20-.05	General Application Requirements		

1200-13-20-.01 Scope and Authority.

- (1) This Chapter governs the processes for determining financial and categorical eligibility for the TennCare and CoverKids programs. This Chapter preempts any other TennCare and CoverKids Rules pertaining to eligibility determination to the extent that they are in conflict.
- (2) The Tennessee Medical Assistance Act of 1968 and Executive Order Number 23, dated October 19, 1999, designate the Tennessee Department of Finance and Administration as the Single State Agency for purposes of administering Title XIX of the Social Security Act (Medicaid).
- (3) The CoverKids Act of 2006 authorizes the Tennessee Department of Finance and Administration to establish and administer a program to provide health care coverage to uninsured children under Title XXI of the Social Security Act (State Children's Health Insurance Program – CHIP).
- (4) Titles XIX and XXI of the Social Security Act, TennCare Medicaid Section 1115 Demonstration Waiver as may be amended, extended, or renewed in the future, and 42 C.F.R. Parts 431 and 435 require the designated State agency to provide for eligibility determinations for applicants for assistance and services provided through the programs.

Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-106, 71-5-110, 71-5-111 and 71-5-117.

1200-13-20-.02 Definitions and Acronyms.

- (1) AAAD – Area Agency for Aging and Disability
- (2) ABD – Aged, Blind or Disabled
- (3) Access to Health Insurance (TennCare). See definition in Rule 1200-13-13-.01. Access to health insurance through the Federally Facilitated Marketplace (FFM) shall not constitute “access to insurance” for purposes of eligibility for TennCare.

- (4) Achieving a Better Life Experience (ABLE) Account. An account established under 26 U.S.C.A. § 529A. ABLE accounts or 529A accounts are tax-advantaged savings accounts for individuals with disabilities that are established under a qualified ABLE program.
- (5) Active SSI Recipient. An individual who has been found eligible to receive SSI benefits by the SSA.
- (6) AFDC -- Aid to Families with Dependent Children
- (7) Aged. An individual age sixty-five (65) or older.
- (8) Aid to Families With Dependent Children (AFDC). The name of the cash assistance program for families and children prior to the passage of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in July 1996.
- (9) Annuities. Contracts or agreements that, in exchange for a lump sum payment or series of payments, provide for the payment of income at regular intervals, e.g., monthly, quarterly, annually, etc. Annuities establish a source of income for a future period and are often used in retirement planning.
- (10) Applicant. An individual who is seeking an eligibility determination for himself through an application submission or a transfer from another agency or insurance affordability program. For purposes of this Chapter, applicant also includes an individual who is seeking an eligibility determination for himself through an application for Medicare Savings Programs (MSP).
- (11) Application. The single, streamlined form developed for use for all insurance affordability programs, as required by 42 C.F.R. § 435.907(b), or the application form used in determining Medicaid eligibility for Long Term Services and Supports (LTSS), Hospice Care, and Medicare Savings Programs (MSP).
- (12) Application File Date. See Rule .05(5).
- (13) APTC – Advanced Premium Tax Credit
- (14) APTC/CSR – Advanced Premium Tax Credit/Cost Sharing Reductions
- (15) Authorized Representative. An Authorized Representative as defined at 42 C.F.R. § 435.923.
- (16) BCSP – Breast and Cervical Screening Program
- (17) Blind. An individual who is determined to be blind by the SSA.
- (18) Breast and Cervical Cancer (BCC). The Medicaid eligibility category defined at Section 1902(aa) of the Social Security Act (42 U.S.C. § 1396a(aa)). This eligibility category covers individuals who have been found to have breast or cervical cancer through the National Breast and Cervical Cancer Early Detection Program, who are under age sixty-five (65), do not otherwise have creditable coverage (including current enrollment in Medicaid), as the term is used under the Health Insurance Portability and Accountability Act (HIPAA) (§ 2701(c) of the PHS Act (42 U.S.C. § 300gg(c))), are not otherwise eligible for Medicaid or receiving TennCare Standard, and who are currently undergoing treatment for breast or cervical cancer.
- (19) Bureau of TennCare (Bureau). See definition in Rule 1200-13-13-.01.
- (20) Caretaker Relative. A relative of a dependent child by blood, adoption, or marriage with whom the child lives, assumes primary responsibility for the child's care, and is one of the following:
  - (a) The child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece; or
  - (b) The spouse of such caretaker relative, even after the marriage is terminated by death or divorce.

- (21) CCRC – Continuing Care Retirement Community
- (22) CHIP. The Children’s Health Insurance Program established by Title XXI of the Social Security Act.
- (23) CHOICES. TennCare CHOICES in Long-Term Care, as defined in Rule 1200-13-01-.02.
- (24) CMS (Centers for Medicare & Medicaid Services). See definition in Rule 1200-13-13-.01.
- (25) Community Spouse. The legal spouse of an institutionalized individual. A community spouse may not reside in a medical institution or nursing facility.
- (26) Comprehensive Aggregate Cap Waiver. See definition in Tennessee’s 1915(c) Home and Community Based Services Waiver.
- (27) Completed Application. An application that meets the following criteria:
  - (a) All required fields have been completed;
  - (b) Is signed and dated by the applicant, the applicant’s parent or guardian, an individual acting on behalf of the applicant, or an authorized representative;
  - (c) Includes all supporting documentation required by the Bureau to determine TennCare or CoverKids eligibility, including technical and financial requirements as set out in this Chapter; and
  - (d) If the application is for the TennCare Standard Medically Eligible category, it includes all supporting documentation required to prove TennCare Standard medical eligibility as set out in this Chapter.
- (28) Continuous Eligibility. Enrollment in TennCare or CoverKids with no lapse in coverage.
- (29) Core Medicaid Population. Individuals eligible under Title XIX of the Social Security Act, 42 U.S.C. §§ 1396, et seq., with the exception of the following groups: active SSI recipients who are receiving benefits as determined by the SSA; individuals eligible for emergency services as an undocumented or ineligible alien; individuals in a presumptive eligibility period; and children in DCS custody, including DCS children who meet the criteria for immediate eligibility and those receiving adoption assistance payments.
- (30) CoverKids. The name given to the Children’s Health Insurance Program (CHIP) in Tennessee under T.C.A. § 71-3-1101.
- (31) CoverKids Pregnant Women/Unborn Children. Provides maternity care coverage for pregnant CoverKids enrollees, including the unborn children of pregnant women with no source of coverage, who meet the CoverKids eligibility requirements.
- (32) CSIMA – Community Spouse Income Maintenance Allowance
- (33) CSRMA – Community Spouse Resource Maintenance Allowance
- (34) DAC – Disabled Adult Child
- (35) DCS – Department of Children’s Services
- (36) Deemed Newborn. An individual eligible in a Medicaid category authorized by Section 1902(e)(4) of the Social Security Act (42 U.S.C. § 1396a(e)(4)) and 42 C.F.R. § 435.117.
- (37) DIMA – Dependent Income Maintenance Allowance
- (38) Disabled. An individual who has been determined to be disabled by the SSA. An individual that meets conditions in Rule .08(5)(c).

- (39) Disabled Adult Child (DAC). The Medicaid eligibility category defined in Section 1634(c) of the Social Security Act (42 U.S.C. § 1383c(c)).
- (40) Effective Date. The first date of eligibility for purposes of health care services coverage and payment.
- (41) Eligible. An individual who has been determined to meet the eligibility criteria of TennCare Medicaid, TennCare Standard, or CoverKids.
- (42) Enrollee. An individual eligible for and enrolled in the TennCare program or in any Tennessee federal Medicaid waiver program approved by the Secretary of the U. S. Department of Health and Human Services pursuant to Sections 1115 or 1915 of the Social Security Act or in the CoverKids program. (42 U.S.C. §§ 1315 or 1396n). For purposes of this Chapter, enrollee also includes individuals eligible for and enrolled in the Medicare Savings Programs (MSPs).
- (43) Enrollment. The process by which a TennCare or CoverKids eligible individual becomes enrolled in TennCare or CoverKids.
- (44) Exchange. A governmental agency or non-profit entity that meets the applicable Federal standards and makes Qualified Health Plans (QHPs), including TennCare and CoverKids, available to qualified individuals and/or qualified employers. Unless otherwise identified, this term includes an Exchange serving the individual market for qualified individuals and a Small Business Health Options Program (SHOP) serving the small group market for qualified employers, regardless of whether the Exchange is established and operated by a State (including a regional Exchange or subsidiary Exchange) or by the Department of Health and Human Services (HHS).
- (45) Extended Medicaid. Medicaid eligibility authorized for enrollees who lose Child Modified Adjusted Gross Income (MAGI), Pregnancy MAGI, or Caretaker Relative MAGI eligibility due to increased receipt of spousal support, whose household income prior to losing eligibility was at or below the current Caretaker Relative MAGI income standard for three (3) of the six (6) months preceding the month of the increase in income.
- (46) Families First (FF). Tennessee's Temporary Assistance for Needy Families (TANF) program was created by the PRWORA in 1996. TANF became effective in July 1996 and replaced what was then commonly known as the AFDC program.
- (47) Federal Data Services Hub. An electronic service established by the HHS to facilitate sharing of data and other information between federal agencies, State agencies, and other entities involved in administering Insurance Affordability Programs.
- (48) Federal Financial Participation (FFP). See definition in Rule 1200-13-13-.01.
- (49) Federal Poverty Level (FPL). The poverty level established annually by HHS.
- (50) Federally Facilitated Marketplace (FFM). See "Exchange."
- (51) FEMA – Federal Emergency Management Agency
- (52) FF – Families First
- (53) FFM – Federally Facilitated Marketplace
- (54) FFP – Federal Financial Participation
- (55) Financially Responsible Relatives (FRR). Principle of financial responsibility between spouses and of parents to their children which is used in determining household composition, income counting and resource counting for certain Medicaid categories.

- (56) Former Foster Care Children Under 26. The Medicaid eligibility category defined at Section 1902(a)(10)(A)(i)(IX) of the Social Security Act (42 U.S.C. § 1396a(a)(10)(A)(i)(IX)).
- (57) FPL – Federal Poverty Level
- (58) FRR – Financially Responsible Relatives
- (59) Full-Time Student. A student is defined as a child under age twenty-one (21), unless otherwise specified in this Chapter, attending primary or secondary school, college, university, or a course of vocational or technical training.
  - (a) A child retains his or her student status during official school vacations and breaks if the requirement prior to the vacation or break was met, and the student plans to return.
  - (b) A child who is receiving elementary/secondary or equivalent vocational/technical instruction from a homebound teacher meets student requirements.
  - (c) An elementary school is defined as a State-approved educational institution comprised of grade kindergarten through eighth grade.
  - (d) Participation in apprenticeships, correspondence courses, other courses of home study and rehabilitation programs other than academic, institutional, vocational or technical training do not qualify a child as a student.
  - (e) A full-time student for college or university is an individual who is enrolled in at least twelve (12) credit or semester hours per semester. A part-time student is an individual who is enrolled in at least six (6) but less than twelve (12) credit or semester hours per semester. T.C.A. §§ 49-4-902(18) and (29).
- (60) Group Health Insurance. An employee benefit plan to the extent that the plan provides medical care to employees or their dependents (as defined under the terms of the plan) directly through an insurance reimbursement mechanism. This definition includes those types of health insurance found in the Health Insurance Portability And Accountability Act of 1996, as amended, definition of creditable coverage (with the exception that the 50-or-more participants criteria do not apply), which includes Medicare and TRICARE. Health insurance benefits obtained through COBRA are included in this definition. It also covers group health insurance available to an individual through membership in a professional organization or a school.
- (61) HCBS – Home and Community Based Services
- (62) HCFA – Health Care Finance and Administration
- (63) Health Care Finance and Administration (HCFA). The State agency that oversees most of the health care related divisions within the Tennessee Department of Finance and Administration, including the Bureau of TennCare, the Office of eHealth, the Cover Tennessee Programs and the Strategic Planning and Innovation Group.
- (64) Health Insurance (for CoverKids).
  - (a) Health insurance including, but not limited to, basic medical coverage (hospitalization plans), major medical insurance, comprehensive medical insurance, short-term medical policies, mini-medical plans, and high-deductible plans with health savings accounts. For purposes of eligibility, other coverage includes Medicare, TennCare, TRICARE, employer-sponsored coverage.
  - (b) Health insurance shall not include the following:
    1. CoverTN;

2. AccessTN;
  3. Catastrophic health insurance plans that only provide medical services after satisfying a deductible in excess of \$3,000.00 (or the maximum allowed deductible for a health savings account plan);
  4. Dental-only plans;
  5. Vision-only plans;
  6. Benefits provided by the U.S. Department of Veterans Affairs or the Indian Health Service.
  7. Coverage under the State of Tennessee's Children's Special Services program; or
  8. Medical insurance that is available to an enrollee pursuant either to the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986 (29 U.S.C. §§ 1161, et seq.) and which the individual declined, or to T.C.A. §§ 56-7-2312, et seq., and which the individual declined.
- (c) Consistent with 42 U.S.C. § 1397jj(b)(2)(B) and 42 C.F.R. §§ 457.301 and 457.310(c)(1)(ii), health insurance shall not include State-administered or other medical coverage offered by means of a family member's employment with a local education agency (LEA) if the LEA does not make more than a nominal contribution (as defined at 42 C.F.R. § 457.310(c)(1)(ii)) to the premium for the dependent, who is applying (or re-applying) for coverage through CoverKids.

(65) Health Insurance (for TennCare).

- (a) Health insurance, for purposes of determining eligibility under these Rules, shall mean:
1. Any hospital or medical expense-incurred policy;
  2. Medicare;
  3. TRICARE;
  4. COBRA;
  5. Medicaid;
  6. State health high-risk pool;
  7. Nonprofit health care service plan contract;
  8. Health maintenance organization (HMO) subscriber contracts;
  9. Group Health Insurance;
  10. Coverage available to an individual through membership in a professional organization or a school;
  11. Coverage under a policy covering one individual or all members of a family under a single policy where the contract exists solely between the individual and the insurance company;
  12. Any of the above types of policies for which:
    - (i) The policy contains a type of benefit (such as mental health benefits) which has been completely exhausted;

- (ii) The policy contains a type of benefit (such as pharmacy) for which an annual limitation has been reached;
  - (iii) The policy has a specific exclusion or rider of non-coverage based on a specific prior existing condition or an existing condition or treatment of such a condition.
13. Any of the types of policies listed in part 12 will be considered Health Insurance even if one or more of the following circumstances exists:
- (i) The policy contains fewer benefits than TennCare;
  - (ii) The policy costs more than TennCare; or
  - (iii) The policy is one the individual could have bought during a specified period of time (such as COBRA) but chose not to do so.
- (b) Health insurance, for purposes of determining eligibility under these Rules, shall not mean:
1. Short term coverage;
  2. Accident coverage;
  3. Fixed indemnity insurance;
  4. Long-term care insurance;
  5. Disability income contracts;
  6. Limited benefits policies as defined elsewhere in these Rules;
  7. Credit insurance;
  8. School-sponsored sports-related injury coverage;
  9. Coverage issued as a supplement to liability insurance;
  10. Automobile medical insurance;
  11. Insurance under which benefits are payable with or without regard to fault and which are statutorily required to be contained in any liability insurance policy or equivalent self-insurance;
  12. A medical care program of the Indian Health Services (IHS) or a tribal organization;
  13. Benefits received through the U.S. Department of Veterans Affairs; or
  14. Health care provided through a government clinic or program such as, but not limited to, vaccinations, flu shots, mammograms, and care or services received through a disease- or condition-specific program such as, but not limited to, the Ryan White CARE Act.
- (66) Health Insurance Marketplace, a.k.a. "Marketplace", "Exchange" or "Federally Facilitated Marketplace". See "Exchange."
- (67) Home and Community Based Services (HCBS). See definition in Rule 1200-13-01-.02.
- (68) Household Size. The number of individuals counted as members of an individual's household for purposes of determining eligibility for TennCare or CoverKids.

- (69) ICF/IID – Intermediate Care Facility for Individuals with Intellectual Disabilities.
- (70) Immediate Eligibility (for DCS children only). An arrangement whereby children in the custody of the State who are presumed to be TennCare-eligible may gain TennCare eligibility while their applications are being processed.
- (71) Inactive SSI Enrollee. Individuals whose SSI cash benefits have been terminated by SSA and who remain eligible for TennCare until they have been reviewed for coverage in other eligibility categories. Inactive SSI enrollees are not eligible for CHOICES.
- (72) Incarcerated. The state of being confined in a local, State, or federal prison, jail, youth development center, or other penal or correctional facility, including the state of being on furlough from such facility.
- (73) Individual Health Insurance. Health insurance coverage under a policy covering one individual or all the members of a family under a single policy where the contract exists solely between that individual and the insurance company.
- (74) Infants and Children Under Age 19. The Medicaid eligibility categories defined at Sections 1902(a)(10)(A)(i)(III), (IV), (VI), and (VII); 1902(a)(10)(A)(ii)(IV) and (IX); and 1931(b) and (d) of the Social Security Act. (42 U.S.C. §§ 1396a(a)(10)(A)(i)(III), (IV), (VI) and (VII); 1396a(a)(10)(A)(ii)(IV) and (IX); and 1396u-1(b) and (d)).
- (75) Insurance Affordability Program. A program that is one of the following:
  - (a) TennCare.
  - (b) CoverKids.
  - (c) APTC/CSR for participation in a QHP available through the FFM.
- (76) Institutional Eligibility. The eligibility category defined at Section 1902(a)(10)(A)(ii)(V), (VI) and (VII) of the Social Security Act. (42 U.S.C. § 1396a(a)(10)(A)(ii)(V), (VI) and (VII)).
- (77) Institutional Spouse. An institutionalized individual who is the legal spouse of a Community Spouse.
- (78) Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID). An institution described at 42 C.F.R. Part 483, Subpart I.
- (79) IRA – Individual Retirement Account
- (80) ITEM D. The term used in Tennessee to refer to the methodology for deducting incurred expenses for necessary medical or remedial care for institutionalized individuals in the post-eligibility phase of income defined at 42 C.F.R. §§ 435.725(c)(4), 435.726(c)(4) and 435.832.
- (81) Joint Custody. Legal custody of a child held simultaneously by two (2) or more caretaker relatives. The caretaker relatives must exercise care and control of the child.
- (82) Limited Benefits Policy. A policy of health coverage for a specific disease (e.g., cancer), or an accident occurring while engaged in a specified activity (e.g., school-based sports), or which provides for a cash benefit payable directly to the insured in the event of an accident or hospitalization (e.g., hospital indemnity).
- (83) Long-Term Care. See "Long-Term Services and Supports" (LTSS).
- (84) Long-Term Services and Supports (LTSS) Program. See definition in Rule 1200-13-01-.02.

- (85) LTSS – Long-Term Services and Supports
- (86) MAGI – Modified Adjusted Gross Income
- (87) Marketplace. See "Exchange."
- (88) Medicaid. See definition in Rule 1200-13-13-.01.
- (89) Medicaid Income Cap (MIC). Three hundred percent (300%) of the SSI Federal Benefit Rate.
- (90) Medicaid "Rollover" Enrollee. A TennCare Medicaid enrollee under the age of 19 who no longer meets eligibility requirements for Medicaid and who is afforded an opportunity to enroll in TennCare Standard according to the provisions of these Rules.
- (91) Medically Needy. The Medicaid eligibility category described at Section 1902(a)(10)(C) of the Social Security Act (42 U.S.C. § 1396a(a)(10)(C)).
- (92) Medically Needy Income Standard (MNIS). See definition at 42 C.F.R. § 435.811.
- (93) Medicare. The program administered through the SSA pursuant to Title XVIII, available to most individuals upon attaining age sixty-five (65), to some disabled individuals under age sixty-five (65), and to some individuals that have End Stage Renal Disease (ESRD) or Amyotrophic Lateral Sclerosis (ALS).
- (94) Medicare Buy-In. The process by which TennCare "buys" Medicare beneficiaries into the Medicare program. The Medicare buy-in consists of paying for some or all of a beneficiary's Medicare premiums, deductibles, and coinsurance.
- (95) Medicare Savings Program (MSP). One of the programs under which low-income Medicare beneficiaries can get assistance from Medicaid for paying for some or all of their Medicare premiums, deductibles, and coinsurance. These programs include the Qualified Medicare Beneficiary (QMB) program, the Specified Low Income Medicare Beneficiary (SLMB) program, the Qualifying Individual (QI1) program and the Qualified Disabled and Working Individual (QDWI) program.
- (96) Member. See "Enrollee."
- (97) MIC – Medicaid Income Cap
- (98) Miller Trust. See "Qualified Income Trust."
- (99) MNIS – Medically Needy Income Standard
- (100) Modified Adjusted Gross Income (MAGI). See definition at 42 C.F.R. § 435.603(e).
- (101) MSP – Medicare Savings Program
- (102) Newborn Presumptive. The Medicaid eligibility category described at 42 C.F.R. § 435.1102.
- (103) Nursing Facility (NF). See definition in Rule 1200-13-.01-.02.
- (104) PACE – Program of All-Inclusive Care for the Elderly
- (105) PACE Carryover Group. See definition in Rule 1200-13-01-.02.
- (106) PASS – Plan to Achieve Self Support
- (107) Patient Liability. See definition in Rule 1200-13-01-.02.

- (108) Payment for Emergency Medical Services. Eligibility authorized by Section 1903(v) of the Social Security Act (42 U.S.C. § 1396b(v)).
- (109) Personal Needs Allowance (PNA). See definition in Rule 1200-13-01-.02.
- (110) Pickle Passalong. The eligibility category defined at 42 C.F.R. § 435.135.
- (111) Pregnant Women. For purposes of the Medicaid program, the Medicaid eligibility category defined at Sections 1902(a)(10)(A)(i)(III), (IV) and (VII); 1902(a)(10)(A)(ii)(I), (IV), and (IX); and 1931(b) and (d) of the Social Security Act, (42 U.S.C. §§ 1396a(a)(10)(A)(i)(III), (IV), and (VII); 1396a(a)(10)(A)(ii)(I), (IV) and (IX); and 1396u-1(b) and (d)); and 42 C.F.R. § 435.116.
- (112) Presumptive Eligibility for Individuals with Breast or Cervical Cancer. Individuals presumed to be eligible for coverage under the Medicaid category authorized by Section 1902(aa) of the Social Security Act (42 U.S.C. § 1396a(aa)) based on a determination by the Tennessee Department of Health or other qualified entity.
- (113) Presumptive Eligibility for Pregnant Women. Women presumed to be eligible for coverage in the category defined at Sections 1902(a)(10)(A)(i)(III), (IV) and (VII); 1902(a)(10)(A)(ii)(I), (IV), (IX); and 1931(b) and (d) of the Social Security Act, (42 U.S.C. §§ 1396a(a)(10)(A)(i)(III), (IV), and (VII); 1396a(a)(10)(A)(ii)(I), (IV) and (IX); and 1396u-1(b) and (d)); and in 42 C.F.R. § 435.1103 by the Tennessee Department of Health or other qualified entity.
- (114) Program of All-Inclusive Care for the Elderly (PACE). See definition in Rule 1200-13-01-.02.
- (115) QDWI – Qualified Disabled and Working Individual
- (116) QHP – Qualified Health Plan
- (117) QI1 – Qualifying Individual
- (118) QIT – Qualified Income Trust
- (119) QMB – Qualified Medicare Beneficiary
- (120) Qualified Disabled and Working Individual (QDWI). An individual who is under age sixty-five (65), has lost free Medicare Part A coverage due to substantial gainful activity, has a disabling impairment, has the option to purchase Medicare Part A for an indefinite period of time, and for whom Medicaid pays the Medicare Part A premium, if income is not more than two hundred percent (200%) of the FPL and resources are not more than twice the SSI limit and is not otherwise eligible for Medicaid. Eligibility is authorized by Sections 1905(p)(3)(A)(i) and (s); and 1902(a)(10)(E)(ii) of the Social Security Act, (42 U.S.C. §§ 1396d(p)(3)(A)(i) and (s); and 1396a(a)(10)(E)(ii)).
- (121) Qualified Health Plan (QHP). See definition at 42 USC § 18021.
- (122) Qualified Income Trust (QIT). The trust defined at 42 U.S.C. § 1396p(d)(4)(B).
- (123) Qualified Long-Term Care Insurance Policy. A long-term care insurance policy issued on or after October 1, 2008, that has been pre-certified by the Tennessee Department of Commerce and Insurance pursuant to Rule 0780-01-61 as:
- (a) A policy that meets all applicable Tennessee Long Term Care Partnership requirements; or
  - (b) A policy that has been issued in another Partnership State and which is covered under a reciprocal agreement between that State and the State of Tennessee.
- (124) Qualified Medicare Beneficiary (QMB). An individual who is entitled to and receives Medicare Part A and for whom Medicaid pays the Medicare Part A and Part B premium, coinsurance and deductible for Medicare-

covered services, and whose income is not more than one hundred percent (100%) of the FPL. Eligibility is authorized by Sections 1905(p) and 1902(a)(10)(E)(i) of the Social Security Act, (42 U.S.C. §§ 1396d(p) and 1396a(a)(10)(E)(i)).

- (125) Qualifying Individual 1 (QI1). An individual who is entitled to and receives Medicare Part A, for whom Medicaid pays Medicare Part B premiums on a first-come, first-served basis, and who has income at least one hundred and twenty percent (120%) of the FPL but not more than one hundred and thirty-five percent (135%) of the FPL. Individuals are not enrolled in TennCare Medicaid or TennCare Standard. Eligibility is authorized by Section 1902(a)(10)(E)(iv) of the Social Security Act, (42 U.S.C. § 1396a(a)(10)(E)(iv)) and 42 U.S.C. § 1396u-3.
- (126) Qualifying Medical Condition. A medical condition included on a list of conditions established by the Bureau which will render a qualified uninsured applicant medically eligible.
- (127) Redetermination. The process by which the Bureau evaluates the ongoing eligibility status of TennCare Medicaid enrollees who are considered a part of the Core Medicaid Population, as well as TennCare Standard and CoverKids enrollees. This is a periodic process that is conducted at specified intervals. The process is conducted according to TennCare's, or its designee's, policies and procedures. This is also referred to as "Renewal."
- (128) Renewal. See "Redetermination."
- (129) Responsible Party(ies). The following individuals, who are representatives and/or relatives of recipients of medical assistance who are not financially eligible to receive benefits: parents, spouses, children, and guardians; as defined at T.C.A. § 71-5-103.
- (130) Single State Agency (CoverKids and TennCare). The Department of Finance and Administration.
- (131) SLMB – Specified Low Income Medicare Beneficiary.
- (132) Specified Low-Income Medicare Beneficiary (SLMB). An individual who is eligible for Medicare Part A and for whom Medicaid pays Medicare Part B premiums, if income is at least one hundred percent (100%) but not more than one hundred twenty percent (120%) of the FPL. Eligibility is authorized by Sections 1905(p)(3)(A)(ii) and 1902(a)(10)(E)(iii) of the Social Security Act, (42 U.S.C. §§ 1396d(p)(3)(A)(ii) and 1396a(a)(10)(E)(iii)).
- (133) Spend down. The process by which excess income is utilized for recognized medical expenses and which, when depleted, results in a determination of eligibility if all other eligibility factors are met for the Medically Needy categories.
- (134) SSA – Social Security Administration
- (135) SSI – Supplemental Security Income
- (136) SSI – Related Groups. Individuals who have been found eligible in one of the following categories:
  - (a) Disabled Adult Children (DAC).
  - (b) Pickle Passalong.
  - (c) Widow/Widower.
- (137) Standard Child Medically Eligible. An uninsured child under age nineteen (19) who is losing eligibility for Medicaid or currently enrolled in TennCare Standard, whose household income exceeds two hundred and eleven percent (211%) of the FPL, who does not have access to health insurance, and who has been determined medically eligible according to these Rules.

- (138) Standard Child Uninsured. The TennCare Demonstration category defined as including individuals in the following groups:
- (a) Uninsured children under age nineteen (19) who are losing eligibility for Medicaid, or are currently enrolled in TennCare Standard, who have household incomes at or below two hundred and eleven percent (211%) of the FPL, and who do not have access to health insurance; or
  - (b) Uninsured children under age nineteen (19) who have been continuously enrolled in TennCare Standard since December 31, 2001, who have family incomes at or below two hundred percent (200%) of the FPL, and who have not purchased insurance even if they have access to it. This is a "grandfathered" eligibility category. When an individual loses eligibility in this category, he will not be able to re-enroll in it.
- (139) Supplemental Security Income (SSI). A federal income supplement program funded by general tax revenues and is designed to help aged, blind and disabled individuals who have little or no income. Applications for SSI benefits are filed at the Social Security office. Individuals who are eligible for SSI are automatically entitled to Medicaid (42 U.S.C. §§ 1382, et seq.).
- (140) TANF – Temporary Assistance for Needy Families
- (141) Temporary Assistance for Needy Families (TANF). A program created by the PRWORA in 1996. TANF became effective in July 1996 and replaced what was then commonly known as the AFDC program. The name given to Tennessee's TANF program is Families First.
- (142) TennCare. The program administered by the Single State agency as designated by the State and CMS pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration waiver granted to the State of Tennessee.
- (143) TennCare CHOICES in Long-Term Services and Supports. The program described in Rule 1200-13-01-.05. CHOICES is a benefit package available to TennCare enrollees who are eligible in the Institutional eligibility category or who are active SSI enrollees and who meet the requirements of the program set out in Chapter 1200-13-01.
- (144) TennCare Medicaid. That part of the TennCare program which covers individuals eligible for Medicaid under Tennessee's Title XIX State Plan for Medical Assistance. The following individuals are eligible for TennCare Medicaid:
- (a) Tennessee residents determined to be eligible for Medicaid according to this Chapter.
  - (b) Individuals who qualify as dually eligible for Medicare and Medicaid are enrolled in TennCare Medicaid.
  - (c) A Tennessee resident who is an uninsured individual, under age sixty-five (65), a US citizen or qualified alien, is not eligible for any other category of Medicaid, and has been diagnosed as the result of a screening at a Centers for Disease Control and Prevention (CDC) site with breast or cervical cancer, including pre-cancerous conditions.
  - (d) Tennessee residents determined eligible for SSI benefits and TennCare Medicaid by the SSA are automatically enrolled in TennCare Medicaid.
- (145) TennCare Standard. That part of the TennCare Program which provides health coverage for Tennessee residents who are not eligible for Medicaid and who meet the eligibility criteria found in this Chapter.
- (146) Tennessee Health Connection (TNHC). Working title of the entity contracted with TennCare to provide service center functionality, including a call center and document intake.

- (147) Termination. See definition in Rule 1200-13-13-.01. Also means the discontinuance of an enrollee's coverage under the CoverKids program.
- (148) Title IV-E. The section of the Social Security Act under which grants are made to States for implementation of foster care and adoption assistance programs. Eligibility is authorized by Section 1902(a)(10)(A)(i)(I) of the Social Security Act (42 U.S.C. § 1396(a)(10)(A)(i)(I)), 42 C.F.R. § 435.115, and 42 C.F.R. § 435.145.
- (149) TNHC – Tennessee Health Connection
- (150) Transitional Medicaid. Medicaid authorized for enrollees who lose Child MAGI, Pregnancy MAGI, or Caretaker Relative MAGI eligibility due to increased earnings and whose household income prior to losing eligibility was at or below the current Caretaker Relative MAGI income standard for three (3) of the six (6) months immediately preceding the month of the increase in income.
- (151) Uninsured. See definition in Rule 1200-13-13-.01.
- (152) Valid Application. Either the single application form for all insurance affordability programs or the application form for LTSS or MSPs. It must include contact information and be signed by the Applicant, a Responsible Party, or the Authorized Representative.
- (153) WIA – Workforce Investment Act
- (154) Widow/Widower. The eligibility category defined at 42 C.F.R. § 435.138.

Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-106, 71-5-110, 71-5-111 and 71-5-117.

#### 1200-13-20-.03 Delineation of Roles and Responsibilities.

- (1) Agencies' Roles and Responsibilities.
- (a) The Bureau of TennCare (Bureau) is responsible for determining eligibility for both TennCare and CoverKids and for conducting appeals of eligibility-related decisions, unless otherwise agreed to by the Single State Agency and CMS. The Bureau is also responsible for coordinating the eligibility process for TennCare and CoverKids with the eligibility process for APTC/CSR in the FFM, in compliance with 42 C.F.R. §§ 435.1200 and 1205, unless otherwise agreed to by the Single State Agency and CMS.
  - (b) The Tennessee Department of Human Services (DHS) is under contract with the Bureau to determine initial eligibility for some TennCare Medicaid and TennCare Standard applicants who have open Supplemental Nutrition Assistance Program (SNAP) cases, as well as to redetermine, at regular intervals, whether eligibility should be continued for some enrollees. DHS is not responsible for making decisions about the presence of a qualifying medical condition for those applying as medically eligible individuals under TennCare Standard.
  - (c) With respect to the eligibility of children applying for TennCare as medically eligible individuals, the Bureau is responsible for determining the presence of a qualifying medical condition under TennCare Standard.
  - (d) The Tennessee Department of Children's Services (DCS) is responsible for determining eligibility for Medicaid foster care and adoption assistance categories.
  - (e) The Tennessee Department of Health (DOH) is responsible for conducting presumptive eligibility determinations for pregnant women and individuals in the BCC category.
  - (f) The SSA is responsible for determining eligibility for receipt of benefits from the SSI program and for

determining TennCare Medicaid eligibility for individuals who are eligible for SSI benefits. 42 U.S.C. § 1383c(a). Individuals determined eligible for SSI benefits and TennCare Medicaid by SSA are automatically enrolled in TennCare Medicaid.

- (g) The FFM is responsible for making TennCare Medicaid and CoverKids eligibility determinations for categories using MAGI income methodologies, based on an agreement between the State and the FFM. The FFM is also responsible for assessing applicants who may be eligible for other Medicaid eligibility categories and transmitting those applications to the State for full review.
- (h) The Bureau is responsible for notifying applicants of recovery for LTSS expenditures. Section 1917 of the Social Security Act (42 U.S.C. § 1396p), 42 C.F.R. §§ 433.36 and 435.700, et seq., and T.C.A. § 71-5-116.

(2) Enrollee Roles and Responsibilities.

- (a) Each TennCare enrollee and each CoverKids enrollee is responsible for reporting to HCFA any material change in the information affecting eligibility given by the applicant/enrollee to the Bureau or to the FFM. This information includes, but is not limited to, changes in address, income, household size, employment, or access to insurance. When submitting changes to the State, the applicant/enrollee shall mail, fax, or present in person, any required documentation of any such change to TennCare. When submitting changes to the FFM the applicant/enrollee shall mail or electronically upload any required documentation of any such change to the FFM. General contact information such as phone number and address changes may be updated by phone call to TNHC. Changes must be reported within ten (10) days of the occurrence.
- (b) All verifications requested must be furnished within ten (10) days of the notice requesting additional information unless otherwise specified by federal law.
- (c) Each TennCare enrollee and each CoverKids enrollee is responsible for reporting to his provider that he is a TennCare or CoverKids enrollee.
- (d) By accepting medical assistance through the TennCare program, every enrollee is deemed to assign to the State of Tennessee all third party insurance benefits or other third party sources of medical support or benefits. Individuals applying as Caretaker Relatives under Medicaid (see Rule .07) must cooperate in establishing the paternity of dependent children and obtaining medical support. Failure to cooperate in securing or collecting third party medical insurance, benefits or support is grounds for denying or terminating TennCare eligibility.

Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-106, 71-5-110, 71-5-111 and 71-5-117.

1200-13-20-.04 Technical Eligibility Requirements.

- (1) State Residency. Individuals enrolled in TennCare must meet the requirements for State residency established in 42 C.F.R. § 435.403. Individuals applying for CoverKids must also meet the requirements specified at 42 C.F.R. § 457.320(d).
  - (a) Temporary absence. Individual may be "temporarily absent" from Tennessee but still considered a resident of the State for purposes of TennCare and CoverKids eligibility. An individual who wishes to be considered temporarily absent from the State for continued eligibility purposes must provide the Bureau with an anticipated date of return. The Bureau will assess the continuation of an individual's temporary absence status ten (10) days after the individual's anticipated date of return.

A temporary absence from the State will not preclude continued eligibility under the following circumstances:

1. The absence is for a specific purpose such as a temporary work assignment, visit, hospitalization, participation in an educational or rehabilitation program not available in Tennessee; or
  2. The absence is for a child receiving specialized treatment out of State; and
  3. The individual indicates his intent to return to Tennessee once the purpose for his absence is accomplished.
- (b) Students.
1. Individuals who are dependents of a Tennessee resident and who attend school out of State will be considered Tennessee residents.
  2. Individuals aged eighteen (18) to twenty-two (22) who are considered to be dependents of a non-Tennessee resident and who attend school full time in State will not be considered Tennessee residents.
- (2) Citizenship. Individuals enrolled in TennCare or CoverKids must meet the requirements for citizenship or qualified non-citizen status established in 42 C.F.R. § 435.406.
- (a) Qualified aliens who entered the United States on or after August 22, 1996, are barred from receiving TennCare Medicaid or CoverKids benefits for five (5) years from the date of entering the U.S. before potential eligibility for TennCare or CoverKids unless they meet the exceptions to the five (5) year bar as outlined in 8 U.S.C. § 1613(b).
  - (b) For CoverKids, unborn children are presumed to be U.S. citizens, regardless of the citizenship or immigration status of the mother.
- (3) Social Security Number (SSN).
- (a) Individuals enrolled in TennCare or CoverKids must meet the requirements of 42 C.F.R. § 435.910.
  - (b) Unborn children enrolled in CoverKids Pregnant Women/Unborn Children are not required to have an SSN.
  - (c) SSNs are not required for members of households who are not applying for TennCare or CoverKids coverage.
- (4) Incarceration. Individuals who are incarcerated are eligible for TennCare in a suspended status pursuant to T.C.A. § 71-5-106(r), as long as all eligibility criteria are met. Individuals in a suspended status will be eligible for TennCare payments only for medical institution stays longer than twenty-four (24) hours. All other medical payments while in the suspended status are not subject to TennCare reimbursement. The suspended status will be removed once the State receives notice that the enrollee is no longer incarcerated. See also 42 C.F.R. § 435.1010.
- (5) Residents of an Institution for Mental Disease (IMD). Individuals who are residents of an IMD are not eligible for FFP, except for those who are age sixty-five (65) or older and confined to an approved ward, or those who are under age twenty-two (22) and receiving inpatient psychiatric services. Confinement in an IMD does satisfy and establish institutional status for individuals under age sixty-five (65) and those confined to unapproved wards who are subsequently admitted to a medical institution. See Section 1905 of the Social Security Act (42 U.S.C. § 1396d).

Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-106, 71-5-110, 71-5-111 and 71-5-117.

1200-13-20-.05 General Application Requirements.

(1) Right to apply.

- (a) Any individual wishing to do so shall have the opportunity to apply for TennCare Medicaid or CoverKids without delay.
- (b) Information about the TennCare or CoverKids program administered by HCFA shall be provided to any individual requesting it pursuant to 42 C.F.R. § 435.905.
- (c) Applications may be filed by the applicant, an individual listed in Rule .05(3)(b), his Authorized Representative or someone acting responsibly for him. See 42 C.F.R. § 435.923.
- (d) Proof of eligibility is not required of an individual prior to filing an application.
- (e) The right to file an application shall not be denied to any individual even if it is apparent that eligibility for TennCare or CoverKids does not exist.

(2) Rights and responsibilities.

- (a) By applying for TennCare or CoverKids, an applicant grants permission and authorizes release of information to TennCare, or its designee, to investigate any and all information provided, or any information not provided if it could affect eligibility, to determine TennCare or CoverKids eligibility; and if approved, what cost sharing, if any, may be required of the applicant. Information may be verified through, but not limited to, the following sources:
  - 1. The United States Internal Revenue Service (IRS);
  - 2. State income tax records for Tennessee or any other State where income is earned;
  - 3. The Tennessee Department of Labor and Workforce Development, and other Employment Security offices within any State where the applicant may have received wages or been employed;
  - 4. Credit bureaus;
  - 5. Insurance companies; or,
  - 6. Any other governmental agency or public or private source of information where such information may impact an applicant's eligibility or cost sharing requirements for the TennCare or CoverKids Program. The Federal Data Services Hub, or "electronic service" referred to in 42 C.F.R. § 435.949, is an example of such an information source.
- (b) It is a felony offense, pursuant to T.C.A. § 71-5-2601, to apply for TennCare coverage under false means or to help anyone obtain TennCare under false means.
- (c) By applying for TennCare Medicaid, an applicant agrees to provide information to the Bureau, or its designee, about any third party coverage in which the applicant is enrolled.

(3) Submitting an application.

- (a) TennCare will accept Valid Applications in compliance with 42 C.F.R. § 435.907 and, for CoverKids applicants, 42 C.F.R. § 457.330, or as otherwise agreed to by the Single State Agency and CMS.
- (b) An application can be filed by one of the following individuals, as applicable:
  - 1. Adult applicants or an adult who is in the applicant's household as defined in 42 C.F.R. §

435.603(f);

2. An adult who is in the applicant's family, as defined in the Internal Revenue Code at 26 U.S.C. § 36B(d)(1);
  3. Applicants who are over age fourteen (14) but under age eighteen (18) who are emancipated or are considered sufficiently mature to make their own health care decisions;
  4. A parent who has primary custody of a minor child;
  5. Either parent of a minor child when custody is equally divided between legal parents;
  6. The legal guardian or conservator;
  7. An Authorized Representative;
  8. If the applicant is a minor or incapacitated, someone acting responsibly for the applicant; or
  9. A representative of the long term care facility where the individual resides.
- (c) Applications received from Tennessee residents living out of State.
1. Applications filed for Tennessee residents who are temporarily out of State may be accepted.
  2. The application of someone who is hospitalized in another State and planning to return to Tennessee when discharged may be processed in the usual manner.
- (d) Out of State applicants.
1. Applications received from individuals residing in another State and not intending to reside in Tennessee will be denied.
  2. Individuals who are in Tennessee for a temporary purpose, such as a visit, who intend to return to their home out of State are not eligible for TennCare or CoverKids.
  3. Applicants must always be given the right to submit an application if they wish to do so and receive a decision on their application.
- (4) Assistance with submitting an application. HCFA is required to provide assistance to any individual seeking help with the application or redetermination process in person by Certified Application Counselors (CACs), over the phone, and online in a manner that is accessible to individuals with disabilities and those who have limited English proficiency. Assistance includes, but is not limited to, the following:
- (a) Help with form completion;
  - (b) Help securing a representative, if needed, and/or allowing someone of the applicant's choice to assist with the application and renewal process; and
  - (c) Help in obtaining necessary information from third parties.
- (5) Applications may be filed in any of the following ways:
- (a) By mail.
    1. LTSS and MSP: Paper LTSS/MSP applications must be submitted to TNHC. The Application File Date for LTSS/MSP applications mailed to TNHC will be the date the application is received at TNHC.

2. All categories of TennCare and CoverKids except MSPs:
  - (i) Mail paper applications to the FFM. The Application File Date will be the date provided by the FFM.
  - (ii) Mail an application to TNHC. If an FFM application is mailed to TNHC, the State will forward the application to the FFM to be processed. The Application File Date will be the date provided by the FFM, or as otherwise agreed to by the Single State Agency and CMS.
- (b) By phone.
  1. LTSS and MSP: Call TNHC or the local AAAD (or MCO if current TennCare enrollee). TNHC will provide a paper application that must be submitted by mail or fax. The Application File Date for LTSS/MSP applications will be the date the application is received at TNHC.
  2. All other categories of TennCare and CoverKids except MSPs: Call the FFM. The Application File Date will be the date provided by the FFM.
  3. Newborn applicants may call TNHC to either be added as a Deemed Newborn or apply for Newborn Presumptive coverage. The Application File Date for a Newborn Presumptive will be the date of determination by the qualified entity.
- (c) By fax.
  1. LTSS and MSP or EMS (Emergency Medical Services) applicants: Fax an application to TNHC. The Application File Date for LTSS/MSP/EMS applications faxed to TNHC will be the date the application is received at TNHC.
  2. All other categories of TennCare and CoverKids: Fax application to TNHC. If an FFM application is faxed to TNHC, the State will forward the application to the FFM to be processed. The Application File Date will be the date provided by the FFM, or as otherwise agreed to by the Single State Agency and CMS.
- (d) By online submission of the application through the FFM. The Application File Date will be the date provided to the State by the FFM.
- (e) In person at any DHS county office.
  1. LTSS and MSP: Submit a paper LTSS/MSP application at the local DHS office. The Application File Date for LTSS/MSP applications submitted to DHS will be the date of receipt at DHS.
  2. All categories of TennCare and CoverKids other than MSPs: Complete an online application by using a kiosk at a DHS office or by telephone. Applications filed with the FFM, using the FFM Web site, call center or paper application, are processed by the FFM. Once processed, the federal government transmits the applicant's information to HCFA through an electronic file. The Application File Date will be the date provided to the State by the FFM.
- (f) Low Income Subsidy (LIS) applications through the SSA. Application File Date will be the date provided to the State by the SSA.
- (6) Processing time. Eligibility will be timely determined in compliance with 42 C.F.R. § 435.912, or as otherwise agreed to by the Single State Agency and CMS.
- (7) Disposition.

- (a) Eligibility is determined based on information contained on the completed application form as well as information secured during the application process.
- (b) All applications will be subject to one (1) of the following actions:
  - 1. Approval. When all eligibility factors are met, the application is approved.
  - 2. Denial. When one or more eligibility factor(s) is not met, the application is denied.
    - (i) Death is not an appropriate reason to deny a Medicaid application. If the applicant dies before a final eligibility determination is made, the application process must be continued to completion.
    - (ii) Applicants who do not respond to requests for verifications by the State in a timely manner will be denied for failure to respond to such requests.
    - (iii) Applicants who do not provide sufficient information in response to requests for verifications by the State will be denied.
- (c) Withdrawal. When an applicant decides to withdraw his request for assistance during the application process, it is not necessary to complete any remaining verification and evaluation.

Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-106, 71-5-110, 71-5-111 and 71-5-117.

#### 1200-13-20-.06 Financial Eligibility Determinations.

##### (1) Modified Adjusted Gross Income (MAGI) Financial Eligibility Determinations.

- (a) All applicants for TennCare or CoverKids will have their income calculated for eligibility purposes according to the MAGI-based requirements at 42 C.F.R. § 435.603. The only exceptions are the Medicaid applicants at 42 C.F.R. §§ 435.603(j)(1)-(6).
- (b) In compliance with 42 C.F.R. § 435.603(g)(1), there is no resource or asset test for individuals whose income eligibility is required to be determined using MAGI income requirements.
- (c) There is no resource or asset test for pregnant women or children enrolled in CoverKids.
- (d) In compliance with 42 C.F.R. § 435.603(g)(2), there are no income or expense disregards for individuals whose eligibility is determined according to MAGI requirements, with the exception of those described at 42 C.F.R. §§ 435.603(d)(1) and (4).
- (e) Household composition, for financial eligibility determination purposes, for TennCare Medicaid (Child, Pregnant Women and Caretaker Relative categories), TennCare Standard Children Uninsured, TennCare Standard Medically Eligible, and the CoverKids categories will be determined using the MAGI methodology in accordance with 42 C.F.R. § 435.603(f). Household composition for all other categories will be determined according to this Chapter. MAGI household composition methodology is based on federal tax rules and the principles of tax dependency, however the MAGI rules apply to both applicants who expect to file taxes or be claimed as tax dependents, and to those applicants who do not file taxes or are not claimed as tax dependents. Each applicant has his own household size constructed under MAGI rules, and it is permissible for applicants who live in the same household to have different household sizes.
  - 1. Tax Filers.
    - (i) For applicants who expect to file taxes, the household includes the tax filer and any

dependents the tax filer expects to claim.

- (ii) For applicants claimed as tax dependents, the household is the same as the tax filer claiming the tax dependent. Tax dependents may include individuals not otherwise eligible for TennCare Medicaid or CoverKids, and who are not applying for benefits. If a non-custodial parent claims a child as a dependent, the dependent child will be included in the non-custodial parent's household size.
- (iii) For married couples who live together, each spouse will always be included in the other spouse's household, regardless of the couple's tax filing status.
- (iv) There are three exceptions to the tax filer rule for applicants claimed as tax dependents. An applicant who meets any of the following is subject to the non-filer household composition rules:
  - (I) The tax filer is someone other than the applicant's spouse, or natural, adopted or step parent; or
  - (II) The applicant is under age nineteen (19), or twenty-one (21) if a full-time student, and is claimed as a tax dependent by one parent, but his or her parents live together and do not file a joint tax return; or
  - (III) The applicant is under age nineteen (19), or twenty-one (21) if a full-time student, and expects to be claimed as a tax dependent by a non-custodial parent.

2. Non-Filers. Applicants who do not file taxes are subject to the non-filer household composition rules. The non-filer household includes the applicant and if living with the applicant:

- (i) The applicant's spouse;
- (ii) The applicant's natural, adopted and step children under age nineteen (19), or twenty-one (21) if a full-time student;
- (iii) For applicants under age nineteen (19), or twenty-one (21) if a full-time student, the applicant's natural, adopted or step parent; and
- (iv) For applicants under age nineteen (19), or twenty-one (21) if a full-time student, the applicant's natural, adoptive and step siblings who are under age nineteen (19), or (21) if a full-time student.

(f) The household size for a pregnant woman includes the number of children she is expected to deliver (the unborn child(ren)). The household size for other applicants in a pregnant woman's household does not include the unborn child(ren).

(2) AFDC-Related Financial Determinations.

- (a) Coverage groups whose financial eligibility is determined according to AFDC-based methodologies are:
  - 1. Medically Needy Children; and
  - 2. Qualified Medically Needy Pregnant Women.
- (b) Income Determinations. Income for individuals described in this paragraph is calculated according to the AFDC cash assistance program's income definitions and policies (Rules 1240-01-04-.12 and .14 - .19, and 45 C.F.R. § 233.20). Unless otherwise specified below, these individuals are subject to the following income requirements:

1. ABLE Accounts. Contributions and ABLE account earnings are excluded, except that contributions are not deducted from countable income of the individual making the contribution. Distributions from an ABLE account are not income of the designated beneficiary in any month regardless of whether the distribution is for non-housing QDEs, housing QDEs or non-qualified expenses. Distribution from an ABLE account is the conversion of a resource from one form to another.
2. Adoption Subsidies – Countable to the child if intended for general living expenses. Excluded if for reimbursement of child care while the adult responsible for the child is at work or seeking employment, for medical expenses, or from State adoption assistance programs or Title IV-E funds for special needs children.
3. Alimony Received – Countable.
4. Annuity Payments – If the underlying annuity is an excluded resource, the periodic payments are countable unearned income. If the underlying annuity is a countable resource, payments are excluded.
5. Assistance Payment from another State – Countable.
6. Bonuses – Countable.
7. Cancelled Debts – Excluded.
8. Capital Gains – Countable.
9. Cash Support – Countable, unless excluded as infrequent or irregular income.
10. Census Payments – Excluded.
11. Child Support Payments – Countable, both current payments and arrears.
12. Child/Spousal Support Transferred to IV-D Agency – Payments transferred by the household to DCS as assigned support are excluded.
13. Commissions – Countable.
14. CSIMA – Countable as unearned income only when the institutionalized individual is not in the community spouse's household.
15. Contractual Payments – Countable.
16. Death Benefits – Countable income to an individual if the total amount exceeds the expense of the deceased person's last illness and burial paid by the individual to whom the death benefit is issued.
17. Deferred Wages – Countable when the income would have normally been received if the wages are deferred at the employee's request. Countable when received if the wages are deferred by the employer.
18. DIMA – Countable as unearned income only when the institutionalized individual is not in the dependent's household.
19. Differential Payments – Countable.
20. Domestic Commercial Transportation Tickets – Excluded as long as tickets are not converted

to cash.

21. Domestic Volunteer Service Act Payments – Excluded as income if payments are made for supporting services or reimbursements for out-of-pocket expenses.
22. Dwelling-related Assistance – Excluded if housing assistance is provided by HUD or FMHA.
23. Earned Income Tax Credits – Excluded.
24. In-Kind Income: Wages, Food, Shelter or other – Countable.
25. Earned In-Kind Food or Shelter – Countable.
26. Earned In-Kind Not Food or Shelter – Countable.
27. Earned In-Kind Wages – Countable.
28. Education Income that is Not Work Study – Includes: Pell Grant; SEOG Grant; National Direct Student Loan; Guaranteed Student Loan; State Student Initiative and any financial aid:
  - (i) Excluded - if paid directly to the school and unavailable to the student.
  - (ii) Countable - as unearned income: Any portion of the grant, scholarship or fellowship that is not used to pay tuition, fees, or other necessary education expenses.
29. FF/TANF Payments – Excluded.
30. Farmer Income – Countable.
31. Farmer/Fishing Income – Countable.
32. Gambling Prizes and Awards – Countable.
33. Gifts – Cash gifts are countable unless excluded as infrequent or irregular income. In-Kind gifts are countable, and the value is equal to the current market value.
34. Income Produced from Resources – Countable.
35. Inheritance Cash – Countable.
36. Interest Bearing Resources – Interest earned on a resource, dividends, royalties and other direct money payments is countable.
37. Interest on Burial Funds and Spaces – Excluded.
38. Irregular or Infrequent Income – Up to \$30.00 of unearned or earned income received infrequently or irregularly per quarter is excluded.
39. Jury Duty Pay – Countable unless the income is turned over to an applicant's employer.
40. Low Income Home Energy Assistance Payments (LIHEAP) – Excluded.
41. Military Allotments – The Family Subsistence Supplemental Allowance (FSSA) and the Military Basic Allowance for Housing (BAH) are countable as unearned income.
42. PASS Payments – Excluded.

43. Payments from FEMA – FEMA payments issued as a result of presidentially declared emergency or major disaster are excluded. Payments made by comparable disaster assistance programs by States, local governments and disaster assistance organizations are also excluded. FEMA payments which are made to a household to pay for rent, food and utility assistance when there is no major disaster or emergency declaration are countable.
44. Pensions – Countable.
45. Protective Payee Payments – Funds received by a protective payee (conservator, authorized representative or representative payee) and used for the care and maintenance of a third party beneficiary (adult or child) who may or may not be a member of the protective payee's household are excluded as income to the protective payee. Any part of the payment that is retained by the protective payee for his or her own use is countable income to the protective payee. Even if the protective payee retains a fee for his or her services, the entire payment issued on behalf of the beneficiary is countable income to the beneficiary.
46. Railroad Retirement Payments – Countable.
47. Rehabilitation Payments – Net rehabilitation payments are countable as unearned income. Deduct allowable expenses from the gross rehabilitation payment.
48. Reimbursements – Reimbursement of expenses an employee incurs in the performance of his duties for items other than normal living expenses are excluded.
49. Rental or Lease Income – Countable as earned income when the individual is actively engaged in producing such income, or bears some responsibility in earning the income. Countable as unearned income when the individual is not actively engaged in producing the income, or bears no responsibility in earning the income. Count the amount of income remaining after expenses related to maintaining the property are applied.
50. Royalties and Honoraria – Countable.
51. Self-Employment – Net earnings are countable.
52. Settlements and Restitutions – The following settlements and restitution payments are excluded as unearned income:
  - (i) Agent Orange Settlement Payments. Excluded as unearned income but counted when determining patient liability for institutionalized individuals;
  - (ii) Alaska Native Claims Settlement Act exclusions;
  - (iii) Criminal Victims Compensation Funds paid to crime victims;
  - (iv) Distribution of perpetual judgment funds to Indian tribes under the following:
    - (I) Black Feet and Gros Ventre Tribes (P.L. 92-254);
    - (II) Grand River Band of Ottawa Indians in Indian Claims Commission Docket No. 40-K;
    - (III) Indian Judgment Funds Distribution (P.L. 93-134);
    - (IV) Receipts from land held in trust by the Federal government and distributed to certain Indian tribes under P.L. 94-114;
    - (V) Tribes of groups under P.L. 93-134; and

- (VI) Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (P.L. 94-433).
  - (v) Filipino Veterans Compensation Fund Payments. Lump sum payments made to certain veterans and spouses of veterans who served in the military of the Government of the Commonwealth of the Philippines during WWII;
  - (vi) German Reparation Payments;
  - (vii) Japanese-American and Aleutian Restitution Payments;
  - (viii) Payments made to individuals because of their status as victims of Nazi persecutions;
  - (ix) Payments to children born of Vietnam veterans diagnosed with spina bifida; and
  - (x) Revenues from the Alaska Native Fund paid under section 21(a) of the Alaska Native Claims Settlement Act.
53. Severance – Countable.
  54. Sick/Disability Payments – Countable.
  55. Social Security Payments – Countable.
  56. Social Service Payments – Excluded.
  57. SSI Payments – Excluded.
  58. Strike Benefits – Countable.
  59. Supplemental Nutrition Assistance Program (SNAP) – The value of a SNAP benefit is excluded. The value of free or reduced food under WIC or the National School Lunch Act is also excluded.
  60. Temporary Disability Payments – Income is countable as unearned income to the extent it is not a reimbursement for specific costs and is paid directly to the applicant or any member of the applicant's household.
  61. Tips – Any amount over \$20.00 per month is countable.
  62. Trusts – Money withdrawn from the body of a trust or interest and dividends accrued to the trust and paid to the individual is countable.
  63. Unemployment Compensation – Countable.
  64. U.S. Department of Veterans Affairs Payments – Educational benefits, VA Aid & Attendance, Augmented VA benefits and VA payments from Unusual Medical Expenses are excluded.
  65. VISTA Payments – Countable.
  66. Wages – Countable.
  67. WIA Payments – Excluded.
  68. Work Study Payments – Exclude college work study income up to the amount necessary to pay for tuition and mandatory fees. Income in excess of tuition and fee costs is countable earned

income.

69. Workers' Compensation – Countable.

(c) Resource Requirements. Resources for individuals described in this paragraph are calculated according to the AFDC cash assistance program's resource definitions and policies (Rules 1240-01-04-.05, .07, .09 and .10; 42 C.F.R. §§ 435.840 and 435.845; and 45 C.F.R. § 233.20). Individuals described in this paragraph are subject to the following resource requirements:

1. ABLÉ Accounts. ABLÉ account balances under \$100,000.00 are not a countable resource of the designated beneficiary. Distributions from an ABLÉ account are countable as a resource when:

- (i) Distributions are retained past the month of receipt for a housing-related QDE or are used for or intended to be used for non-qualified disability expenses;
- (ii) Distributions are retained past the month of receipt and were previously excluded because intended for a QDE, but used for a non-qualified expense. Count the amount of funds used as a resource the first of the month in which funds were spent; or
- (iii) Distributions are retained past the month of receipt, have not been spent, and the intent to use the funds for a QDE has changed. Count the retained funds as a resource the first of the following month.
- (iv) Qualified disability expenses (QDE) are expenses related to the blindness or disability of the designated beneficiary and for the benefit of the designated beneficiary. In general, a QDE includes, but is not limited to: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, funeral and burial expenses, and basic living expenses.

2. Annuities. An annuity is a countable resource when it is revocable, assignable, or if it can be sold.

- (i) If an annuity is an excluded resource, payments being received from the annuity are countable unearned income. If the annuity is a countable resource, any payments being received from the annuity are excluded.
- (ii) The countable resource value of an annuity is its Fair Market Value (FMV). If the applicant is able to provide the FMV of the annuity, verified by two (2) credible sources in the legitimate business of selling and purchasing annuities, accept the verified value.
- (iii) If the applicant does not provide two (2) credible statements of FMV, multiply the total annual payment by the period remaining to determine the countable value. If the period of the annuity is based on an annuitant's lifetime, the annual payments are multiplied by the annuitant's life expectancy, according to SSA's Period Life Table. If the annuity is a "period certain" annuity, annual payments are multiplied by the annuitant's life expectancy or the period certain, whichever is less. The calculated value of an annuity may be rebutted by providing two (2) credible statements of FMV amounts.

3. Business or Self-Employment – Excluded as essential for the production of earned income. Such excluded resources may include:

- (i) Tools/equipment;

- (ii) Stock or raw materials;
  - (iii) Personal property essential for income production;
  - (iv) Real property;
  - (v) Office equipment;
  - (vi) Business loans for the purchase of capital assets;
  - (vii) Inventory;
  - (viii) Machinery and equipment;
  - (ix) Business/commercial checking accounts; and
  - (x) Life insurance.
4. Burial Contracts or Policies – Excluded. This does not include pre-paid or pre-need burial agreements.
  5. Burial Plot – Exclude the value of burial plots and spaces for all household members.
  6. Prepaid Burial Agreements or Burial Trusts – Exclude one burial agreement or burial trust with equity value of \$1,500.00 or less per family member.
  7. Cash – Countable.
  8. Certificate of Deposit (CD) – Countable if held in a personal account. The value of a CD is the net amount that could be received after penalties for early withdrawal, if applicable. Taxes are not deducted in determining value.
  9. Checking Account – Personal checking accounts are countable. Other checking accounts may be excluded if designated for burial needs, educational income, Individual Development Accounts, PASS, prorated as income, proceeds from the sale of a home, disaster or settlement funds and retroactive SSA payments.
  10. Contract for Deed or Mortgage – The value of a contract for deed or mortgage may be a countable asset depending on the circumstances of the loan, including the individual's role as lender or borrower and the accessibility of the asset:
    - (i) When the individual is the lender for a contract for deed, the lender may sell or transfer the instrument to have immediate access to the unpaid principal. The value of the resource equity value is a countable asset. Any subsequent payments to the principal made by the debtor after approval are considered a resource because the unpaid loan principal is a resource. The value of the contract may be excluded from the countable resource if the individual can demonstrate that the contract cannot be sold without his realizing a net loss.
    - (ii) If the individual is the borrower, the property agreement is not a resource. However, the property purchased may be a countable resource following the month of transaction.
  11. Educational Income – All educational income is excluded as a resource, including Title IV, Bureau of Indian Affairs, Department of Veterans Affairs and work study for post-secondary education. The individual must be enrolled in school and attending classes to be considered a student. Grants, scholarships, fellowships and gifts other than those previously listed intended to pay for tuition, fees or education expenses are excluded as a resource.

12. Farm, Business or other Equipment – The equity value of non-self-employment income-producing real property, other than the homestead, is countable. If the property is used for self-employment, it is excluded as Business or Self-Employment.
13. Rental property - Countable if the individual who owns the property is not 'in the business of renting property. Someone who is in the business of renting property is someone who materially participates in the operation and decision making of the rental business for at least twenty (20) hours per week.
14. Home and Lot – The entire value of the home, whether on land or water, and lot and all adjoining land not separated by property owned by others and any related outbuildings are excluded in determining resource eligibility, as long as the home is the principal place of residence for the applicant/enrollee. Temporary absences from the home do not affect the home's exemption, as long as the individual intends to return home at a specified time.
15. Household Goods and Personal Effects – Excluded.
16. Individual Development Account (IDA) – Funds, including accrued interest, in the account are excluded as a resource as long as the individual complies with the IDA eligibility rules and continues to maintain or make contributions to the account.
17. Income-Producing Resource – Countable if accessible to the individual.
18. Sick and Disability Insurance – Excluded.
19. Burial Insurance – Excluded.
20. Items of Unusual Value – Exclude up to \$2,000.00 of all total personal items of unusual value. If the individual's equity value in one or more than one item of unusual value is greater than \$2,000.00, the amount that exceeds \$2,000.00 is countable towards the resource limit.
21. Life Estates:
  - (i) Property in which an individual holds a life estate is subject to the same exclusion rules as property the individual owns by title, subject to the following exceptions:
    - (I) A life estate will be excluded as the home when the property meets the home exemption.
    - (II) A life estate will be excluded when ownership is necessary for the production of earned income. See Business or Self-Employment in this Subparagraph.
    - (III) The terms of the life estate contract prevent the holder from selling his or her interest in the property.
  - (ii) If the life estate is not excluded based on the criteria above, the entire value of the life estate is a countable asset. The life estate value is determined by multiplying the fair market value of the property by the percentage listed in the "Life Estate Interest Table" for the age of the individual on whose lifetime the life estate is based. If more than one person owns the life estate, the value is based on the owner with the longest life expectancy.
22. Life Insurance – Excluded.

23. Livestock – The value of livestock necessary for business or self-employment, as a tool of the trade, or raised for home/personal consumption is an excluded resource. Income received is countable as self-employment income. Livestock that is used as non-business, income-producing property is countable.
24. Oil and Mineral Rights – May be included with land ownership or owned separately. If surface rights of the same property are excluded (for example, as a home) so are oil and mineral rights. Oil and mineral rights are countable when owned for personal use, or when the surface rights of the same property are countable (non-homestead, real property).
  - (i) If oil or mineral rights are producing income under a lease agreement, the owner may be constrained from selling or otherwise disposing of those rights. If the land is already excluded, then oil and mineral rights are also excluded.
  - (ii) If oil or mineral rights are producing income to the individual, and he or she is not actively engaged in the production of income, the equity value of the rights is countable.
25. Personal – Countable unless excluded based on the terms of the asset. A personal resource is typically for the use of the individual and/or his family.
26. Personal Consumption – Exclude as a resource the equity value of a non-business property used to produce goods or services essential to daily activities.
27. PASS – Income an SSI recipient places in an approved PASS account is excluded as a resource. The PASS account itself is also excluded. This exclusion expires when the PASS contract expires or ends, or when the individual is no longer an SSI recipient.
28. Proceeds from the Sale of a Home – Excluded to the extent that the funds are intended to be used to purchase another home subject to the homestead exclusion, and the funds are used for such a purpose within three (3) months of the date of receipt of the proceeds.
29. Promissory Note and Other Loans – A promissory note or other loan given by the household is considered personal property and is countable, unless the note/loan balance is inaccessible or the promissory note is held for reasons other than personal use. The lender holds legal interest and has the legal ability to make available his or her share in the note or loan. The equity value of the note/loan is countable.
30. Prorated as Income – Excluded.
31. Real Property – The equity value in all real property the individual owns individually or jointly is a countable asset with the following exceptions:
  - (i) Property excluded as the homestead;
  - (ii) The inaccessible equity value of real property;
  - (iii) Equity value of income-producing property;
  - (iv) Real property necessary for the production of earned income (see Business or Self-Employment in this Subparagraph); and
  - (v) Real property excluded under a Conditional Assistance agreement between the individual and the State. The individual must make a bona fide effort to sell the property at its current market value, and repay the State for medical expenses covered by HCFA during the exclusion period with the proceeds of the sale. Exemption of the real property is not to exceed nine (9) months. Only one (1) parcel of property may be excluded under a

Conditional Assistance agreement per period of eligibility.

- (I) Repayment of medical expenses covered by HCFA may not exceed the total of the net proceeds. Any proceeds remaining after repayment to the State are considered a resource.
  - (II) If the property remains unsold after nine (9) months, the property is considered inaccessible so long as bona fide efforts to sell the property continue.
32. Retirement Accounts and Pension Plans – Excluded up to \$20,000.00. Money held in an IRA, 401(K), or Keogh in excess of \$20,000.00 is countable, minus any penalty for early withdrawal.
33. Savings Account – Countable if it is characterized by personal use. If the current month's income has been deposited into the account, it must be excluded when determining the current value of the account. A savings account may be excluded if it is used for one of the following purposes:
- (i) Burial funds;
  - (ii) Business or Self-Employment;
  - (iii) Educational Income;
  - (iv) Individual Development Account;
  - (v) PASS;
  - (vi) Proceeds from the Sale of a Home (subject to time limits);
  - (vii) Prorated as Income;
  - (viii) Settlement or Disaster Payment, if Excluded by Policy; and
  - (ix) SSI/SSA Retroactive Payment (subject to time limits).
34. Settlement or Disaster Payment – Payments or benefits provided under certain Federal statutes are excluded, if payments are not commingled with other funds. Excluded settlement and/or disaster payments include:
- (i) Agent Orange Settlement Payments. Payments and interest are excluded as unearned income but counted when determining patient liability for institutionalized individuals;
  - (ii) Disaster Relief Assistance received under the Disaster Relief Act of 1974;
  - (iii) Distribution of perpetual judgment funds to Indian tribes under the following:
    - (I) Indian Judgment Funds Distribution (P.L. 93-134)
    - (II) Black Feet and Gros Ventre Tribes (P.L. 92-254)
    - (III) Grand River Band of Ottawa Indiana in Indian Claims Commission Docket No. 40-K;
    - (IV) Tribes of groups under P.L. 93-134;
    - (V) Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (P.L. 94-433); and

- (VI) Receipts from land held in trust by the Federal government and distributed to certain Indian tribes under P.L. 94-114.
  - (iv) Factor VIII or IX Concentrate Blood Products Litigation. The settlement payments (and interest from payments) made as a result of the class action lawsuit to hemophilia patients infected with HIV through blood plasma products;
  - (v) Filipino Veterans Compensation Fund Payments. Lump sum payments (and interest from payments) made to certain veterans and spouses of veterans who served in the military of the Government of the Commonwealth of the Philippines during WWII;
  - (vi) Japanese-American and Aleutian Restitution Payments (and interest from payments);
  - (vii) Payments made to individuals because of their status as victims of Nazi persecutions (and interest from payments);
  - (viii) Payments to children born of Vietnam veterans diagnosed with spina bifida (and interest from payments);
  - (ix) Payments made under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (interest is not excluded);
  - (x) Revenues from the Alaska Native Fund paid under Section 21(a) of the Alaska Native Claims Settlement Act;
  - (xi) Criminal Victims Compensation Funds paid to crime victims (excluded for nine (9) months); and.
  - (xii) Energy Employees Occupational Illness Compensation Program Act (EEOICPA).
35. SSI/SSA Retroactive Payments – Excluded for nine (9) months after the payment is received and countable after the nine (9) month exclusion period.
36. Stocks, Bonds and Mutual Funds – Countable if asset is held for personal use. Stocks, bonds or mutual funds held for purposes listed below are subject to different treatment:
- (i) Burial;
  - (ii) Business or Self-Employment;
  - (iii) Educational Income;
  - (iv) Proceeds from the Sale of a Home;
  - (v) Prorated as Income; or
  - (vi) Settlement or Disaster Payment, if Excluded by Policy.
37. Tools of the trade – Excluded when essential for the production of earned income.
38. Trusts – Countable or excluded, when the applicant or household member is either the trust's trustee or beneficiary, based on the nature of the trust, the date the trust was created, the source of funds used to create the trust, plus other factors as specified in 42 U.S.C. § 1396p(d).
39. Vehicles – Exclude up to \$4,600.00 of the equity value of one (1) vehicle in the applicant's

household. The equity value of any other vehicle is countable, unless the vehicle can be excluded based on its use. The equity value of recreational vehicles (boats, snowmobiles, jet skis, ATVs and aircraft) is a countable resource.

- (d) Disregards and Expenses Allowed. For purposes of determining the income of individuals described in this paragraph, the following expenses will be disregarded from their income:
1. Child Support Disregard – Disregard \$50.00 per month per household if a child living in the home receives child support payments (current only) and the family receives TANF benefits.
  2. Earned Income Disregard – Disregard \$90.00 per month from each household member's total earned income.
  3. Payments made on Behalf of Dependents within the Home – Disregard up to \$175.00 per month of day care expenses per dependent age two (2) or older. Disregard up to \$200.00 per month of day care expenses per dependent under age two (2).
  4. Student Income – Disregard the earnings of a child who is a full-time student or part-time student and not employed full time.
- (e) Household composition for TennCare Medicaid Medically Needy categories is based on the principle of FRR.
1. The following individuals must be included in the applicant's household for TennCare Medicaid Medically Needy Child, if living with the applicant:
    - (i) The applicant;
    - (ii) The applicant's spouse;
    - (iii) The applicant's children under age twenty-one (21);
    - (iv) For applicants who are under age twenty-one (21), the applicant's natural or adoptive parents; and
    - (v) The applicant's siblings who are under age twenty-one (21) (including unborn children).
  2. The TennCare Medicaid Medically Needy child applicant's parent(s) are not included if the applicant is an emancipated minor.
  3. A step parent living in the home with a child applicant for TennCare Medicaid Medically Needy is not included in the child's household.
  4. The following individuals must be included in the TennCare Medicaid Medically Needy Qualified Pregnant Woman applicant's household, if living with the applicant:
    - (i) The pregnant woman applicant;
    - (ii) The applicant's unborn child(ren);
    - (iii) The applicant's spouse; and
    - (iv) The applicant's children under age twenty-one (21).
  5. Parents of a pregnant woman applying for TennCare Medicaid Medically Needy Qualified Pregnant Woman coverage are not included in the applicant's household.

- (f) Spend down.
1. Applicants must produce proof of relevant medical expenses in order to “spend down” monthly income to the TennCare Medically Needy Income Standard (MNIS) to be eligible in a Medically Needy category. If income is below the MNIS, spend down will not be necessary. Applicants may reduce available monthly income with countable expense, as listed below, in order to qualify for eligibility in the Medically Needy categories. The income limits for the Medically Needy category are published in the State Plan.
  2. Countable Expenses. The following Rules apply to the expenses that may be used to meet spend down:
    - (i) Countable expenses incurred during the month of application, whether paid or unpaid.
    - (ii) Countable expenses paid during the month of application, regardless of when such expenses were incurred.
    - (iii) Countable expenses incurred during the three (3) calendar months prior to the month of application, whether paid or unpaid.
      - (I) Expenses paid during the three calendar months prior to the month of application will not be counted unless such expenses were also incurred during those three calendar months.
      - (II) Any expenses incurred before the three (3) calendar months prior to the month of application will not be counted unless payment is made on those expenses during the month of application, in which case only the amount paid during the month of application is counted.
      - (III) When a Medically Needy enrollee has been eligible for twelve (12) months, he will be expected to meet spend down again as described in this section, except verified expenses that are documented in the enrollee’s Medicaid record can be carried over to the next year as long as the individual remains continuously eligible, the expenses remain unpaid, and the bills are not written off by the provider. Only the portions of expenses that were not previously used to meet spend down can be carried over to the next eligibility determination. If an enrollee loses eligibility at any point, the carryover of unpaid medical expenses ends and the enrollee must meet spend down as if he were a new applicant.
    - (iv) All medical expenses are considered incurred the date the service is provided with the following exception: medical expenses related to maternity care (e.g., global fee) are considered incurred the month the physician presents a bill once services have begun (i.e., initial examination by the physician at a minimum).
    - (v) If spend down is not met by the medical bills incurred as of the date of application submission or as of the date of submission of a renewal application during redetermination, the daily countable medical expenses incurred during the application month will be added until spend down liability is reached.
  3. Incurred or paid expenses for the following individuals may be considered countable expenses for purposes of determining Medically Needy financial eligibility:
    - (i) The applicant;
    - (ii) Members of the applicant’s household;
    - (iii) The applicants FRRs or anyone for whom the applicant is financially responsible; and

- (iv) Individuals not living in the applicant's home or eligible for inclusion if the applicant's household member or an applicant's FRR is legally obligated to pay the applicant's medical expenses.
4. Countable expenses are those for which the individual is still liable and that are:
- (i) For medical or remedial care, including costs for over the counter medications and costs incurred for medical insurance premiums, co-payments and deductibles. Health insurance premiums may be deducted as a spend down expense only when payment is due, even if paid in another month;
  - (ii) Verifiable and for which the individual provides substantiation;
  - (iii) Incurred by eligible individuals and are the legal responsibility of a household member and not subject to payment in full or part by a third party;
  - (iv) Recognized under State law but not covered under the State's TennCare Medicaid plan or waiver (continuously eligible individuals); or
  - (v) Covered under TennCare Medicaid but incurred during the spend down period (new applicants).
5. The following list includes but is not limited to the types of medical expenses that are considered Countable Medical Expenses for the Medically Needy categories:
- (i) Acupuncture services.
  - (ii) Bed hold at a Long Term Care Facility (Medicaid rate).
  - (iii) Dental expenses.
  - (iv) Doctor's fees – includes fees from services rendered by practitioners and others providing medical services, physicians, surgeons, dentists, optometrists, chiropractors, osteopaths, podiatrists, psychiatrists, psychologists, and Christian Science providers.
  - (v) Drugs prescribed by a physician (prior to TennCare eligibility) – includes charges for medicines and drugs prescribed by a doctor incurred prior to establishing TennCare Medicaid eligibility and which remained unpaid or paid in the month under consideration (i.e., Spend Down month).
  - (vi) Guide dogs – Guide dogs for the blind or deaf and the costs of their maintenance.
  - (vii) Hospital charges.
  - (viii) Medical care charges included in tuition costs – Charges for medical care included in the tuition fee of a college or private school which is paid on a monthly basis, provided that a breakdown of the charges is included in the bill or is furnished separately by the institution.
  - (ix) Nursing home costs.
  - (x) Nursing services – Nursing services include nursing care in an individual's home, if for the purpose of treatment or alleviation of a physical, mental, or emotional disorder and ordered by a provider acting within the provider's scope of practice. The care needed must be medical, e.g., administering medication or therapy. Cost of services solely domestic in nature, such as the preparation of meals and the performance of housework,

is not deductible.

- (xi) Organ transplant expenses.
- (xii) Prosthetic devices – Artificial teeth, limbs, hearing aids and component parts, eyeglasses and crutches.
- (xiii) Psychiatric care – Psychiatric care primarily for alleviating a mental illness or defect; the cost of maintaining a mentally ill individual at a specially equipped medical center where the individual receives continual medical care.
- (xiv) Special education for handicapped – Special school for mentally or physically handicapped individuals if for the alleviation of handicap. The costs of meals and lodging, if supplied by the institution, and/or ordinary education furnished incidental to the special services are medical expenses.
- (xv) Substance abuse treatment – Treatment at a therapeutic center for drug addicts or alcoholics, including meals and lodging furnished as a necessary incident to the treatment.
- (xvi) Transportation for medical/remedial purposes – Transportation essential to medical care, e.g., bus, taxi, train, or plane fares, and forty-seven cents (\$0.47) for each mile that the individual's car is used for medical purposes, in addition to parking fees and tolls.
- (xvii) Over the counter (non-prescription) medicine – \$10.00 per month is deducted for these expenses without verification, using only the applicant's statement. All of these expenses must be verified if the amount is more than \$10.00 per month.

6. The following are types of medical expenses that are not considered Countable Medical Expenses for the Medically Needy categories:

- (i) Expenses that have been written off as uncollectible or have been forgiven by the provider.
- (ii) Expenses that are covered by the State's TennCare Medicaid plan and are incurred during a period of eligibility:
  - (I) Costs incurred during a period of TennCare eligibility due to co-pays or services not covered such as dental, hearing and eye care for adults are allowable as a medical expense.
  - (II) Bills incurred during TennCare eligibility which are subject to TennCare reimbursement are not considered outstanding for subsequent spend down periods even if not paid by TennCare.

(3) ABD Financial Determinations.

- (a) Coverage groups whose financial eligibility is determined based on SSI financial methodology are:
  - 1. Members of SSI-Related Groups.
  - 2. MSP Applicants.
  - 3. Individuals applying for coverage of LTSS, under the Institutional Eligibility category.
- (b) Income Determinations. Income countable for purposes of individuals described in this paragraph is defined at 20 C.F.R. §§ 416.1100, et seq., and as set forth below. Unless otherwise specified below,

these individuals are subject to the following income requirements:

1. ABLÉ Accounts. Contributions and ABLÉ account earnings are excluded, except that contributions are not deducted from countable income of the individual making the contribution. Distributions from an ABLÉ account are not income of the designated beneficiary in any month regardless of whether the distribution is for non-housing QDEs, housing QDEs or non-qualified expenses. Distribution from an ABLÉ account is the conversion of a resource from one form to another.
2. Adoption Subsidies – Countable to the child if intended for general living expenses. Excluded if for reimbursement of child care while the adult responsible for the child is at work or seeking employment, or for medical expenses.
3. Alimony – Countable.
4. Annuity Payments – If the underlying annuity is an excluded resource, the periodic payments are countable unearned income. If the underlying annuity is a countable resource, payments are excluded.
5. Assistance Payment from another State – Countable.
6. Bonuses – Countable.
7. Care and Contribution in Exchange for a Transferred Asset – Countable.
8. Canceled Debts – Excluded.
9. Capital Gains – Countable.
10. Cash Support – Countable, unless excluded as irregular or infrequent income.
11. Child Support Arrearage – Countable to the child(ren) the payments are intended to support. Exclude one-third (1/3) of the child support arrearage payment to or for an eligible child. The one-third (1/3) exclusion does not apply to ineligible children.
12. Child Support Payments – Countable to the child(ren) the payments are intended to support. Exclude one-third (1/3) of the child support payment to or for an eligible child. The one-third (1/3) exclusion does not apply to ineligible children.
13. Commissions – Countable.
14. CSIMA – Countable as unearned income only when the institutionalized individual is not in the community spouse's household. If the applicant is a deemed member of the institutionalized individual's household, the CSIMA is excluded.
15. Contractual Payments – Excluded.
16. Death Benefits – Countable income to an individual if the total amount exceeds the expense of the deceased person's last illness and burial paid by the individual to whom the death benefit is issued.
17. DIMA – Countable as unearned income only when the institutionalized individual is not in the dependent's household. If the applicant is a deemed member of the institutionalized individual's household, the DIMA is excluded.
18. Differential Payments – Countable.

19. Domestic Volunteer Service Act Payments – Excluded if received through the following programs: Title II Retired and Senior Volunteer Program, and Foster Grandparent Program; Title III Service Corps of Retired Executives, Senior Companion Program, and Active Corps of Executives.
20. Earned Income Tax Credits – Excluded.
21. Earned In-Kind Food or Shelter – Countable.
22. Earned In-Kind Not Food or Shelter – Excluded.
23. Earned In-Kind Wages – Countable.
24. Education Income that is Not Work Study – Excluded.
25. Farmer/Fishing Income – Countable.
26. Gambling Prizes and Awards – Countable.
27. General Assistance Payments – Countable.
28. Gifts – Countable.
29. Income Not Pursued - Countable.
30. Income Produced from Resources – Income generated by a resource that is excluded is countable unearned income. Income generated by a resource that is countable is excluded as income.
31. Inheritance Cash – Countable.
32. Interest Bearing Resources – Interest earned on a countable resource is excluded as unearned income. Interest earned on an excluded resource is countable as income.
33. Irregular or Infrequent Income – Exclude up to \$60.00 per calendar quarter of unearned income when it is received infrequently or irregularly. Exclude up to \$30.00 per calendar quarter of earned income when it is received infrequently or irregularly.
34. Jury Duty Pay – Countable unless the income is turned over to an applicant's employer.
35. Long Term Care Insurance Payments – Countable if the payment is not assigned to the nursing home or lead HCBS agency.
36. Military Allotments – The Family Subsistence Supplemental Allowance (FSSA) and the Military Basic Allowance for Housing (BAH) are counted as unearned income.
37. Older Americans Act Payments – Countable.
38. Payments from FEMA – FEMA payments issued as a result of a presidentially declared emergency or major disaster are excluded. Payments made by comparable disaster assistance programs by States, local governments and disaster assistance organizations are also excluded. FEMA payments which are made to a household to pay for rent, food and utility assistance when there is no major disaster or emergency declaration are countable.
39. Pensions – Countable.
40. PASS Payments – Funds received by a protective payee (conservator, authorized

representative or representative payee) and used for the care and maintenance of a third party beneficiary (adult or child) who may or may not be a member of the protective payee's household are excluded as income to the protective payee. Any part of the payment that is retained by the protective payee for his or her own use is countable income to the protective payee. Even if the protective payee retains a fee for his or her services, the entire payment issued on behalf of the beneficiary is countable income to the beneficiary.

41. Rental or Lease Income – Countable as earned income when the individual is in the business of renting or leasing property, i.e., self-employment. Countable as unearned income when the individual is not in the business of renting or leasing property. Count the amount of income remaining after expenses related to maintaining the property are applied.
42. Royalties and Honoraria – Countable.
43. Self-Employment – Net earnings are countable.
44. Settlements or Disaster Payments – The following settlements and disaster payments are excluded as unearned income:
  - (i) Agent Orange Settlement Payments. Payments and interest are excluded as unearned income but counted when determining patient liability for institutionalized individuals;
  - (ii) Disaster Relief Assistance received under the Disaster Relief Act of 1974;
  - (iii) Distribution of perpetual judgment funds to Indian tribes under the following:
    - (I) Indian Judgment Funds Distribution (P.L. 93-134)
    - (II) Black Feet and Gros Ventre Tribes (P.L. 92-254)
    - (III) Grand River Band of Ottawa Indiana in Indian Claims Commission Docket No. 40-K;
    - (IV) Tribes of groups under P.L. 93-134;
    - (V) Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (P.L. 94-433); and
    - (VI) Receipts from land held in trust by the Federal government and distributed to certain Indian tribes under P.L. 94-114.
  - (iv) Factor VIII or IX Concentrate Blood Products Litigation. The settlement payments (and interest from payments) made as a result of the class action lawsuit to hemophilia patients infected with HIV through blood plasma products;
  - (v) Filipino Veterans Compensation Fund Payments. Lump sum payments (and interest from payments) made to certain veterans and spouses of veterans who served in the military of the Government of the Commonwealth of the Philippines during WWII;
  - (vi) Japanese-American and Aleutian Restitution Payments (and interest from payments);
  - (vii) Payments made to individuals because of their status as victims of Nazi persecutions (and interest from payments);
  - (viii) Payments to children born of Vietnam veterans diagnosed with spina bifida (and interest from payments);

- (ix) Payments made under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (interest is not excluded);
  - (x) Revenues from the Alaska Native Fund paid under section 21(a) of the Alaska Native Claims Settlement Act; and
  - (xi) Criminal Victims Compensation Funds paid to crime victims.
45. Severance – Countable.
  46. Sheltered Workshop Payments – Excluded.
  47. Sick/Disability Payments – Countable.
  48. Social Security Payments – Countable.
  49. Social Service Payments – Excluded.
  50. SSI – Excluded.
  51. Temporary Disability Insurance – Income is countable as unearned income to the extent it is not a reimbursement for specific costs and is paid directly to the household.
  52. Tips – Any amount over \$20.00 per month is countable.
  53. Trusts – Dividends, interest, rents and other income generated by a trust fund, unless otherwise excluded, that can be paid to the beneficiary or to a third party on the beneficiary's behalf are countable income to the beneficiary for the period the fund is intended to cover, beginning the month the funds become available, regardless of whether the income is actually paid out to the beneficiary. When funds are withdrawn irregularly, the payments are countable in the month received.
    - (i) Monies withdrawn from the principal of an accessible (countable) trust fund are excluded as income to the beneficiary, because an accessible trust fund is a countable resource. Money cannot be considered income and a resource in the same month.
    - (ii) Monies disbursed from the principal of an inaccessible trust fund are counted as income because an inaccessible trust fund is an excluded resource.
    - (iii) Monies received by the trustee of a trust and used for the care and maintenance of a third party beneficiary (adult or child) are excluded as income for the trustee.
  54. Unearned In-Kind Income or In-Kind Support and Maintenance – Unearned In-Kind income in the form of food and/or shelter may be countable or excluded and is subject to certain rules that determine the countable or excluded value.
  55. Unearned In-Kind Income, Not Food or Shelter – Excluded.
  56. Unemployment Compensation – Countable.
  57. U.S. Department of Veterans Affairs Payments:
    - (i) Additional Child Allotment – Excluded.
    - (ii) Compensation – Countable.

- (iii) Death Benefit – Countable as unearned income to an individual if the total amount exceeds the expense of the deceased person's last illness and burial paid by the individual to whom the death benefit is issued.
  - (iv) Dependency and Indemnity Compensation– Countable.
  - (v) Pension – Veteran's benefits other than Aid and Attendance (A&A) are countable income. Homebound allowances are countable income. Any part of a veteran's pension that is attributable to A&A is excluded as income, but is treated as third party liability available to help meet the veteran's medical expenses. A&A will be contributed to the cost of care in the nursing home.
  - (vi) If an institutionalized veteran receives the \$90.00 reduced, improved pension, exclude the \$90.00 from countable income and the cost of care calculation.
58. VISTA Payments – Excluded.
59. Wages – Countable.
60. Worker's Compensation – Countable as unearned income to the extent it is not an expense attributable to obtaining the compensation.
61. WIA Payments – Excluded.
62. Work Study Payments – Excluded.
- (c) Resource Determinations. Resources countable for purposes of individuals described in this paragraph are defined at 20 C.F.R. §§ 416.1201, et seq. Unless otherwise specified below, individuals described in this paragraph are subject to the following resource requirements:
1. ABLE Accounts. ABLE account balances under \$100,000.00 are not a countable resource of the designated beneficiary. Distributions from an ABLE account are countable as a resource when:
    - (i) Distributions are retained past the month of receipt for a housing-related QDE or are used for or intended to be used for non-qualified disability expenses; or
    - (ii) Distributions are retained past the month of receipt and were previously excluded because intended for a QDE, but used for a non-qualified expense. Count the amount of funds used as a resource the first of the month in which funds were spent; or
    - (iii) Distributions are retained past the month of receipt, have not been spent, and the intent to use the funds for a QDE has changed. Count the retained funds as a resource the first of the following month.
    - (iv) Qualified disability expenses (QDE) are expenses related to the blindness or disability of the designated beneficiary and for the benefit of the designated beneficiary. In general, a QDE includes, but is not limited to: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, funeral and burial expenses, and basic living expenses.

2. Annuities are countable resources for individuals when accessible according to 20 C.F.R. § 416.1201. An annuity is a countable resource when it is revocable, assignable, or if can be sold.
  - (i) If the annuity is an excluded resource, payments being received from the annuity may be countable unearned income. If the annuity is a countable resource, any payments being received from the annuity are excluded.
  - (ii) The countable resource value of an annuity is its FMV. If the applicant is able to provide the FMV of the annuity, verified by two (2) credible sources in the legitimate business of selling and purchasing annuities, accept the verified value.
  - (iii) If the applicant does not provide two credible statements of FMV, multiply the total annual payment by the period remaining to determine the countable value. If the period of the annuity is based on an annuitant's lifetime, the annual payments are multiplied by the annuitant's life expectancy, according to SSA's Period Life Table. If the annuity is a "period certain" annuity, annual payments are multiplied by the annuitant's life expectancy or the period certain, whichever is less. The calculated value of an annuity may be rebutted by providing two (2) credible statements of FMV amounts.
  - (iv) Individuals applying for or receiving LTSS must meet additional requirements regarding asset transfers and exclusion of annuities at Rule .06(3)(h).
3. Business or Self-Employment – Excluded as essential for the production of earned income. Resources may include:
  - (i) Tools/equipment;
  - (ii) Stock or raw materials;
  - (iii) Personal property essential for income production;
  - (iv) Real property;
  - (v) Office equipment;
  - (vi) Business loans for the purchase of capital assets;
  - (vii) Inventory;
  - (viii) Machinery and equipment;
  - (ix) Business/commercial checking accounts; and
  - (x) Life insurance.
4. Burial Funds.
  - (i) Burial funds which are not commingled are excluded resources when:
    - (I) The funds are used to purchase a life insurance policy which is then irrevocably assigned to a funeral provider. Either the ownership of the policy or proceeds may be assigned to the funeral provider. The purpose of the assignment is to fund a burial contract.
    - (II) The funds are invested in an irrevocable pre-paid or pre-need burial contract established by a funeral provider and the contract meets the following conditions:

- I. Both the individual and the funeral home representative have signed the document;
  - II. An itemized list of the services provided under the contract is provided;
  - III. The total dollar amount of the agreement is specified;
  - IV. The individual was neither a minor nor legally declared incompetent when the agreement was signed; and
  - V. The agreement specifies in writing that the money is not refundable under any circumstances.
- (III) The funds are invested in a burial trust established by the individual, and the total funds in the trust, including interest payments, do not exceed \$6,000.00 per individual. Transport costs which cause the trust value to exceed \$6,000.00 are excluded.
- (ii) Burial funds are countable resources when:
- (I) The funds are used to purchase a life insurance policy and a revocable assignment of the policy or proceeds is made to a funeral provider.
  - (II) The funds are invested in a revocable pre-paid or pre-need burial contract established by a funeral provider.
  - (III) Countable burial funds are eligible to be excluded as part of the individual's burial reserve.
- (iii) Burial Reserve – An individual is allowed to set aside \$1,500.00 in resources to cover expenses connected to his or her burial, cremation or other funeral arrangements. Funds allowed to be excluded as part of the burial reserve include revocable, countable burial funds. These funds must not be commingled with other resources, and must be set aside for burial expenses. The \$1,500.00 maximum amount of the burial reserve is first reduced by:
- (I) Life insurance, if the total value of all life insurance owned by the individual is \$1,500.00 or less; and
  - (II) Funds in an irrevocable burial agreement or contract.
5. Burial Plots – Exclude the value of one burial space for each family member, e.g. spouse, child, parent, sibling, whether living in the home or not. Burial plots and spaces include a gravesite, crypt, mausoleum, niche or other repository for bodily remains, vaults, headstones, markers, plaques, containers and arrangement for opening and closing the gravesite.
6. Cash – Countable.
7. Certificates of Deposit (CD) – Countable if held in a personal account. The value of a CD is the net amount that could be received after penalties for early withdrawal, if applicable. Taxes are not deducted in determining net value.
8. Checking Accounts – Personal checking accounts are countable. Some checking accounts that may be excluded include those designated for burial needs, educational income, Individual Development Accounts, PASS, prorated as income, proceeds from the sale of a home, disaster or settlement funds if excluded by policy, and retroactive SSA payments.

9. CCRC Deposit or Fee – The value of an entrance fee paid to a CCRC is a countable resource when it meets the following conditions:
  - (i) The entrance fee can be used to pay for care under the terms of the entrance contract should other resources of the individual be insufficient;
  - (ii) The entrance fee or its remaining portion is refundable when the individual dies or terminates the contract and leaves the CCRC; and
  - (iii) The entrance fee does not confer any ownership interest in the community.
10. Contracts for Deed or Mortgage – The value of a contract for deed or mortgage may be a countable asset dependent on the circumstances of the loan, including the individual's role as lender or borrower and the accessibility of the asset.
  - (i) When the individual is the lender for a contract for deed, the lender may sell or transfer the instrument to have immediate access to the unpaid principal. The value of the resource equity value is a countable asset. Any subsequent payments to the principal made by the debtor after approval are considered a resource because the unpaid loan principal is a resource. The value of the contract may be excluded from the countable resources if the individual can demonstrate that the contract cannot be sold without his realizing a net loss.
  - (ii) If the individual is the borrower the property agreement is not a resource. However, the property purchased may be a countable resource following the month of transaction.
11. Educational Income.
  - (i) Educational income received under Title IV, Bureau of Indian Affairs, or Department of Veterans Affairs programs is excluded as a resource.
  - (ii) Grants other than Title IV or Bureau of Indian Affairs grants, scholarships, fellowships and gifts intended to pay for tuition, fees or educational expenses are excluded for nine (9) months beginning the month after the funds are received. The individual must be enrolled in school and attending classes to be considered a student.
12. Farm, Business, Other Equipment – The equity value of non-self-employment income-producing real property, other than the homestead, is a countable resource. Exclude up to \$6,000.00 in equity and count only the amount that exceeds the limit, if the net income totals at least six percent (6%) of the equity value. If the property is used for self-employment, it is excluded as Business or Self-Employment.
13. Rental property is countable if the individual who owns the property is not in the business of renting property. Someone who is in the business of renting property is someone who materially participates in the operation and decision making of the rental business for at least (20) hours per week.
14. Homestead Exclusion - The entire value of the home, whether on land or water, all adjoining land not separated by property owned by others and any related outbuildings are excluded in determining resource eligibility as long as:
  - (i) The home is the principal place of residence for the individual and/or his spouse and/or dependent relatives; and
  - (ii) If the individual resides in a long-term care facility, his intent to return to the home is established.

- (iii) For an institutionalized individual, the home is excluded if the above are true and the individual's equity interest does not exceed \$552,000.00, with one exception: the home equity limit does not apply to an institutionalized individual if the spouse of the individual, the individual's child under age twenty-one (21), or a blind or permanently and totally disabled child is residing in the home. An institutionalized individual whose home exceeds the \$552,000.00 limit and who does not have a spouse, a child under age twenty-one (21) or a disabled or blind child living in the home, is not eligible for payment of long term services and supports, unless it is determined undue hardship exists.
  - (iv) An individual must have lived in the home for it to be considered his home or principal place of residence.
  - (v) The value of the home and surrounding land will not be counted as a resource during the individual's absence from an unoccupied home when he intends to return to the property. An absence from the home can be necessary to accomplish a specific purpose such as hospitalization, confinement in a nursing home or receipt of services, such as nursing or personal care services not available to the individual in his home.
  - (vi) An intent to return home is nullified by any efforts to sell or dispose of the property during the exemption period. The exemption based on the intent to return ends the first day of the month after the month efforts are made to sell or dispose of the homestead property.
  - (vii) Rental of a homestead which has been excluded because of intent to return does not nullify the exclusion. The homestead retains the exclusion as long as there is a clear, non-contradictory intent to return, and no efforts are made to sell or dispose of the property. The rent will be counted as unearned income in the month received.
  - (viii) The exemption based on residence of the enrollee's dependent relative ends the first day of the month after the relative last lived in the homestead, if the relative does not intend to return. Real property located outside of Tennessee can be excluded from countable resources as homestead property, if there is substantiation of the individual's intent to return to the home or the property is the principal residence of the individual's spouse or dependent relatives.
15. Individual Development Account – Funds, including accrued interest, in the account are excluded as a resource as long as the individual complies with the IDA eligibility rules and continues to maintain or make contributions into the account.
  16. Income-Producing Resource - Exclude up to \$6,000.00 of an individual's equity in an income-producing resource if it produces a net annual income to the individual of at least six percent (6%) of the property's equity value. If the individual's equity value is greater than \$6,000.00, the amount that exceeds \$6,000.00 is countable towards the resource limit.
    - (i) If an income-producing resource does not produce a net annual income of at least six percent (6%) of the resource's equity value, the entire equity value of the resource is countable.
    - (ii) If the individual owns more than one piece of income-producing resource and each produces income, each is reviewed to determine whether the six percent (6%) test is met. Then the amounts of the individual's equity in all of those properties producing six percent (6%) are totaled to determine if the total equity of all properties is \$6,000.00 or less. If the total equity value in the properties that meet the six percent (6%) rule is over the \$6,000.00 equity limit, the amount exceeding \$6,000.00 is counted as a resource.
  17. Insurance – Exclude Sick and Disability Insurance and Burial Insurance.

18. Items of Unusual Value, Household Goods, and Personal Effects – In general, an item may be considered an item of unusual value if the item is not excluded as a household good or personal effect, and the equity value of the item is greater than \$500.00. An item of unusual value that generates income for the individual is countable. The countable value is determined by applying the Rate of Return test (see Income-Producing Resource above). A personal item of unusual value is excluded. Household Goods and Personal Effects are also excluded.
19. Life Estates – Property in which an individual holds a life estate is subject to the same exclusion rules as property the individual owns by title, subject to the following exceptions:
  - (i) A life estate will be excluded as the home when the property meets the homestead exemption.
  - (ii) If the property is used in the passive production of income, then the life estate is subject to the Rate of Return test (see, Income-Producing Resource above).
  - (iii) A life estate will be excluded when ownership is necessary for the production of earned income.
  - (iv) The terms of the life estate contract prevent the holder from selling his or her interest in the property.
  - (v) If the life estate is not excluded based on the criteria (i)-(iv) above, the entire value of the life estate is a countable asset. The life estate value is determined by multiplying the Fair Market Value (FMV) of the property by the percentage listed in the SSA's Life Estate and Remainder Interest Tables for the age of the individual on whose lifetime the life estate is based. If more than one person owns the life estate, the value is based on the owner with the longest life expectancy.
  - (vi) When an individual purchases, or, in some other way receives, as compensation in a transaction, a life estate in another individual's home, the purchase of the life estate is considered an asset transfer subject to penalty, unless the individual then lives in the home for a period of at least one year after receiving the life estate.
  - (vii) If the individual does live in the home for a period of one year after receiving or purchasing the life estate, then the amount of the transfer is the entire amount used to purchase the life estate.
  - (viii) If an individual purchases a life estate in another individual's home and then does live there for one year after the purchase, the life estate is an excluded resource while being used as the individual's (or the individual's spouse's) home. However, if payment for a life estate exceeds the FMV of the life estate the difference between the amount paid and the FMV should be treated as an asset transfer. In addition, if an individual makes a gift or transfer of a life estate interest, the value of the life estate should be treated as a transfer of assets.
20. Life Insurance – Countable or excluded based on the type of life insurance owned by the individual and its intended use. Exclude all life insurance if the total face value of all policies does not exceed \$1,500.00 per owner.
21. Livestock – The value of livestock necessary for business or self-employment, as a tool of the trade, or raised for home/personal consumption is an excluded resource. Income received is countable as self-employment income. The equity value of livestock that are pets is countable. Livestock that is used as non-business income-producing property is countable, and subject to treatment as an Income-Producing Resource as described in this subparagraph.
22. Oil and Mineral Rights – May be included with land ownership or owned separately. If surface

rights of the same property are excluded (for example, as a home) so are oil and mineral rights. Oil and mineral rights are countable when owned for personal use, or when the surface rights of the same property are countable (non-homestead, real property).

- (i) If oil or mineral rights are producing income under a lease agreement, the owner may be constrained from selling or otherwise disposing of those rights. If the land is already excluded, the oil and mineral rights are excluded.
  - (ii) If oil or mineral rights are producing income to the individual, and he or she is not actively engaged in the production of income, the equity value of the rights is subject to the Rate or Return test. See Income-Producing Resource above.
- 23. Patient Trust Account – The balance of the account at the time of application and redetermination is a countable resource.
  - 24. Personal – Countable unless excluded based on the terms of the asset. A personal resource is typically for the use of the individual and his family.
  - 25. Personal Consumption – Exclude up to \$6,000.00 of the equity value of non-business property currently in use to produce goods or services essential to daily activities. Any portion of the property's equity value in excess of \$6,000.00 is a countable resource.
  - 26. PASS - Any income an SSI recipient places in an approved PASS account is excluded as a resource. The PASS account itself is also excluded. This exclusion expires when the PASS contract expires or ends, or when the individual is no longer an SSI recipient.
  - 27. Prepayment of Rent – Countable unless the individual cannot receive the money back under any circumstances (i.e., the lease agreement includes a no refund policy, or the landlord provides a statement that the funds will not be returned to the renter). Prepayment of an applicant's mortgage is not considered a resource.
  - 28. Prepayment of Nursing Home Care – Prepayment for care deposited by an applicant upon his admission to a TennCare Medicaid-participating long-term care facility is a countable resource for the individual who is subsequently approved for TennCare Medicaid benefits if the deposit was paid from the individual's own funds.
  - 29. Proceeds from the Sale of a Home - Excluded to the extent that the funds are intended to be used to purchase another home subject to the homestead exclusion, and the funds are used for such a purpose within three (3) months of the date of receipt of the proceeds.
  - 30. Promissory Notes and other Loans – A promissory note or other loan given by the household is considered personal property and is countable, unless the note/loan balance is inaccessible or the promissory note is held for reasons other than personal use. The lender holds legal interest and has the legal ability to make available his or her share in the note or loan. The equity value of the note/loan is countable.
    - (i) If a household makes a loan that is considered inaccessible, or is shown to have a significantly lower market value than the unpaid balance of the loan, the loan will be considered to be an uncompensated transfer of assets. The uncompensated asset transfer will be considered to be the outstanding balance due on the loan as of the date of the lender's application for long term services and supports (nursing facility or HCBS services).
    - (ii) In addition, the Deficit Reduction Act of 2005 (DRA) provides that funds used to purchase a promissory note, loan or mortgage must meet the following criteria, or the purchase will be treated as a transfer of assets for less than FMV:

- (I) The repayment term must be actuarially sound (as determined by SSA standards);
  - (II) Payments must be made in equal amounts during the term of the loan with no deferral payment and no balloon payments; and
  - (III) The promissory note, loan or mortgage must prohibit the cancellation of the balance upon the death of the lender.
- (iii) If the above criteria are not met, the purchase of the promissory note or loan must be treated as a transfer of assets. The amount used to calculate a penalty will be the outstanding balance of the loan due as of the date of application for TennCare Medicaid.
  - (iv) Promissory notes that are made for purposes other than personal use are treated according to their use. Promissory notes may be made for the following purposes:
    - (I) Burial;
    - (II) Business or Self-Employment; and
    - (III) Proceeds from the Sale of a Home.
31. Property that represents government authority to engage in an income-producing activity – Excluded if the property is used in trade, business or non-business income-producing activity. Exclude property that is currently not in use due to circumstances beyond the individual's control and there is a reasonable expectation that the use will resume.
32. Prorated as Income – Excluded.
33. Real Property – The equity value in all real property the individual owns individually or jointly is a countable asset with the following exceptions:
- (i) Property excluded as homestead;
  - (ii) The inaccessible equity value of real property;
  - (iii) Equity value of income-producing property (subject to the Rate of Return test);
  - (iv) Real property necessary for the production of earned income (see Business or Self-Employment); and
  - (v) Property excluded under a Conditional Assistance agreement between the individual and the State.
34. Retirement Accounts and Pension Plans – If retirement benefits are being received out of such accounts, the principal is not considered a resource. If payments are not being received and the account is accessible, then the equity value is countable. The equity value is the cash surrender value minus any early withdrawal penalty.
- (i) Funds held in a 401(k) retirement account are countable when the individual or his or her spouse is no longer job-attached because the funds are accessible after employment terminates. If the individual is still job-attached, the value of the 401(k) is excluded. A 401(k) retirement account owned by a deemed spouse or a deemed parent is excluded as a resource.
  - (ii) Funds held in an IRA are considered accessible to the individual or community spouse. Count the equity value of an accessible IRA when determining eligibility. IRA funds owned by a community spouse are also considered countable and accessible when

determining a CSRMA. IRA funds owned by a deemed spouse (for non-institutional categories) or deemed parent are excluded from the resource determination.

- (iii) Keogh plans are considered accessible and counted as resources to the individual or community spouse even if the household is not actually accessing the funds. Keogh funds are countable resources in determining the CSRMA. Keogh plans owned by a deemed spouse (non-institutional) or deemed parent are excluded as resources.
35. Savings Accounts – Countable if it is characterized by personal use. If the current month's income has been deposited into the account it must be excluded when determining the current value of the account. A savings account may be excluded if it is used for one of the following purposes:
- (i) Burial funds;
  - (ii) Business or Self-Employment;
  - (iii) Educational Income;
  - (iv) Individual Development Account;
  - (v) PASS;
  - (vi) Proceeds from the Sale of a Home (subject to time limits);
  - (vii) Prorated as income;
  - (viii) Settlement or Disaster Payment, if excluded by policy; and
  - (ix) SSI/SSA Retroactive Payment (subject to time limits).
36. Settlement or Disaster Payment - Payments or benefits provided under certain Federal statutes are excluded, if payments are not commingled with other funds. Excluded settlement and/or disaster payments include:
- (i) Agent Orange Settlement Payments;
  - (ii) Disaster Relief Assistance received under the Disaster Relief Act of 1974;
  - (iii) Distribution of perpetual judgment funds to Indian tribes under the following:
    - (I) Indian Judgment Funds Distribution (P.L. 93-134);
    - (II) Black Feet and Gros Ventre Tribes (P.L. 92-254);
    - (III) Grand River Band of Ottawa Indians in Indian Claims Commission Docket No. 40-K;
    - (IV) Tribes of groups under PL 93-134;
    - (V) Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (PL 94-433); and
    - (VI) Receipts from land held in trust by the Federal government and distributed to certain Indian tribes under PL 94-114.

- (iv) Factor VIII or IX Concentrate Blood Products Litigation. The settlement payments made to hemophilia patients infected with HIV through blood plasma products as a result of the class action lawsuit;
  - (v) Filipino Veterans Compensation Fund Payments. Lump sum payments made to certain veterans and spouses of veterans who served in the military of the Government of the Commonwealth of the Philippines during WWII;
  - (vi) Japanese-American and Aleutian Restitution Payments;
  - (vii) Payments made to individuals because of their status as victims of Nazi persecutions;
  - (viii) Payments to children born of Vietnam veterans diagnosed with spina bifida;
  - (ix) Payments made under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (State and local payments are only excluded for nine (9) months);
  - (x) Revenues from the Alaska Native Fund paid under section 21(a) of the Alaska Native Claims Settlement Act;
  - (xi) Criminal Victims Compensation Funds paid to crime victims (excluded for nine (9) months); and
  - (xii) Energy Employees Occupational Illness Compensation Program Act (EEOICPA).
37. SSI/SSA Retroactive Payment – Excluded for nine (9) months after the payment is received and counted after that nine (9) month exclusion period.
38. Stocks/Bonds/Mutual Funds– Countable. Although personal mutual funds are countable, those held for purposes listed below are subject to different treatment:
- (i) Burial;
  - (ii) Business or Self-Employment;
  - (iii) Educational Income;
  - (iv) Proceeds from the Sale of a Home;
  - (v) Prorated as Income; or
  - (vi) Settlement or Disaster Payment, if excluded by policy.
39. Tools of the Trade – Excluded.
40. Trusts – Countable or excluded based on the nature of the trust, the date the trust was created, the source of funds used to create the trust, plus other factors as specified in 42 U.S.C. § 1396p(d).
41. Vehicles – One car, truck, motorcycle, camper, motor home, aircraft, snowmobile, watercraft, boat, or all-terrain vehicle is excluded regardless of its value if it is used for transportation of the individual or a member of his or her household. If an applicant owns more than one vehicle, the equity value of that second vehicle is countable when it is owned by the applicant or a deemed filing unit member, and it cannot be excluded under another provision. Boats, motorcycles, snowmobiles, jet skis, ATVs, and aircraft are generally considered recreational vehicles. The equity value of these recreational vehicles is a countable resource unless it can be excluded under other provisions.

- (d) Conditional Assistance. Real and personal property, which is not exempt under another resource provision, is exempt as a resource if the individual enters into a Conditional Assistance agreement with the State. The individual must make a bona fide effort to sell the property at its current market value, and repay the State for medical expenses covered by HCFA during the period of conditional assistance.
1. The exclusion period for real property is not to exceed nine (9) months. The exclusion period for personal property is not to exceed three (3) months, however a three (3) month extension may be granted if the individual is able to show a good cause for failure to dispose of the property. Property that remains unsold at the end of the exclusion period will be considered inaccessible so long as the individual continues the bona fide effort to sell.
  2. Repayment of medical expenses covered by HCFA during the period of conditional assistance may not exceed the total net proceeds of the sale. Any proceeds remaining after the repayment of medical expenses is paid are considered a resource.
- (e) Disregards and Expenses Allowed. Unless otherwise specified in Subparagraph (f) below, individuals described in Subparagraph (a) are subject to the following expense requirements.
1. Court Ordered Child Support Payments – Exclude amount actually paid up to the full court-ordered obligation. A child support disregard will not be allowed for the same individual for whom a CSIMA or DIMA is allowed in an Institutionalized Medicaid budget.
  2. Legally Obligated Alimony Payments – Alimony is an expense to the payer of the alimony and is allowed when alimony is paid during the month of application. The payments must be in cash, including checks and money orders, to be considered alimony. The following payments are not alimony: child support, noncash property settlements, and payments to keep up the payer's property. Alimony expenses do not include voluntary payments.
  3. General Income Disregard – A \$20.00 monthly General Income Disregard is allowed per household, and is applied to unearned income. If any of the \$20.00 disregard is not offset by unearned income, the remainder is applied to the spouse's unearned income and then to the applicant or enrollee's earned income.
  4. Child Support Disregard – If the applicant receives child support payments (current only), exclude up to \$50.00 per month of child support payments received if the family also receives TANF benefits.
  5. Earned Income Disregard – The first \$65.00 of the earned income of each aged, blind or disabled individual is disregarded.
  6. Blind and Disability Related Work Expenses:
    - (i) The gross countable earned income of each blind or disabled individual (not living in a medical institution) may be reduced by the amount of expenses attributable to earning the income. The allowable Blind Work Expenses (BWE) and allowable Disability Related Work Expenses (DRWE) are not the same. BWE and DRWE apply only to earned income. In order to deduct either BWE or DRWE, the individual must be:
      - (i) Blind, blind and disabled, or disabled; and under age sixty-five (65), or
      - (ii) Age sixty-five (65) and older; and received SSI payments due to blindness or disability the month before attaining age sixty-five (65).
    - (ii) These expenses do not apply to the Institutionalized Medicaid categories. Work expenses must not be payable or reimbursable by a third party, such as Medicaid,

Medicare or other insurance.

7. One-Half Disregard – If an individual's gross earned income, less any of the following disregards: General Income Disregard (\$20.00) remainder, Earned Income Disregard (\$65.00), Disabled Work Expense and Impairment-Related Work Expenses (IRWE), is greater than \$0, disregard one-half (1/2) of the remainder.
  8. Student Earned Income Exclusion (SEIE) – Applies to the earnings of an individual who is under age twenty-two (22) and regularly attending school. The exclusion may apply to an eligible or ineligible individual, child, spouse, or parent(s). The SEIE monthly amount is determined by the SSA. The SEIE does not apply to children attending elementary school.
- (f) Household Composition Rules – Household composition for the ABD categories is governed by the FRR principle. Financial responsibility is limited to spouse to spouse and parent to child. Household composition not only determines which income standard to use, but also how FRR income is “deemed” or available, and the amount of income “deemed” or available to an individual. See 20 C.F.R. §§ 1160, et seq.
1. The following individuals must be included in the applicant's household, if living in the same household:
    - (i) The applicant's spouse;
    - (ii) The applicant's children under eighteen (18) years of age or under twenty-two (22) years of age if a student;
    - (iii) The applicant's parents, for children under eighteen (18) years of age or under twenty-two (22) years of age if a student; and
    - (iv) The applicant's siblings that are under eighteen (18) years of age or under twenty-two (22) years of age if a student.
  2. Step-children are included in the household when they live in the home and their natural parent is the spouse of the applicant and living in the home. Step-parents are included when they live in the home with the applicant and natural or adopted parent, and are married to the natural or adopted parent. Step-siblings are included when their natural or adopted parent lives in the home and is considered the applicant's step-parent.
  3. Financial eligibility is determined based on a household size of one or two. Included household members are the applicant and if applicable, his spouse. If there are additional household members, they will be considered in deeming budgets, if appropriate.
  4. Parent-to-child deeming applies when a blind or disabled child is living with his parent(s), and a portion of the parent's income and resources may be deemed available to the child and counted as unearned income to the child in determining his TennCare Medicaid eligibility. The parent receives income disregards and allocations in order to meet his own needs and the needs of other children that live in the household. Child and parental allocations are deducted from the parent's income before any income is deemed to the applicant/enrollee. Parental deeming applies to the following TennCare Medicaid categories:
    - (i) Medicare Savings Program (QMB, SLMB, Q11 and QDWI);
    - (ii) Pickle Passalong Aged and Blind/Disabled; and
    - (iii) Institutional Eligibility.
  5. The countable income and resources of an applicant/enrollee's TennCare Medicaid-ineligible

spouse living in the home may be deemed available to the applicant/enrollee. Spousal deeming only applies when the spouses share a living arrangement, i.e., live in the community or home together. Spousal deeming applies to the following TennCare Medicaid Categories:

- (i) Medicare Savings Program (QMB, SLMB, QI, and QDWI); and
  - (ii) Pickle Passalong Aged and Blind/Disabled.
6. The countable income and resources of a LTSS applicant/enrollee's TennCare Medicaid-eligible spouse living in the home is made available to the applicant/enrollee under the Spousal Impoverishment rules.
- (g) Qualifying Income Trusts (QIT) for Institutional Applicants.
- 1. Individuals who are receiving or will receive nursing facility services or home and community based services (HCBS) offered either through the CHOICES Program or through a Section 1915(c) HCBS waiver program and whose income exceeds the Medicaid Income Cap (MIC) may establish a qualified income trust. Funds placed in a QIT that meets the standards set forth below are not treated as available resources or income for purposes of determining the individual's TennCare eligibility.
  - 2. A QIT is a trust consisting only of the individual's pension income, SSI, and other monthly income that is created for the purpose of establishing income eligibility for TennCare coverage when an individual is or soon will be confined to a nursing facility, HCBS or ICF/IID waiver program offered either through the CHOICES Program or through a Section 1915(c) HCBS waiver program.
  - 3. An individual is eligible to establish a QIT if his income is above the level at which he would be financially eligible for nursing facility, HCBS offered either through the CHOICES Program or through a Section 1915(c) HCBS waiver program, or ICF/IID care under Medicaid.
  - 4. The amount of income that an applicant/recipient places in a QIT cannot be limited nor can it be counted when testing income against the MIC. However, it is used in determining patient liability during post-eligibility treatment of income. If the applicant/recipient's income that is not placed in a QIT is over the MIC, the individual is not financially eligible for the Institutional category.
  - 5. A valid QIT must meet the following criteria:
    - (i) The trust must be irrevocable and cannot be modified or amended in whole or in part by the Grantor at any time. However, the Trustee or a court of competent jurisdiction shall have the right and jurisdiction to modify any provision of the trust to the extent necessary to maintain the eligibility of the Grantor for medical assistance.
    - (ii) Each month the trustee shall distribute the entire amount of income transferred into the Trust except for an amount not to exceed \$20.00 for expenses of the Trust.
    - (iii) The sole beneficiaries of the Trust are the individual for whose benefit the Trust is established and the State of Tennessee. The Trust terminates upon the death of the individual, or when the Trust is no longer required to establish TennCare Medicaid eligibility in the State of Tennessee, or if nursing facility care or HCBS is no longer medically necessary for the individual, or if the individual is no longer receiving such services.
    - (iv) The Trust must provide that upon the death of the individual or termination of the Trust, whichever occurs sooner, the State of Tennessee shall receive all amounts remaining in the Trust up to the total amount of medical assistance paid by the State on behalf of the

individual.

- (v) Amounts remaining in the Trust that are owed to the State must be paid to HCFA within three (3) months after the death of the individual or termination of the Trust, whichever is sooner, along with an accounting of the payments from the Trust. HCFA may grant an extension if a written request is submitted within two (2) months of the termination of the Trust.
- (vi) This Part applies to an income trust established on or after July 1, 2005, and under the hardship provision in Section 1613 (e) of the Social Security Act (42 U.S.C. § 1382b(e)). Hardship may be considered to exist when the institutionalized individual or his spouse would have resources in excess of the resource limit, is otherwise eligible, and for whom TennCare Medicaid ineligibility would result in loss of essential nursing care which is not available.
- (vii) Allowable payments from the Trust include:
  - (I) Personal Needs Allowance (PNA) – The amount the individual is allowed to retain for his personal needs under TennCare Medicaid policies. As of January 1, 2005, this amount is \$50.00 for confinement in a nursing facility or ICF/IID and three hundred percent (300%) of the SSI/FBR for HCBS enrollees and Self-Determination Waiver; and two hundred percent (200%) of the SSI/FBR for the Arlington and Statewide Waivers.
  - (II) A deduction of up to \$20.00 for expenses necessary for managing the trust (i.e. bank charges).
  - (III) CSIMA or DIMA, if applicable.
  - (IV) Health Insurance Premiums – Allowed when the individual has health insurance other than TennCare Medicaid (for example, Medicare premium or a Medicare supplement policy).
  - (V) Item D deductions – Payment for types of medical or remedial care recognized under State law, but not covered as medical assistance under TennCare Medicaid.
- (viii) Any countable income not placed in the QIT and any Trust income remaining after allowable deductions are made shall be paid monthly to the nursing facility, HCBS provider, or MCO by the individual or from the Trust in an amount not to exceed the Medicaid reimbursement rate. Any excess income not distributed from the Trust shall accumulate in the Trust monthly.
- (ix) No other deductions or expenses may be paid from the Trust. Expenses which cannot be paid from the Trust except as specifically provided herein include, but are not limited to, trustee fees, attorney fees and costs (including attorney fees and costs incurred in establishing the trust), accountant fees, court fees and costs, fees for guardians ad litem, funeral expenses, past due medical bills and other debts.

(h) Annuities.

1. Disclosure. Disclosure of annuities is required for all applicants pursuant to 42 U.S.C. § 1396p(e). If an individual or his or her spouse refuses to disclose information related to an annuity, the individual will be denied Medicaid eligibility based on the individual's failure to cooperate.
2. Annuities and Transfer of Assets. An annuity will not be treated as a transfer of assets if the annuity meets the requirements of 42 USC 1396p(c)(1)(G).

3. Requirement to name the State as the Remainder Beneficiary. The purchase of an annuity is subject to the transfer of assets provision unless it meets the requirements of 42 U.S.C. § 1396(c)(1)(F).
  - (i) Annuities purchased or converted by the individual or his spouse on or after February 8, 2006, must be changed prior to TennCare Medicaid approval or redetermination to name the State of Tennessee as the remainder beneficiary of the annuity, in the following order, if applicable:
    - (I) Community Spouse.
    - (II) A minor, blind or disabled child.
    - (III) State of Tennessee.
  - (ii) As a remainder beneficiary, the State may receive up to the total amount of medical assistance paid on behalf of the individual, including both long term services and supports and home and community based services. The State must notify the issuer of the State's right as the preferred remainder beneficiary and the issuer must notify the State if there are any changes in the amount of income or principal being withdrawn.
  - (iii) An annuity may be amended to meet these criteria, so that the annuity purchase will not be treated as a transfer of assets for less than FMV.

Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-106, 71-5-110, 71-5-111 and 71-5-117.

#### 1200-13-20-.07 Family and Child Eligibility Groups.

- (1) Caretaker Relatives.
  - (a) Definition: See Rule .02.
  - (b) Technical Requirements: See Rule .04.
  - (c) Special Eligibility Requirements: Individual must be a parent or caretaker relative of a minor child and must agree to cooperate with State Child Support Enforcement to establish paternity and medical support, if applicable. Failure to cooperate or show good cause for not cooperating once eligible shall result in termination.
  - (d) Household size is based upon the MAGI household composition Rule .06.
  - (e) Income Limitation: Household income cannot exceed the monthly income levels as outlined in the State Plan. Note: The FFM uses these numbers to establish an equivalent FPL.
  - (f) Resource Limitation: None.
  - (g) Effective Date of Eligibility: Eligibility begins on the Application File Date, according to Rule .05, or the date all eligibility requirements are met, whichever is later.
  - (h) Individuals in this category may also be eligible for Extended Medicaid as described in 42 C.F.R. § 435.115 and Transitional Medicaid as described in 42 C.F.R. § 435.112.
- (2) TennCare Pregnant Women.
  - (a) Definition: See Rule .02.

- (b) Technical Requirements: See Rule .04.
  - (c) Special Eligibility Requirements: Individual must be pregnant. Self-attestation of pregnancy is accepted unless the State has information that is not reasonably compatible with such attestation.
  - (d) Household size is based upon the MAGI household composition Rule .06.
  - (e) Income Limitation: Household income cannot exceed one hundred ninety five percent (195%) of the FPL. See Rule .06.
  - (f) Resource Limitation: None.
  - (g) Effective Date of Eligibility: Eligibility begins on the Application File Date, according to Rule .05, or the date all eligibility requirements are met, whichever is later.
  - (h) Other:
    1. Eligibility is continuous through the last day of the month of the sixty (60)-day postpartum period as defined at 42 C.F.R. § 435.4, regardless of income changes.
    2. An individual in this category is eligible for all medically necessary covered services, other than LTSS, because TennCare considers all medically necessary covered services to be pregnancy-related. A pregnant woman could be eligible for LTSS if she is determined to meet the criteria for an Institutional Eligibility category.
    3. Individuals in this category may also be eligible for Extended Medicaid as described in 42 C.F.R. § 435.115 and Transitional Medicaid as described in 42 C.F.R. § 435.112.
- (3) Presumptive Eligibility for Pregnant Women.
- (a) Definition: See Rule .02.
  - (b) Technical Requirements: See Rule .04. Self-attestation of citizenship, residency and Social Security Number (SSN) are accepted at application for presumptive eligibility.
  - (c) Special Eligibility Requirements: Individual must be pregnant at the time of application. Self-attestation of pregnancy is accepted unless the State has information that is not reasonably compatible with such attestation.
  - (d) Household size is based upon the MAGI household composition Rule .06.
  - (e) Income Limitation: Household income cannot exceed one hundred ninety five percent (195%) of the FPL. See Rule .06.
  - (f) Resource Limitation: None.
  - (g) Effective Date of Eligibility: The date of determination by the Tennessee Department of Health or other qualified entity. The presumptive eligibility period ends either the last day of the month following the month a presumptive eligibility determination was made, or if a full Medicaid application is submitted before the end of the month following the presumptive application, eligibility continues until a determination is made on a complete Medicaid application, or as otherwise agreed to by the Single State Agency and CMS. Only one presumptive period of eligibility is allowed for each pregnancy.
- (4) Infants and Children under Age 19.

- (a) Definition: See Rule.02.
  - (b) Technical Requirements: See Rule.04.
  - (c) Special Eligibility Requirements: Individual must be younger than nineteen (19) years of age.
  - (d) Household size is based upon the MAGI household composition Rule .06.
  - (e) Income Limitations:
    1. Infants younger than age one (1): Household income cannot exceed one hundred ninety-five percent (195%) of the FPL.
    2. Children from age one (1) to age five (5): Household income cannot exceed one hundred forty-two percent (142%) of the FPL.
    3. Children from age six (6) to age nineteen (19): Household income cannot exceed one hundred thirty-three percent (133%) of the FPL. See Rule .06.
  - (f) Resource Limitations: None.
  - (g) Effective Date of Eligibility: Eligibility begins on the Application File Date, according to Rule .05, or the date all eligibility requirements are met, whichever is later.
  - (h) Individuals in this category may also be eligible for Extended Medicaid as described in 42 C.F.R. § 435.115 and Transitional Medicaid as described in 42 C.F.R. § 435.112.
- (5) Deemed Newborns.
- (a) Definition: See Rule .02.
  - (b) Technical Requirements: See Rule .04, except Deemed Newborns are not subject to citizenship rules. Newborns without an SSN must be enumerated by age one (1) to remain eligible for another category, or before they can be approved in another category, whichever occurs first.
  - (c) Special Eligibility Requirements: Newborns must be twelve (12) months or younger. A baby born to a mother eligible for and receiving TennCare Medicaid shall be eligible for TennCare Medicaid for one (1) year from the date of birth, as long as the newborn remains a resident of Tennessee during that time.
  - (d) Income Limitations: None.
  - (e) Resource Limitations: None.
  - (f) Effective Date of Eligibility: The child's date of birth, if mother was eligible for and receiving TennCare Medicaid at the time of birth.
- (6) Newborn Presumptive.
- (a) Definition: See Rule .02.
  - (b) Technical Requirements: See Rule .04. Self-attestation of residency is accepted at application for presumptive eligibility. SSN is not required for newborns to age one (1).
  - (c) Special Eligibility Requirements: Newborns must be twelve (12) months or younger.

- (d) Household size is based upon the MAGI household composition Rule .06.
  - (e) Income Limitations: Household income cannot exceed one hundred ninety-five percent (195%) of the FPL.
  - (f) Resource Limitations: None.
  - (g) Effective Date of Eligibility: The date of determination by the qualified entity. The presumptive eligibility period extends from the date of application through the end of the following month, or if a full Medicaid application is submitted before the end of the month following the presumptive application, eligibility continues until a determination is made on a complete Medicaid application or as otherwise agreed to by the Single State Agency and CMS.
- (7) Former Foster Care Children up to Age 26.
- (a) Definition: See Rule .02.
  - (b) Technical Requirements: See Rule .04.
  - (c) Special Eligibility Requirements: The individual must be under age twenty-six (26), have been in foster care provided by the State of Tennessee, and must have been receiving Medicaid in the foster care category at the time he aged out of custody in order to qualify for this category.
  - (d) Income Limitations: None.
  - (e) Resource Limitations: None.
  - (f) Effective Date of Eligibility: Eligibility begins on the Application File Date, according to Rule .05, or the date all eligibility requirements are met, whichever is later.
- (8) Standard Child Uninsured.
- (a) Definition: See Rule .02.
  - (b) Technical Requirements: See Rule .04.
  - (c) Special Eligibility Requirements: Must be a Medicaid "Rollover" enrollee as defined in Rule .02, or currently enrolled in TennCare Standard, and does not have insurance or access to health insurance.
  - (d) Household size is based upon the MAGI household composition Rule .06.
  - (e) Income Limitations: Household income must be at or below two hundred eleven percent (211%) of the FPL. See Rule .04.
  - (f) Resource Limitations: None.
  - (g) Effective Date of Eligibility: The day following the TennCare Medicaid coverage end date.
  - (h) Other: Includes uninsured children under age nineteen (19) who have been continuously enrolled in TennCare Standard since December 31, 2001, who have family incomes at or below two hundred percent (200%) of the FPL, and who have not purchased insurance even if they have access to it. This is a "grandfathered" eligibility category. If an individual loses eligibility in this category, he or she will not be able to re-enroll in it.
- (9) Standard Child Medically Eligible.
- (a) Definition: See Rule .02.

- (b) Technical Requirements: See Rule .04.
  - (c) Special Eligibility Requirements: Must be an uninsured child under age nineteen (19) who is losing eligibility for Medicaid or being renewed as TennCare Standard, who does not have access to health insurance, and who has been determined to have a qualifying medical condition according to these rules.
  - (d) Special Application Procedures:
    1. Must be a Medicaid "Rollover" enrollee as defined in Rule .02, or currently enrolled in TennCare Standard.
    2. Applicants have three (3) options for proving medical eligibility:
      - (i) Option 1: Physician's attestation on the Medically Eligible (ME) Packet of specific qualifying conditions.
      - (ii) Option 2: A completed ME packet and medical records to support a qualifying medical condition with a signed release for medical records in the event additional medical records are needed.
      - (iii) Option 3: An existing Medically Eligible determination in Interchange.
    3. If a Medicaid enrollee under age nineteen (19) whose Medicaid eligibility is ending is determined to otherwise meet technical eligibility requirements for TennCare Standard, but is not eligible as uninsured because his income is above two hundred eleven percent (211%) of poverty, he will be sent a ME packet.
    4. TennCare will send the enrollee a ME packet with an explanation regarding how to apply for TennCare Standard as a medically eligible individual. The enrollee will have sixty (60) days from the date of the notice letter (inclusive of mail time) to submit his medical eligibility packet. If the individual is determined to qualify as medically eligible, coverage will be provided throughout the eligibility determination period and will continue with no break.
    5. The required ME application information must be returned to the address specified within sixty (60) days from the date of the letter included in the packet. A ME form and documentation received after that time will not be processed as it exceeds the timely filing requirement. Packets which are not completed by the sixtieth (60th) day will be denied with a notice of appeal rights.
  - (e) Household size is based upon the MAGI household composition Rule .06.
  - (f) Income Limitations: Household income must exceed two hundred eleven percent (211%) of the FPL. See Rule .06.
  - (g) Resource Limitations: None.
  - (h) Effective Date of Eligibility: The day following the TennCare Medicaid coverage end date.
- (10) CoverKids - CHIP Children under age 19.
- (a) Definition: See Rule .02.
  - (b) Technical Requirements: See Rule .04.
  - (c) Special Eligibility Requirements: Includes children under age 19 who do not have Health Insurance,

as defined in Rule .02.

- (d) Household size is based upon the MAGI household composition Rule .06.
  - (e) Income Limitations: Must be over the applicable Medicaid limit and under two hundred fifty percent (250%) of the FPL. See Rule .06.
  - (f) Resource Limitations: None.
  - (g) Effective Date of Eligibility: Eligibility begins on the Application File Date, according to Rule .05, or the date all eligibility requirements are met, whichever is later.
- (11) CoverKids Pregnant Women/Unborn Children.
- (a) Definition: See Rule .02.
  - (b) Technical Requirements: See Rule .04. The pregnant woman's unborn child is presumed to be a U.S. citizen, regardless of the citizenship or immigration status of the mother. The mother is not required to provide proof of citizenship or immigration status.
  - (c) Special Eligibility Requirements: Includes pregnant women who do not have Health Insurance, as defined in Rule .02, or do not have maternity benefits or have exhausted maternity benefits.
  - (d) Household size is based upon the MAGI household composition Rule .06.
  - (e) Income Limitations: Must be ineligible for Medicaid and below two hundred fifty percent (250%) of the FPL. See Rule .06.
  - (f) Resource Limitations: None.
  - (g) Effective Date of Eligibility: Eligibility begins on the Application File Date, according to Rule .05, or the date all eligibility requirements are met, whichever is later.
  - (h) Other: Eligibility for the pregnant woman is continuous through the 60 days postpartum period as defined at 42 C.F.R. § 435.4. Eligibility for the newborn child continues twelve (12) months from the mother's effective date of eligibility.
- (12) IE Foster Care, Foster Care, and Adoption Assistance.
- (a) Definition: Children in State foster care or in a subsidized adoptive home.
  - (b) Eligibility for these categories is determined by the Tennessee Department of Children's Services.
- (13) Transitional Medicaid.
- (a) Definition: See Rule .02.
  - (b) Technical Requirements: See Rule .04.
  - (c) Special Eligibility Requirements for Transitional Medicaid: Eligible individuals must have been eligible for and receiving benefits for at least three (3) of the six (6) months immediately preceding the month of ineligibility. Eligible individuals receive twelve (12) months of Medicaid.
  - (d) Special Eligibility Requirements for children: Transitional Medicaid benefits are provided to children who lose Child MAGI eligibility when the following conditions are met:
    - 1. The child's parent or caretaker relative was previously eligible in a MAGI category with income

under the Caretaker Relative income standard for three (3) of the previous six (6) months but lost eligibility due to an increase in earnings; and

2. The child was eligible and enrolled in a Child MAGI category for three (3) of the six (6) months immediately preceding the month the parent or caretaker relative lost eligibility.
- (e) Special Eligibility Requirements for Pregnant women: Transitional Medicaid benefits are provided to pregnant women who lose Pregnancy MAGI eligibility when all of the following conditions are met:
1. The individual was eligible and enrolled in the Pregnancy MAGI category for three (3) of the six (6) months immediately preceding the month eligibility was lost;
  2. The woman's loss of eligibility is due to an increase in earnings; and
  3. The woman's household income was at or below the Caretaker Relative income standard for three (3) of the six (6) months immediately preceding the month eligibility was lost.
- (f) Special Eligibility Requirements for Caretaker Relatives: Transitional Medicaid benefits are provided to parents and caretaker relatives who lose Caretaker Relative MAGI eligibility when all of the following conditions are met:
1. The individual was eligible and enrolled in the Caretaker Relative MAGI category for three (3) of the six (6) months immediately preceding the month eligibility was lost;
  2. Loss of eligibility was due to an increase in earnings; and
  3. The parent or caretaker relative must continue to have a dependent child in the home in order to receive Transitional Medicaid.
- (g) Household size is based upon the MAGI household composition Rule .06.
- (h) Income Limitations: See Rule .06.
- (14) Extended Medicaid.
- (a) Definition: See Rule .02.
- (b) Technical Requirements: See Rule .04.
- (c) Special Eligibility Requirements: Eligible individuals must have been eligible for and receiving benefits for at least three (3) out of six (6) months immediately preceding the month of ineligibility. Eligible individuals receive twelve (12) months of Medicaid.
- (d) Special Eligibility Requirements for children: Extended Medicaid benefits are provided to children who lose Child MAGI eligibility when the following conditions are met:
1. The child's parent or caretaker relative was previously eligible in a MAGI category with income under the Caretaker Relative income standard for three (3) of the previous six (6) months but lost eligibility due to an increase in spousal support; and
  2. The child was eligible and enrolled in a Child MAGI category for three (3) of the six (6) months immediately preceding the month the parent or caretaker relative lost eligibility.
- (e) Special Eligibility Requirements for Pregnant women: Extended Medicaid benefits are provided to pregnant women who lose Pregnancy MAGI eligibility when the following conditions are met:

1. The individual was eligible and enrolled in the Pregnancy MAGI category for three (3) of the six (6) months immediately preceding the month eligibility was lost;
  2. The woman's loss of eligibility is due to an increase in spousal support; and
  3. The woman's household income was at or below the Caretaker Relative income standard for three (3) of the six (6) months immediately preceding the month eligibility was lost.
- (f) Special Eligibility Requirements for Caretaker Relatives: Extended Medicaid benefits are provided to parents and caretaker relatives who lose Caretaker Relative MAGI eligibility when the following conditions are met:
1. The individual was eligible and enrolled in the Caretaker Relative MAGI category for three (3) of the six (6) months immediately preceding the month eligibility was lost;
  2. Loss of eligibility was due to an increase in spousal support; and
  3. The parent or caretaker relative must continue to have a dependent child in the home in order to receive Transitional Medicaid.
- (g) Household size is based upon the MAGI household composition Rule .06.
- (h) Income Limitations: See Rule .06.

Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-106, 71-5-110, 71-5-111 and 71-5-117.

1200-13-20-.08 Aged, Blind or Disabled Categories.

- (1) Supplementary Security Income (SSI) Cash recipient.
  - (a) Aged, blind or disabled individuals who are determined eligible for SSI payments by the SSA are eligible for TennCare Medicaid. Once SSI payments in Tennessee stop, the individual becomes an inactive SSI enrollee who must be reviewed for eligibility in all other categories.
  - (b) Effective date of eligibility: Date of eligibility as determined by the SSA.
- (2) Disabled Adult Child.
  - (a) Definition: See Rule .02.
  - (b) Technical Requirements: See Rule .04.
  - (c) Special Eligibility Requirements: Disabled adult children who lose SSI eligibility after July 1, 1987 because of the receipt of or an increase in benefits for DAC payments under Title II of the Social Security Act will remain eligible for Medicaid if the initial entitlement under Title II above and/or cost of living increases, whichever caused the ineligibility for SSI, were disregarded.
  - (d) Income Limitations: SSI Federal Benefit Rate.
  - (e) Resource Limitations: \$2,000.00 for an individual, \$3,000.00 for a couple.
  - (f) Effective Date of Eligibility: Eligibility begins on the Application File Date, according to Rule .05, or the date all eligibility requirements are met, whichever is later.
- (3) Pickle Passalong.

- (a) Definition: See Rule .02.
  - (b) Technical Requirements: See Rule .04.
  - (c) Special Eligibility Requirements: TennCare Medicaid benefits are available to individuals who would be eligible for SSI payments if increases in their Social Security benefits due to cost of living adjustments were disregarded. Individuals who meet all other non-financial and financial eligibility requirements remain eligible for TennCare Medicaid if they:
    1. Were eligible for and received both Social Security and SSI benefits in the same month since April 1977. The SSI recipient who receives Social Security retroactive benefits is considered for TennCare Medicaid purposes to have received SSI and Social Security benefits in the same month, if Social Security eligibility overlaps a month the individual also received SSI benefits;
    2. Lost eligibility for SSI since April 1977;
    3. Currently receive Social Security benefits authorized under Title II of the Social Security Act; and
    4. Have countable income equal to or less than the current SSI Federal Benefit Rate after all applicable cost of living adjustments have been deducted.
  - (d) Income Limitations: SSI Federal Benefit Rate.
  - (e) Resource Limitations: \$2,000.00 for an individual, \$3,000.00 for a couple.
  - (f) Effective Date of Eligibility: Eligibility begins on the Application File Date, according to 1200-13-20-.05, or the date all eligibility requirements are met, whichever is later.
- (4) Widow/Widower.
- (a) Definition: See Rule .02.
  - (b) Technical Requirements: See Rule .04.
  - (c) Special Eligibility Requirements. A disabled widow/widower is eligible for TennCare Medicaid for any month in which he is entitled to a Social Security Widow/Widower benefit, but is not eligible for SSI, if he:
    1. Was eligible for SSI based on his own disability;
    2. Was entitled to the Social Security Widow/Widower benefit any time after the age of fifty (50);
    3. Lost SSI eligibility in the first month that the Social Security Widow/Widower benefit was paid;
    4. Has been continuously entitled to the Social Security Widow/Widower benefit from the month that the SSI was authorized;
    5. Would be eligible for SSI if the Widow/Widower entitlement and all subsequent COLAs were disregarded;
    6. Is not entitled to Medicare Part A; and
    7. Is at least age fifty (50) and up to age sixty-five (65).
  - (d) Income Limitations: SSI Federal Benefit Rate.

- (e) Resource Limitations: \$2,000.00 for an individual, \$3,000.00 for a couple.
  - (f) Effective Date of Eligibility: Eligibility begins on the Application File Date, according to Rule .05, or the date all eligibility requirements are met, whichever is later.
- (5) Institutional Eligibility.
- (a) Definition: See Rule .02.
  - (b) Technical Requirements: See Rule .04.
  - (c) Special Eligibility Requirements: To gain eligibility in this category, applicants must either be determined to meet the medical (level of care) eligibility criteria for CHOICES or ECF CHOICES, according to Rule Chapter 1200-13-01, to receive payments for long term services and supports through the CHOICES or ECF CHOICES benefits package or be continuously confined in an institution for thirty (30) consecutive days. Receipt of hospice services in a nursing facility for any length of time meets the 30-day continuous confinement requirement.
  - (d) Household size is based upon the Aged, Blind, and Disabled household composition Rule .06.
  - (e) Income Limitations: Income shall not exceed three hundred percent (300%) of the SSI Federal Benefit Rate for an individual.
  - (f) Resource Limitations: Resources shall not exceed \$2,000.00 for an individual.
  - (g) Effective Date of Eligibility: Eligibility begins on the Application File Date, according to Rule .05, or the date all eligibility requirements are met, whichever is later.
  - (h) Special Asset Rules:
    1. Asset Disregards for Qualified Long-Term Care Insurance Policies.
      - (i) Individuals who purchase a qualified long term care insurance policy may have certain assets disregarded in the determination of eligibility for TennCare. TennCare shall disregard an individual's assets up to the amount of payments made by the individual's qualifying long-term care insurance policy for services covered under the policy at the time of TennCare application.
      - (ii) The amount of the individual's assets properly disregarded under these provisions shall continue to be disregarded through the lifetime of the individual.
      - (iii) Assets which were disregarded for purposes of Medicaid eligibility determination during the individual's lifetime are also protected from estate recovery. When the amount of assets disregarded during the individual's lifetime was less than total benefits paid by the qualified long term care insurance policy, additional assets may be protected in the estate recovery process up to the amount of payments made by the individual's qualifying long term care policy for services covered under the policy. If no assets were disregarded during the individual's lifetime, the personal representative may designate assets to protect from estate recovery up to the lesser of the two options specified above, even if a qualified long term care policy's benefits were not completely exhausted.
    2. Entrance Fees: Any contractual provision requiring the resident to deposit entrance fees must take into account the required allocation of resources or income to the community spouse before determining the resident's cost of care. In addition, the entrance fee paid to the

Continuing Care Retirement Community (CCRC) or life care community is treated as a resource to an individual for purposes of determining Medicaid eligibility. The following three (3) conditions must be met in order for the entrance fee to be considered an available resource:

- (i) Any portion of the entrance fee is refunded or used to pay for care under the terms of the entrance contract should other resources of the individual be insufficient;
  - (ii) The entrance fee, or any portion thereof, is refundable under the terms of the contract when the individual dies or terminates the contract and leaves the CCRC or life care community, whether or not any amount is actually refunded; and
  - (iii) The entrance fee does not confer an ownership interest in the community.
3. Funds used to purchase a loan, mortgage or promissory note after February 8, 2006 must be treated as a transfer of assets unless it has a repayment term that is actuarially sound, provides for payments to be made in equal amounts during the term of the loan with no deferral or balloon payment, and prohibits cancellation of the balance upon the death of the lender. If an individual purchases a home from a nursing home applicant and the purchase agreement does not meet the criteria of this part, the value of the home will be the outstanding balance due as of the date of the application for Medicaid.
  4. A life estate interest purchased by a nursing home applicant in another individual's home shall be treated as a transfer of assets unless the nursing home applicant resides in the home for a period of at least one (1) year after the date of the purchase.
- (i) **Transfer of Assets** – A transfer of assets is transferring ownership of a resource for less than fair market value (FMV). An applicant for Institutional Eligibility shall not transfer assets for less than FMV during the sixty (60) months prior to the date of application. If an individual is found to have transferred an asset for less than FMV, he will be ineligible for payments for Long-Term Services and Supports.
1. An individual shall not receive a period of ineligibility to the extent that the transfer meets the requirements of 42 USC 1396p(c)(2)
  2. The transfers indicated below, if occurring on or after February 8, 2006, may be considered a transfer of assets for less than FMV with respect to an individual applying for Medicaid based on institutionalization:
    - (i) If the transfer of assets occurs within sixty (60) months of application for institutional care.
    - (ii) If the institutionalized individual, his spouse, or any person, court or administrative body with authority to act on behalf of, or at the direction or request of, the individual or his spouse, establishes a trust or similar device, which includes the individual's assets and cannot be used by or for the individual's benefit, if it occurred within sixty (60) months of application for institutional care.
    - (iii) If an asset is held jointly by the institutionalized individual with another person and the individual or other owner reduces or eliminates the institutionalized individual's ownership or control of the asset, if it occurred within sixty (60) months of application for institutional care.
- (j) **Penalty for transfer of assets.**
1. The institutionalized individual may be subject to penalty if the transfer was completed by the individual; the individual's spouse; a person (including a court) or administrative body with legal authority to act in place of, or on behalf of, or at the direction or request of the institutionalized

individual or his spouse.

2. Assets include all income and resources, including the home, unless transferred as indicated in subparagraph (i) above, of the institutionalized individual and his spouse, (including income and/or resources the individual is entitled to, but does not receive because of any action by the individual or his spouse or a person (including a court) or administrative body with legal authority to represent the individual, his spouse, or who acts at the direction or request of the individual and his spouse).
  3. Penalty period: The period of ineligibility for payments for long-term services and supports in the CHOICES Program imposed for transfers of assets within sixty (60) months prior to application for long term care nursing services.
    - (i) The penalty period is determined by dividing the uncompensated value of the transferred asset by the average daily nursing home private pay rate. In determining the penalty for a transfer a State may not round down or disregard any fractional period of ineligibility. There is no limit on the maximum months of ineligibility. The penalty continues until expired unless hardship is considered to exist.
    - (ii) The penalty period for individuals receiving nursing home care begins the month the individual becomes eligible for LTSS through the CHOICES Program or the month of the transfer, whichever is later. The penalty period for HCBS begins the date of application or the date of the transfer for individuals already receiving HCBS. The penalty period runs consecutively even if the individual leaves the nursing home for a period of time and later returns. If a penalty period is imposed for new applicants, Medicaid requires a notice of penalty. If a penalty period is imposed on an individual who is already receiving Medicaid, a ten (10) day adverse action notice is required.
    - (iii) Applicants for, or enrollees in, nursing home coverage can still remain eligible in an Institutional Eligibility category while payments for LTSS are withheld. Applicants for, or enrollees in, HCBS cannot be eligible for an Institutional Eligibility category while subject to the period of ineligibility.
    - (iv) Penalty periods for more than one transferred asset will run consecutively, not concurrently. Any uncompensated value from multiple transfers is added to the initial uncompensated value if penalty periods overlap to determine the consecutive penalty period.
- (k) Undue hardship.
1. Undue Hardship shall exist only when:
    - (i) An application of a transfer of assets provision would deprive the individual of medical care, such that the individual's health or life would be endangered, or of food, clothing, shelter, or other necessities of life;
    - (ii) The institutionalized individual has no available resources (other than the uncompensated value) in excess of the resource limitations, and
    - (iii) The necessary care is not available from any other source.
  2. The individual, the individual's responsible party, or the facility in which an institutionalized individual resides may file an undue hardship claim on behalf of the applicant/recipient. TennCare will determine whether hardship exists and notify the applicant/recipient within thirty (30) days of filing.
  3. If undue hardship is determined not to exist, the denial of undue hardship may be appealed

within forty (40) days.

- (l) Patient Liability - Individuals determined eligible for Institutional Eligibility are required to contribute to the cost of their care as a resident in a nursing facility or as a Home and Community Based Services (HCBS) recipient.
1. Patient liability is determined by allowing the following deductions from the individual's gross income:
    - (i) A Personal Needs Allowance (PNA) for clothing and other personal needs while receiving Institutional Eligibility. Apply the appropriate PNA based on the type of long term services and supports the individual receives, as follows:
      - (I) Nursing Facility. \$50.00 PNA from the gross income of an individual in a nursing facility.
      - (II) HCBS, PACE and Self-Determination ID Waivers. PNA is three hundred percent (300%) of the SSI FBR.
      - (III) Statewide ID and Comprehensive Aggregate Cap ID Waivers. PNA is two hundred percent (200%) of the SSI FBR.
    - (ii) An allowance equivalent to the monthly fee for maintenance of a QIT, if applicable.
    - (iii) A CSIMA for institutionalized individuals with a spouse residing in the community.
    - (iv) A DIMA for institutionalized individuals with a dependent residing in the community.
    - (v) Health insurance premiums, coinsurance and deductibles.
    - (vi) Expenses for medical services as defined at 42 C.F.R. §§ 435.725(c)(4) and 726(c)(4).
  2. Community Spouse Income Maintenance Allowance (CSIMA) – When determining an institutionalized individual's patient liability, an allowance is deducted from his income for the needs of the community spouse. The CSIMA is allowed unless specifically refused by the institutionalized spouse. Funds must actually be transferred to the community spouse in order to be deducted.
    - (i) CSIMA is allowed under the following conditions:
      - (I) CSIMA is not allowed if both spouses are receiving Institutional Eligibility, unless one spouse is receiving HCBS.
      - (II) If the community spouse applies for TennCare Medicaid, the CSIMA will be counted as unearned income at the time of application.
      - (III) A community spouse receiving need-based assistance does not have to accept the total or any of the income allocation if it will result in the termination or decrease of those benefits.
      - (IV) If a couple is married but living separately, and considers themselves to be separated, the CSIMA may be allowed if both individuals agree to the allocation and the community spouse is not institutionalized.
      - (V) If the community spouse lives out of State, the CSIMA is allowed if the community

spouse can be located and the couple is still married.

- (ii) CSIMA Terms and Standards:
  - (I) Standard Maintenance Amount (SMA): The minimum monthly amount of income, as determined by CMS, that the Community Spouse must receive to meet basic needs. This is subject to annual change by CMS and released with SSI and Spousal Impoverishment Standards.
  - (II) Maximum Maintenance Needs Allowance (Maximum MNA): The maximum monthly amount of income, as determined by CMS, that the Community Spouse can receive as a CSIMA. This is subject to annual change by CMS and released with SSI and Spousal Impoverishment Standards.
  - (III) Standard Utility Amount (SUA): The SUA is used when the community spouse is responsible for heating and/or cooling costs. If the SUA is used, then it is considered to cover all utilities, including garbage, water, lighting, etc. The SUA is subject to annual change by the Tennessee Department of Human Services.
  - (IV) Standard Housing Allowance (SHA): The SHA is used to determine whether the community spouse requires an Excess Shelter Allowance. This is subject to annual change by CMS and released with SSI and Spousal Impoverishment Standards.
- (iii) CSIMA Calculation: The CSIMA is calculated using three steps:
  - (I) Determine Excess Shelter Allowance (ESA).
    - I. An ESA is allowed when the total shelter costs for rent, mortgage, taxes and insurance, maintenance charges and utility costs exceed the SHA. The SHA is thirty percent (30%) of the Standard Maintenance Amount.
    - II. The SUA is used when the community spouse is responsible for heating or cooling costs. If the SUA is used then it is considered to cover all utilities (no additional allowance for garbage, telephone, etc.). When there is no or reduced cost to the community spouse because the cost of a particular utility is paid by a third party (in cash or in-kind), reduce the amount of the SUA by the third party payment.
    - III. To determine the ESA, add rent, mortgages, taxes, insurance, etc., to the SUA, then subtract the SHA.
  - (II) Determine Community Spouse Net Income. Defined as income over which the Community Spouse has control and which is actually available to him. Child support payments and other types of court-ordered payments made by the Community Spouse are not considered income available to the Community Spouse.
  - (III) Calculate CSIMA: The CSIMA is calculated by adding the SMA and the ESA, and then subtracting the Community Spouse's net income.
- 3. Dependent Income Maintenance Allowance (DIMA): When determining patient liability, an allowance is deducted from the individual's income for the needs of his dependents.
  - (i) Dependent relatives include all individuals who can be or are being claimed as tax dependents.
  - (ii) A DIMA is not allowed for any dependent receiving HCBS or who is institutionalized.

- (iii) Pursuant to the Medicare Catastrophic Coverage Act, a dependent does not have the option of declining all or a portion of the income allocation for any reason, even if needs-based benefits may be decreased or lost because of the allocation.
- (iv) The total of both the CSIMA and DIMA combined cannot exceed the Maximum MNA.
- (v) The Maximum MNA for each additional dependent family member is equal to one-third of the difference between the SMA and the dependent's gross income.
- (vi) DIMA Calculation: The dependent allocation(s) equals the SMA for the community spouse minus the dependent's own gross countable income divided by 3.

4. Item D Expenses: Expenses for medical or remedial care not subject to third party payment as defined at 42 C.F.R. §§ 435.725(c)(4), .726(c)(4) and .832, and outlined in the State Plan are allowable deductions. Criteria for Deduction of an Item D Expense:

- (i) The expense must not be subject to payment by a third party not expecting reimbursement, e.g., medical or health insurance, the individual's spouse or family or medical trust fund, Medicare, etc.
- (ii) The expense may be unpaid or paid by the individual during the month(s) of eligibility determination or paid by a member of the individual's family and reimbursement is expected by the family member.
- (iii) The expense must not have been allowed previously as an allowed necessary item.
- (iv) If payment for the item is outstanding, it must be considered collectible by the party who provided the medical service and one for which the individual is legally liable.
- (v) Medical expenses incurred during TennCare Medicaid ineligibility do not impact whether the bill is an allowable medical expense.
- (vi) Deductions will be allowed in compliance with 42 C.F.R. §§ 435.725(c)(4), .726(c)(4), and .832, and the State Plan.

(m) Resource Assessment and CSRMA.

1. Resource Assessment: When determining eligibility for a married institutionalized applicant, a calculated amount of the couple's assets is allocated to the community spouse in order to be used for her own needs. The resource assessment is a snapshot of all countable assets owned by the couple at the time the individual enters the nursing facility but conducted when the individual applies or when an assessment is requested prior to application, or is a snapshot at the time of application resulting in enrollment in an HCBS waiver. All of the countable resources owned individually or jointly by both spouses are counted; resources excluded under the ABD resource rules are not counted in the resource assessment.

- (i) Only one resource assessment will be completed for a married couple.
- (ii) Under no circumstances can a resource assessment be completed prior to the date of admission to a long term care facility or enrollment in an HCBS waiver.
- (iii) An assessment remains in effect until a HCFA application is filed, regardless of any interruptions in long-term care. If a resource assessment is completed and the individual applies for TennCare Medicaid, but is found ineligible, the original resource assessment is still valid if the individual applies again in the future.

2. Community Spouse Resource Maintenance Allowance: The CSRMA is based on the spouses' combined countable resources documented in the Resource Assessment. The amount of the CSRMA is the greater of:
  - (i) One-half (1/2) of the total countable resources, but not less than the Minimum Resource Standard or greater than the Maximum Resource Standard (released in the SSI and Spousal Impoverishment Standards and subject to change annually);
  - (ii) The court-ordered amount; or
  - (iii) The amount determined by a HCFA Eligibility Appeals Administrative Judge due to a hardship situation (extreme financial duress).
3. When an application is filed by or on behalf of the spouse seeking LTSS, the CSRMA amount determined in the resource assessment is the amount allocated to the community spouse. This amount is deducted from the combined resources of both spouses as of the first day of the first month for which assistance is requested. None of the community spouse's share of the resources is considered available to the individual seeking eligibility when determining her TennCare Medicaid eligibility.
4. Refusal of CSRMA. - A community spouse who receives needs-based assistance may accept or decline all, some or none of the CSRMA if the allocation would cause the loss of or decrease in those program benefits. If the community spouse accepts only a portion of the CSRMA, the unclaimed portion of the CSRMA is counted as part of the institutionalized spouse's resources.
5. Resource Transfer as a Result of Assessment.
  - (i) CSRMA "Grace Period" - Following a resource assessment and initial approval of eligibility, resources must be transferred within twelve (12) months of the approval. Both spouses must agree to the transfer in order to use the institutionalized spouse's share in determining his or her eligibility. The transfer may require conveyance of resources from the institutionalized individual to the community spouse, or vice versa.
  - (ii) Transfer Refusal - When the community spouse refuses to transfer resources to the institutionalized individual, the institutionalized spouse may still be eligible if on appeal the State finds that undue hardship circumstances exist.
    - (I) If the community spouse has available assets over the CSRMA she is legally obligated to provide support.
    - (II) Hardship cannot be determined to exist unless assets have been reallocated as the result of an appeal decision or a court order.
  - (iii) CSRMA Appeals.
    - (I) When the Individual and/or Spouse Has Appeal Rights - Appeal rights are considered only after a HCFA application has been filed and either spouse alleges that the assessment or eligibility determination decision is not correct. An assessment completed exclusive of a filed application cannot be appealed, 42 U.S.C. § 1396r-5(e)(2)(A). Revisions to the spousal allowance of resources can be made by an HCFA Eligibility Appeals Administrative Judge or by court order.
    - (II) CSRMA Revisions - The amount of the CSRMA may only be revised by an HCFA Eligibility Appeals Administrative Judge or by court order, and only if additional verification/documentation is provided. The CSRMA may only be revised when:
      - I. The initial assessment was alleged to be incorrect and the HCFA Eligibility

Appeals Administrative Judge confirms the allegations.

- II. The community spouse's income, including the CSIMA, is inadequate to meet the basic standard maintenance amount.

(III) Allocation of Additional Resources to the Community Spouse.

- I. When Additional Resources May be Allocated to Community Spouse: An HCFA Eligibility Appeals Administrative Judge may determine a larger CSRMA if necessary to offset a CSIMA that is below the required SMA. In the event that the institutionalized spouse does not have enough income to provide the community spouse with the SMA, and the couple has additional resources above the community spouse's protected amount (CSRMA), some or all of the institutionalized individual's resources can be allocated to the community spouse.
- II. The Deficit Reduction Act (DRA) of 2005 requires all States to allocate the maximum amount of available income of the institutionalized spouse to the community spouse before granting an increase in the CSRMA. This is referred to as the "income-first" method.
- III. Procedure: HCFA uses the Single Fixed Annuity model to address appeals when there is insufficient income to provide the community spouse with the minimum required CSIMA and the couple has additional resources. A single fixed annuity can turn a portion of an individual's savings into income payments made for the rest of the individual's life. The procedure for establishing a Single Fixed Annuity is listed below.
  - A. Additional resources may be allocated to the community spouse through the HCFA eligibility appeals process to make up any shortfall between the amount of income allocated from the institutional spouse to the community spouse and the SMA, if determined appropriate.
  - B. The amount of additional resources that are necessary to cover the income shortfall shall be determined in reference to the purchase of a Single Premium Annuity as follows:
    - (A) By calculating the shortfall between the amount of income allocated and the SMA, and then determining the amount of additional resources that must be invested in a single premium annuity in order to generate the income necessary to cover the shortfall.
    - (B) The amount of resources needed to cover the shortfall shall be determined in reference to an annuity calculator as adopted by the HCFA.
    - (C) The additional resource allocation to the community spouse does not require the actual purchase of a Single Premium Annuity that is used for purposes of calculating the amount of the additional resource allocation.
    - (D) The amount of the community spouse's protected resources shall be excluded from this calculation.
    - (E) If a single premium annuity is actually purchased pursuant to these rules, the annuity must comply with all other relevant

requirements of State and federal law.

- (F) The amount of additional resources that are necessary to cover the shortfall in the SMA shall not be determined in reference to any investment which contemplates the return of the entire principal at maturity.

(iv) Transfer of Assets for Less than Fair Market Value.

- (I) A transfer of assets for less than FMV is not considered to have occurred when resources are transferred from the institutionalized individual to the community spouse or vice versa according to a completed resource assessment.
- (II) Should the spouse who received the allocation according to the resource assessment then transfer the resource to someone else for less than FMV, the transfer will be treated as a transfer of assets by the institutionalized individual.
- (III) Transfer of assets for less than FMV is considered part of the application process whether or not a resource assessment has been requested previously or is requested at application. Transfer of assets is not considered if a resource assessment only (no TennCare Medicaid application filed concurrently) is requested.

(6) Medicare Savings Programs.

(a) QMB.

1. Definition: See Rule .02.
2. Eligibility for this program is not eligibility for Medicaid coverage. An individual eligible for QMB is eligible for TennCare Buy-in of his Medicare premiums, and payment of Medicare coinsurance and deductibles.
3. Technical Requirements: See Rule .04.
4. Household size is based upon the ABD household composition Rule .06.
5. Income Limitations: Below one hundred percent (100%) of the FPL.
6. Resource Limitations: Limits for an individual and couple as determined by SSA.
7. Effective Date: First day of the month following the month in which the application is approved.

(b) SLMB.

1. Definition: See Rule .02.
2. Eligibility for this program is not eligibility for Medicaid coverage. An individual eligible for SLMB is eligible for TennCare Buy-in of his Medicare Part B premiums.
3. Technical Requirements: See Rule .04.
4. Household size is based upon the ABD household composition Rule .06.
5. Income Limitations: Over one hundred percent (100%) but less than one hundred twenty percent (120%) of the FPL.

6. Resource Limitations: Limits for an individual and couple as determined by SSA.
7. Effective Date: Eligibility begins on the Application File Date, according to Rule .05, or the date all eligibility requirements are met, whichever is later.

(c) QI1.

1. Definition: See Rule .02.
2. Eligibility for this program is not eligibility for Medicaid coverage. An individual eligible for QI1 is eligible for TennCare Buy-in of his Medicare Part B premiums, pursuant to State allocation of federal funds. The individual may not be receiving TennCare Medicaid.
3. Technical Requirements: See Rule .04.
4. Household size is based upon the ABD household composition Rule .06.
5. Income Limitations: Over one hundred twenty percent (120%) but less than one hundred thirty-five percent (135%) of FPL.
6. Resource Limitations: Limits for an individual and couple as determined by the SSA.
7. Effective Date: Eligibility begins on the Application File Date, according to Rule .05, or the date all eligibility requirements are met, whichever is later.

(d) QDWI.

1. Definition: See Rule .02.
2. Eligibility for this program is not eligibility for Medicaid coverage. An individual eligible for QDWI is eligible for TennCare Buy-in of his Medicare Part A premiums, but not for Part B premiums.
3. Technical Requirements: See Rule .04.
4. Special Eligibility Requirements: An individual must be under age sixty-five (65), have a disabling impairment as determined by the SSA, and be eligible to enroll in Medicare Part A but no longer entitled to free Medicare Part A due to substantial gainful activity.
5. Household size is based upon the ABD household composition Rule .06.
6. Income Limitations: Two hundred percent (200%) of FPL.
7. Resource Limitations: Resources not exceeding twice the maximum for SSI.
8. Effective Date: Eligibility begins on the Application File Date, according to Rule .05, or the date all eligibility requirements are met, whichever is later.

(7) Other.

(a) Medically Needy Children and Pregnant Women.

1. Definition: See Rule .02.
2. Technical Requirements: See Rule .04.
3. Special Eligibility Requirements: Applicants for the Medically Needy Pregnant Woman category must be pregnant at the time of application. Applicants for the Child Medically Needy

category must be under age twenty-one (21).

4. Household size is based upon the AFDC-Related household composition information set out in Rule .06.
5. Income Limitations: Household income must be less than or equal to the MNIS, based on household size. When household income exceeds the MNIS, based on household size, the individual must meet a spend-down obligation as outlined in the State Plan. See Rule .06.
6. Resource Limitations: Medically Needy applicants are permitted to retain resources not to exceed \$2,000.00 for an individual, \$3,000.00 for two individuals and an additional \$100.00 is added per additional individual. See Rule .06.
7. Effective Date of Eligibility: Eligibility begins on the Application File Date, according to Rule .05, or the date all eligibility requirements are met, whichever is later.
8. Other: Pregnant women enrolled in the Medically Needy program shall receive continuous coverage through two (2) months postpartum, regardless of income changes.

(b) Breast and Cervical Cancer Category of Eligibility.

1. Definition: See Rule .02.
2. Technical Requirements: See Rule .04.
3. Special Eligibility Requirements:
  - (i) Individuals must be younger than age sixty-five (65) and must lack health insurance that will cover treatment for breast and/or cervical cancer. Once third party coverage of cancer has been exhausted, the applicant will be considered to no longer have health insurance.
  - (ii) Individuals must first be screened and approved by the Department of Health's BCSP.
  - (iii) Individuals must be actively undergoing treatment for breast or cervical cancer. A Treatment Plan Form signed by the applicant's physician must be submitted to TennCare. Individuals who are determined to require only routine monitoring services for a precancerous breast or cervical condition are not considered to need treatment for purposes of this section. Surveillance after treatment of cancer (breast or cervical) will not qualify as treatment for purposes of this section.
4. Income Limitations: Income cannot exceed two hundred fifty percent (250%) of the FPL, as determined by the Department of Health through its BCSP.
5. Resource Limitations: None.
6. Effective Date of Eligibility: Eligibility begins on the Application File Date, according to Rule .05, or the date all eligibility requirements are met, whichever is later.

(c) Presumptive Breast or Cervical Cancer.

1. Definition: See Rule .02.
2. Technical Requirements: See Rule .04.
3. Special Eligibility Requirements:

- (i) Individual must be determined to be presumptively eligible by the Department of Health.
  - (ii) Individual must be younger than age sixty-five (65) and must lack access to health insurance that will cover treatment for breast and/or cervical cancer.
  - (iii) The presumptive eligibility period will last either until the end of the month following the month of application or determination of a full Medicaid application, as defined in 42 U.S.C. § 1396r-1b.
4. Income Limitations: Income cannot exceed two hundred fifty percent (250%) of the FPL, as determined by the Department of Health through its BCSP program.
  5. Resource Limitations: None.
  6. Effective Date of Eligibility: The date eligibility is determined by the Tennessee Department of Health.
- (d) Payment for Emergency Medical Services.
1. Definition: See Rule .02.
  2. Technical Requirements: See Rule .04. Individuals must meet eligibility requirements for a Medicaid category except for citizenship and enumeration.
  3. Special Eligibility Requirements: Individuals who meet all eligibility criteria except citizenship and immigration status for the following TennCare categories of eligibility:
    - (i) Caretaker Relative;
    - (ii) Infants and Children Under Age 19;
    - (iii) Pregnant Woman; or
    - (iv) Child or Qualified Pregnant Woman Medically Needy.
  4. Individuals in one of the above categories may qualify for payment for emergency medical services in which the individual has a medical condition, including labor and delivery, manifested by acute symptoms of sufficient severity which, if not attended to immediately, could reasonably be expected to result in:
    - (i) Placing the patient's health in serious jeopardy;
    - (ii) Severe impairment to bodily functions; or
    - (iii) Serious dysfunction of any bodily organ or part.
  5. Household size is based upon the appropriate TennCare category for which the enrollee is seeking coverage.
  6. Income Limitations: Must meet financial criteria of one of the respective TennCare categories (Caretaker Relative, Infants and Children Under Age 19, TennCare Pregnant Woman, or Child or Qualified Pregnant Woman Medically Needy).
  7. Resource Limitations: If an individual would be otherwise eligible for a Medically Needy category except for citizenship or immigration status, then the individual's resource limits are identical to those found in Rule .06, AFDC-Related Financial Determinations. If an individual would be otherwise eligible for a MAGI category except for citizenship or immigration status,

then the individual's resources are not considered.

8. **Effective Date of Eligibility:** Eligibility will not begin prior to the date of admission, nor will coverage begin prior to the date of application, and will be limited to the length of time required to stabilize the emergent episode, as defined at 42 C.F.R. § 440.255. Only the services involved in the emergency itself will be reimbursed and coverage is only provided for the single episode of care.

Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-106, 71-5-110, 71-5-111 and 71-5-117.

1200-13-20-.09 Redetermination and Termination.

- (1) Redetermination of eligibility for CoverKids, TennCare Medicaid's Core Medicaid Population, and TennCare Standard.
  - (a) Redetermination or renewal is the process of verifying whether an enrollee continues to meet the eligibility requirements of a particular HCFA program.
    1. A TennCare Medicaid, TennCare Standard or CoverKids enrollee must have eligibility redetermined once every twelve (12) months, and no more frequently than once every twelve (12) months, absent a waiver from CMS.
    2. Redetermination dates are set twelve (12) months from the date the individual is determined eligible for TennCare Medicaid, TennCare Standard or CoverKids, or as otherwise agreed between the Single State Agency and CMS.
  - (b) Enrollees eligible for TennCare Medicaid as a result of being eligible for SSI benefits shall follow the Redetermination requirements of the SSA. Once SSI benefits are terminated, these enrollees will be reviewed by the State for eligibility in all other categories prior to termination.
  - (c) An enrollee's TennCare Medicaid, TennCare Standard or CoverKids eligibility shall be redetermined as required by the appropriate category of medical assistance as described in this Rule, unless otherwise agreed to by the Single State Agency and CMS. Prior to the termination of TennCare Medicaid, TennCare Standard or CoverKids eligibility, eligibility will be redetermined according to the following process:
    1. HCFA will redetermine eligibility prior to the expiration of the enrollee's current eligibility period.
    2. HCFA will issue a renewal packet to redetermine eligibility. TennCare Medicaid, TennCare Standard or CoverKids enrollees will be given forty (40) days, inclusive of mail time, from the date the notice is mailed to return the completed renewal packet to HCFA. The mail date will be the date on the notice. The enrollee may provide information by mail, fax or in-person, or as otherwise agreed to by the Single State Agency and CMS.
    3. HCFA will provide assistance with submitting a renewal form according to Rule .05(4).
    4. HCFA will use the individual's responses in the renewal packet to complete redetermination. HCFA will request additional verification, as needed, to complete redetermination. The request for additional information or verification will provide the enrollee with twenty (20) days, inclusive of mail time, to submit the requested information.
    5. If HCFA is able to renew eligibility in a TennCare Medicaid, TennCare Standard or CoverKids category based on information provided in the renewal packet, in addition to information known to HCFA and requested verifications, the agency will notify the enrollee and enroll him in the new appropriate category.

6. Enrollees who respond to the renewal form within the forty (40) day period shall retain their eligibility (subject to any changes in covered services generally applicable to enrollees in their Medicaid category) while HCFA reviews their eligibility for open Medicaid categories and CoverKids. If HCFA determines that the enrollee is eligible for a TennCare Medicaid, TennCare Standard or CoverKids category, the agency will notify the individual as follows:
    - (i) If HCFA determines that the enrollee is eligible for an open TennCare Medicaid category, the agency will notify the enrollee and he will be enrolled in the appropriate category. The previous category will be closed with no further notice to the enrollee.
    - (ii) If HCFA determines that the enrollee is eligible for a TennCare Standard category, the agency will notify the enrollee and he will be enrolled in the appropriate category. Notification of enrollment into TennCare Standard will include notification of the denial of TennCare Medicaid eligibility.
    - (iii) If HCFA determines that the enrollee is eligible for CoverKids, the agency will notify the enrollee and he will be enrolled into the CoverKids program. Notification of enrollment into CoverKids will include the denial of TennCare Medicaid eligibility.
  7. If an enrollee provides some but not all of the necessary information to HCFA to determine his eligibility for open Medicaid categories or CoverKids during the forty (40) day period following the mailing of the renewal packet, HCFA will request additional information or verification. The request for additional information or verification will provide the enrollee with twenty (20) days, inclusive of mail time, to submit the requested information.
  8. Enrollees who do not respond to the renewal packet within forty (40) days, or enrollees who do not respond to a request for additional information or verification within twenty (20) days from the request for additional information or verification, will be sent a notice of termination informing the enrollee that coverage will be terminated twenty (20) days from the date of the termination notice.
  9. If HCFA makes a determination that the enrollee is not eligible for any open Medicaid categories, TennCare Standard or CoverKids, the enrollee will be sent a notice of termination informing the enrollee that coverage will be terminated twenty (20) days from the date of the termination notice.
  10. Enrollees who respond to the additional information or verification request after the requisite time period specified in those notices but before the date of termination shall retain their eligibility for TennCare Medicaid, TennCare Standard or CoverKids while HCFA reviews their eligibility.
  11. Individuals may provide the renewal packet, or additional information and verifications specified in the request for additional information and verification notice, up to ninety (90) days after termination of eligibility. Renewal packets or additional information and verification received during the ninety (90) day reconsideration period will be processed without requiring a new application. Individuals terminated for failure to respond and subsequently determined eligible during the ninety (90) day reconsideration period will have eligibility reinstated as of the date of termination.
  12. Renewal packets returned after ninety (90) days will be considered new applications and processed in compliance with Rule .05.
- (d) An individual who has been determined eligible for TennCare Medicaid under the rules for BCC shall annually recertify eligibility in terms of continuation of active treatment, address, and access to health insurance. If the individual is found to no longer be eligible through this review, the individual will be reviewed using the redetermination process set forth in this paragraph.

(2) Termination of TennCare Medicaid, TennCare Standard and CoverKids eligibility.

- (a) HCFA will send termination notices to all enrollees being terminated pursuant to State and federal law who are not determined to be eligible for open Medicaid or TennCare Standard categories, or CoverKids.
- (b) Termination notices will be sent twenty (20) days in advance of the date the coverage will be terminated. Termination notices will be sent two (2) days in advance of the date coverage will be prospectively terminated when an enrollee requests termination. Termination notices will be sent to the HCFA address of record.
- (c) Termination notices will provide enrollees forty (40) days from the date of the notice to appeal the termination and will inform enrollees how they may request a hearing. Appeals will be processed by HCFA in compliance with Chapter 1200-13-19.
- (d) HCFA will reconsider eligibility after termination in compliance with 42 C.F.R. 435.916(a)(3)(iii).
- (e) Enrollees with a physical health problem, mental health problem, learning problem or a disability will be given the opportunity to request additional assistance for their appeal. Enrollees with limited English proficiency will have the opportunity to request translation assistance for their appeal.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-106, 71-5-110, 71-5-111 and 71-5-117.

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 09/12/2016 (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: 04/28/16

Rulemaking Hearing(s) Conducted on: (add more dates). 06/27/16

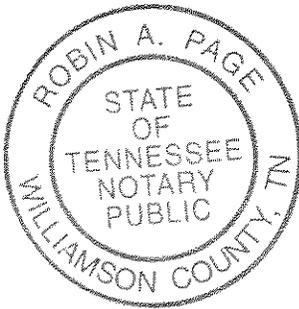
Date: 9/12/16

Signature: Wendy Long

Name of Officer: Wendy Long, M.D., M.P.H.

Director, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration



Subscribed and sworn to before me on: 9/12/16

Notary Public Signature: Robin A. Page

My commission expires on: 10/18/16

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.

Herbert H. Statz III  
Herbert H. Statz III  
Attorney General and Reporter  
9/14/2016 Date

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Filed with the Department of State on: 9/14/16

Effective on: 12/13/16

Tre Hargett  
Tre Hargett  
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: TennCare Medicaid - Employment and Community First (ECF) program

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-202, 71-5-105, and 71-5-109

EFFECTIVE DATES: December 29, 2016 through June 30, 2017

FISCAL IMPACT: The promulgation of rules relating to TennCare Long-Term Care Programs, TennCare Medicaid, and TennCare Standard is anticipated to increase state government expenditures by \$24,179,400.

STAFF RULE ABSTRACT: These rulemaking hearing rules are being promulgated to replace emergency rules which allowed for the implementation of the Employment and Community First (ECF) CHOICES 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.

One commenter suggested that TennCare's existing pharmacy limits should not apply to participants in the ECF CHOICES program. In response, HCFA noted that pharmacy limits applicable to individuals enrolled in ECF CHOICES are set forth in the State's approved 1115 waiver, and applied consistently across all long-term care programs and services in accordance with the Medicaid State Plan. As with other adults enrolled in TennCare, adults enrolled in ECF CHOICES who meet the institutional level of care are exempt from pharmacy limits; adults who do not meet such level of care are subject to the same limits as other adults enrolled in TennCare.

One commenter requested information on the eligibility criteria for ECF CHOICES and suggested that the rule appeared to "tighten" eligibility criteria. In response, HCFA noted that the financial eligibility requirements for ECF CHOICES are the same as those applicable to the state's existing Section 1915(c) waiver programs for individuals with intellectual disabilities and that the rule does not represent a "tightening" of eligibility criteria. HCFA referred the commenter to additional information on TennCare financial eligibility criteria available in Rule Chapter 1200-13-20.

## Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

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.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules are being promulgated to replace emergency rules which allowed for the implementation of the Employment and Community First (ECF) CHOICES program.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The Rules are lawfully adopted by the Bureau of TennCare in accordance with §§ 4-5-202, 71-5-105 and 71-5-109.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The persons and entities most directly affected by these Rules are the TennCare enrollees, providers, and managed care contractors. The governmental entity most directly affected by these Rules is the Bureau of TennCare, Tennessee Department of Finance and Administration.

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

The Rules were approved by the Tennessee Attorney General. No additional opinion was given or requested.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The promulgation of the TennCare Long-Term Care Programs, TennCare Medicaid and TennCare Standard rules is anticipated to increase state government expenditures by \$24,179,400.

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

Donna K. Tidwell  
Deputy General Counsel

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

Donna K. Tidwell  
Deputy General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

310 Great Circle Road  
Nashville, TN 37243  
(615) 507-6852  
donna.tidwell@tn.gov

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

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GW10216215

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**For Department of State Use Only**

Sequence Number: 09-37-16  
 Rule ID(s): 6322  
 File Date: 9/30/16  
 Effective Date: 12/29/16

## Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

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

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

- Amendments  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. 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-.02	Eligibility
1200-13-13-.03	Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS)
1200-13-13-.04	Covered Services
1200-13-13-.05	Enrollee Cost Sharing
1200-13-13-.08	Providers
1200-13-13-.10	Exclusions

Rules  
of  
Tennessee Department of Finance and administration  
Bureau of TennCare

Chapter 1200-13-13  
TennCare Medicaid

1200-13-13-.01 Definitions.

(6) Benefits shall mean the health care package of services developed by the Bureau of TennCare and which define the covered services available to TennCare enrollees. Additional benefits are available through the TennCare CHOICES program, as described in Rule 1200-13-01-.05, and the ECF CHOICES program, as described in Rule 1200-13-01-.31. CHOICES benefits are available only to persons who qualify for and are enrolled in the CHOICES program. ECF CHOICES benefits are available only to persons who qualify for and are enrolled in the ECF CHOICES program.

(#) Employment and Community First (ECF) CHOICES shall mean the program defined in Rule 1200-13-01-.02 and described in Rule 1200-13-01-.31.

(57) HOME HEALTH SERVICES shall mean:

(b) Home health providers shall only provide services to the recipient that have been ordered by the treating physician and are pursuant to a plan of care and shall not provide other services such as general child care services, cleaning services, preparation of meals, or services to other household members. Because children typically have non-medical care needs which must be met, to the extent that home health services are provided to a person under 18 years of age, a responsible adult (other than the home health care provider) must be present at all times in the home during the provision of home health services unless all of the following criteria are met:

4. No other children requiring adult care supervision shall be present in the home during the time the home health provider is present in the home without the presence of another responsible adult, unless these children meet all the criteria stated above and are also receiving TennCare-reimbursed home health services.

1200-13-13-.02 Eligibility.

(1) Delineation of agency roles and responsibilities.

(b) The Bureau of TennCare (Bureau) is the administrative unit within F&A with the responsibility for day-to-day operations of the TennCare Program. The Bureau is responsible for establishing policy and procedural requirements and criteria for TennCare.

3. With respect to the eligibility of individuals applying for the ECF CHOICES program, the Bureau is responsible for determining that the individual meets all applicable eligibility and enrollment criteria, including target population, medical or level of care eligibility, categorical and financial eligibility, the state's ability to provide appropriate ECF HCBS (as defined in Rule 1200-13-01-.02) as determined by the availability of slots under the established enrollment target for each ECF CHOICES Group in accordance with Rule 1200-13-01-.31 and pursuant to intake and enrollment policies and processes described in 1200-13-01-.31 and in TennCare policies and protocols, and for confirming a determination by a TennCare Managed Care Organization that the individual can be safely and appropriately served in the community and at a cost that does not exceed the individual's expenditure cap pursuant to Rule 1200-13-01-.31.

1200-13-13-.03 Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS).

(1) Enrollment.

There are three (3) different types of managed care entities that provide services to TennCare enrollees. Enrollment procedures differ according to the type of managed care entity, the geographic area, and the number of managed care entities operating in each geographic area. Enrollment procedures also differ for ECF CHOICES, as described in subparagraph (c) below.

(a) TennCare Managed Care Organizations (MCOs) other than TennCare Select.

1. Except as provided in subparagraph (c), individuals or families determined eligible for TennCare shall select a health plan (Managed Care Organization/MCO) at the time of application. The health plan must be available in the Grand Division of the State in which the enrollee lives. All family members living in the same household and enrolled in TennCare must be assigned to the same MCO except children determined by the Bureau to be eligible to enroll in TennCare Select. An enrollee is given his choice of MCOs when possible. If the requested MCO cannot accept new enrollees, the Bureau will assign each enrollee to an MCO that is accepting new enrollees. If no MCO is available to enroll new members in the enrollee's Grand Division, the enrollee will be assigned to TennCare Select until such time as another MCO becomes available. The Bureau may also assign TennCare children with special health care needs to TennCare Select.

Individuals enrolled as a result of being eligible for SSI benefits will be assigned to an MCO as they do not have the opportunity to select a health plan prior to the effective date of coverage, since they are enrolled through the Social Security Administration.

2. Except as provided in subparagraph (c), a TennCare enrollee may change MCOs one (1) time within the initial forty-five (45) calendar days (inclusive of mail time) from the date of the letter informing him of his MCO assignment, if there is another MCO in the enrollee's Grand Division that is currently permitted by the Bureau to accept new enrollees. No additional changes will be allowed except as otherwise specified in these rules. An enrollee shall remain a member of the designated plan until he is given an opportunity to change once each year during an annual change period. The annual change period will occur each year in March for enrollees in West Tennessee, in May for enrollees in Middle Tennessee, and in July for enrollees in East Tennessee. Thereafter, an MCO change is permitted only during an annual change period, unless the Bureau authorizes a change as the result of the resolution of an appeal requesting a "hardship" reassignment as specified in paragraph (2)(b) below. When an enrollee changes MCOs, the enrollee's medical care will be the responsibility of the current MCO until he is enrolled in the requested MCO.

(c) TennCare Managed Care Organizations (MCOs) for ECF CHOICES. Individuals enrolled in ECF CHOICES may select from only the MCOs participating in ECF CHOICES.

1. If an individual enrolled in an MCO other than an ECF CHOICES participating MCO wants to enroll in the ECF CHOICES program, the individual must choose to enroll in an ECF CHOICES participating MCO in order to enroll in ECF CHOICES.
2. If an individual enrolled in the ECF CHOICES program elects to transition to an MCO that is not participating in ECF CHOICES, the individual is choosing to voluntarily disenroll from ECF CHOICES. Because this is a voluntary decision, advance notice and the right to a fair hearing shall not be provided. However, the individual may elect to transition back to an ECF CHOICES participating MCO in order to resume enrollment in ECF CHOICES.

(ed) TennCare Dental Benefits Manager (DBM).

TennCare children shall be assigned to the Dental Benefits Manager (DBM) under contract with the Bureau to provide dental benefits through the TennCare Program. TennCare adults age 21 and older enrolled in ECF CHOICES shall be assigned to the DBM under contract with the Bureau to provide Adult Dental Services through the ECF CHOICES program as defined in 1200-13-01-.02.

(3) Disenrollment.

- (a) When it has been determined that an individual no longer meets the criteria for TennCare eligibility, that individual shall be disenrolled from the TennCare Program, including the CHOICES and ECF CHOICES program, as applicable. Services provided by the TennCare MCO in which the individual has been placed, as well as the PBM and DBM, if applicable, shall be terminated upon disenrollment. Such disenrollment action will be accompanied by appropriate due process procedures as described elsewhere in this Chapter. Disenrollment from the CHOICES program shall proceed as described in Rule 1200-13-01-.05. Disenrollment from the ECF CHOICES program shall proceed as described in Rule 1200-13-01-.31.

1200-13-13-.04 Covered Services.

(1) Benefits covered under the managed care program.

- (a) TennCare MCCs shall cover the following services and benefits subject to any applicable limitations described in this Chapter. TennCare MCCs shall cover TennCare CHOICES services and benefits for individuals enrolled in the TennCare CHOICES program in accordance with Rule 1200-13-01-.05 and ECF CHOICES services and benefits for individuals enrolled in the ECF CHOICES program in accordance with Rule 1200-13-01-.31.
- (b) The following physical health and mental health benefits are covered under the TennCare managed care program. Benefits offered under the TennCare CHOICES program are also covered under the TennCare managed care program, as described in Rule 1200-13-01-.05. Benefits offered under the ECF CHOICES program are also covered under the TennCare managed care program, as described in Rule 1200-13-01-.31. There are some exclusions to the benefits listed below. The exclusions are listed in this rule and in Rule 1200-13-13-.10.

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
25. Pharmacy Services [defined at 42 CFR §440.120(a) and obtained directly from an ambulatory retail pharmacy setting, outpatient hospital pharmacy, mail order pharmacy, or those administered to a long-term care facility (nursing facility) resident].		(C) Pharmacy services with no quantity limits on the number of prescriptions per month for the following non-Medicare enrollees only: <del>individuals enrolled in CHOICES 1 or CHOICES 2;</del> <u>adults age 21 and older enrolled in CHOICES 1 or CHOICES 2; adults age 21 and older enrolled in ECF CHOICES who meet nursing facility level of care or transitioned from a Section 1915(c) waiver into ECF CHOICES and granted an exception by TennCare based on ICF/IID level of care; non-Medicare PACE enrollees; and persons receiving TennCare-reimbursed services in an Intermediate Care Facility for Individuals with Intellectual Disabilities or a Home and Community Based Services Waiver for Individuals with Intellectual Disabilities.</u>

(2) Use of Cost Effective Alternative Services.

(a) MCCs shall be allowed, but are not required, to use cost effective alternative services if and only if:

2. These services are provided under the CHOICES program for individuals enrolled in the CHOICES program in accordance with Rule 1200-13-01-.05 or the ECF CHOICES program for individuals enrolled in the ECF CHOICES program in accordance with Rule 1200-13-01-.31; and

1200-13-13-.05 Enrollee Cost Sharing.

(2) The following adult groups are exempt from copay:

- (c) ~~Individuals who are receiving services in a Nursing Facility, an Intermediate Care Facility for persons with Mental Retardation (or pursuant to federal law, Intermediate Care Facility for the Mentally Retarded), the CHOICES program or a~~ Individuals with Intellectual Disabilities, CHOICES Group 2, or a Home and Community Based Services waiver for individuals with intellectual disabilities.
- (d) Adults age 21 and older enrolled in ECF CHOICES who meet nursing facility level of care or transitioned from a Section 1915(c) waiver into ECF CHOICES and granted an exception by TennCare based on ICF/IID level of care.

1200-13-13-.08 Providers.

(2) Non-Participating Providers.

- (e) Non-Participating Providers who furnish covered ECF CHOICES services are reimbursed in accordance with Rule 1200-13-01-.31.

1200-13-13-.10 Exclusions.

- (3) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115 waiver program unless excepted by paragraph (2) herein. Some of these services may be covered under the CHOICES or ECF CHOICES programs or outside the managed care program ~~TennCare~~ under a Section 1915(c) Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with the appropriate TennCare Home and Community Based Services waiver rule.

GW10316215.redline

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 09/28/2016 (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: 07/15/16

Rulemaking Hearing(s) Conducted on: (add more dates). 09/12/16

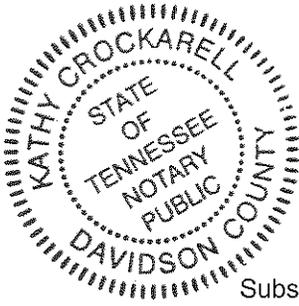
Date: 9/28/16

Signature: Patti Killingsworth

Name of Officer: Patti Killingsworth

Assistant Commissioner and Chief of Long-Term Services and Supports, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration



Subscribed and sworn to before me on: 9/28/16

Notary Public Signature: Kathy Crockarell

My commission expires on: 11/8/2019

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.

Herbert H. Slattery III

Herbert H. Slattery III  
Attorney General and Reporter

9/29/2016  
Date

**Department of State Use Only**

Filed with the Department of State on: 9/30/16

Effective on: 12/29/16

Tre Hargett

Tre Hargett  
Secretary of State

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2016 SEP 30 AM 9:00  
SECRETARY OF STATE  
PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: TennCare Medicaid - Employment and Community First (ECF) program

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-202, 71-5-105, and 71-5-109

EFFECTIVE DATES: December 29, 2016 through June 30, 2017

FISCAL IMPACT: The promulgation of rules relating to TennCare Long-Term Care Programs, TennCare Medicaid, and TennCare Standard is anticipated to increase state government expenditures by \$24,179,400.

STAFF RULE ABSTRACT: These rulemaking hearing rules are being promulgated to replace emergency rules which allowed for the implementation of the Employment and Community First (ECF) CHOICES 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.

One commenter suggested that TennCare's existing pharmacy limits should not apply to participants in the ECF CHOICES program. In response, HCFA noted that pharmacy limits applicable to individuals enrolled in ECF CHOICES are set forth in the State's approved 1115 waiver, and applied consistently across all long-term care programs and services in accordance with the Medicaid State Plan. As with other adults enrolled in TennCare, adults enrolled in ECF CHOICES who meet the institutional level of care are exempt from pharmacy limits; adults who do not meet such level of care are subject to the same limits as other adults enrolled in TennCare.

One commenter requested information on the eligibility criteria for ECF CHOICES and suggested that the rule appeared to "tighten" eligibility criteria. In response, HCFA noted that the financial eligibility requirements for ECF CHOICES are the same as those applicable to the state's existing Section 1915(c) waiver programs for individuals with intellectual disabilities and that the rule does not represent a "tightening" of eligibility criteria. HCFA referred the commenter to additional information on TennCare financial eligibility criteria available in Rule Chapter 1200-13-20.

## Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

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.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules are being promulgated to replace emergency rules which allowed for the implementation of the Employment and Community First (ECF) CHOICES program.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The Rules are lawfully adopted by the Bureau of TennCare in accordance with §§ 4-5-202, 71-5-105 and 71-5-109.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The persons and entities most directly affected by these Rules are the TennCare enrollees, providers, and managed care contractors. The governmental entity most directly affected by these Rules is the Bureau of TennCare, Tennessee Department of Finance and Administration.

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

The Rules were approved by the Tennessee Attorney General. No additional opinion was given or requested.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The promulgation of the TennCare Long-Term Care Programs, TennCare Medicaid and TennCare Standard rules is anticipated to increase state government expenditures by \$24,179,400.

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

Donna K. Tidwell  
Deputy General Counsel

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

Donna K. Tidwell  
Deputy General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

310 Great Circle Road  
Nashville, TN 37243  
(615) 507-6852  
donna.tidwell@tn.gov

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

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GW10216215

**Department of State**  
**Division of Publications**  
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 Email: [publications.information@tn.gov](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 09-37-16  
 Rule ID(s): 6322  
 File Date: 9/30/16  
 Effective Date: 12/29/16

## Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

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

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

- Amendments  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. 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-.02	Eligibility
1200-13-13-.03	Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS)
1200-13-13-.04	Covered Services
1200-13-13-.05	Enrollee Cost Sharing
1200-13-13-.08	Providers
1200-13-13-.10	Exclusions

Rules  
of  
Tennessee Department of Finance and administration  
Bureau of TennCare

Chapter 1200-13-13  
TennCare Medicaid

1200-13-13-.01 Definitions.

- (6) Benefits shall mean the health care package of services developed by the Bureau of TennCare and which define the covered services available to TennCare enrollees. Additional benefits are available through the TennCare CHOICES program, as described in Rule 1200-13-01-.05, and the ECF CHOICES program, as described in Rule 1200-13-01-.31. CHOICES benefits are available only to persons who qualify for and are enrolled in the CHOICES program. ECF CHOICES benefits are available only to persons who qualify for and are enrolled in the ECF CHOICES program.
- (#) Employment and Community First (ECF) CHOICES shall mean the program defined in Rule 1200-13-01-.02 and described in Rule 1200-13-01-.31.
- (57) HOME HEALTH SERVICES shall mean:
- (b) Home health providers shall only provide services to the recipient that have been ordered by the treating physician and are pursuant to a plan of care and shall not provide other services such as general child care services, cleaning services, preparation of meals, or services to other household members. Because children typically have non-medical care needs which must be met, to the extent that home health services are provided to a person under 18 years of age, a responsible adult (other than the home health care provider) must be present at all times in the home during the provision of home health services unless all of the following criteria are met:
4. No other children requiring adult care supervision shall be present in the home during the time the home health provider is present in the home without the presence of another responsible adult, unless these children meet all the criteria stated above and are also receiving TennCare-reimbursed home health services.

1200-13-13-.02 Eligibility.

- (1) Delineation of agency roles and responsibilities.
- (b) The Bureau of TennCare (Bureau) is the administrative unit within F&A with the responsibility for day-to-day operations of the TennCare Program. The Bureau is responsible for establishing policy and procedural requirements and criteria for TennCare.
3. With respect to the eligibility of individuals applying for the ECF CHOICES program, the Bureau is responsible for determining that the individual meets all applicable eligibility and enrollment criteria, including target population, medical or level of care eligibility, categorical and financial eligibility, the state's ability to provide appropriate ECF HCBS (as defined in Rule 1200-13-01-.02) as determined by the availability of slots under the established enrollment target for each ECF CHOICES Group in accordance with Rule 1200-13-01-.31 and pursuant to intake and enrollment policies and processes described in 1200-13-01-.31 and in TennCare policies and protocols, and for confirming a determination by a TennCare Managed Care Organization that the individual can be safely and appropriately served in the community and at a cost that does not exceed the individual's expenditure cap pursuant to Rule 1200-13-01-.31.

1200-13-13-.03 Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS).

- (1) Enrollment.

There are three (3) different types of managed care entities that provide services to TennCare enrollees. Enrollment procedures differ according to the type of managed care entity, the geographic area, and the number of managed care entities operating in each geographic area. Enrollment procedures also differ for ECF CHOICES, as described in subparagraph (c) below.

(a) TennCare Managed Care Organizations (MCOs) other than TennCare Select.

1. Except as provided in subparagraph (c), individuals or families determined eligible for TennCare shall select a health plan (Managed Care Organization/MCO) at the time of application. The health plan must be available in the Grand Division of the State in which the enrollee lives. All family members living in the same household and enrolled in TennCare must be assigned to the same MCO except children determined by the Bureau to be eligible to enroll in TennCare Select. An enrollee is given his choice of MCOs when possible. If the requested MCO cannot accept new enrollees, the Bureau will assign each enrollee to an MCO that is accepting new enrollees. If no MCO is available to enroll new members in the enrollee's Grand Division, the enrollee will be assigned to TennCare Select until such time as another MCO becomes available. The Bureau may also assign TennCare children with special health care needs to TennCare Select.

Individuals enrolled as a result of being eligible for SSI benefits will be assigned to an MCO as they do not have the opportunity to select a health plan prior to the effective date of coverage, since they are enrolled through the Social Security Administration.

2. Except as provided in subparagraph (c), a TennCare enrollee may change MCOs one (1) time within the initial forty-five (45) calendar days (inclusive of mail time) from the date of the letter informing him of his MCO assignment, if there is another MCO in the enrollee's Grand Division that is currently permitted by the Bureau to accept new enrollees. No additional changes will be allowed except as otherwise specified in these rules. An enrollee shall remain a member of the designated plan until he is given an opportunity to change once each year during an annual change period. The annual change period will occur each year in March for enrollees in West Tennessee, in May for enrollees in Middle Tennessee, and in July for enrollees in East Tennessee. Thereafter, an MCO change is permitted only during an annual change period, unless the Bureau authorizes a change as the result of the resolution of an appeal requesting a "hardship" reassignment as specified in paragraph (2)(b) below. When an enrollee changes MCOs, the enrollee's medical care will be the responsibility of the current MCO until he is enrolled in the requested MCO.

(c) TennCare Managed Care Organizations (MCOs) for ECF CHOICES. Individuals enrolled in ECF CHOICES may select from only the MCOs participating in ECF CHOICES.

1. If an individual enrolled in an MCO other than an ECF CHOICES participating MCO wants to enroll in the ECF CHOICES program, the individual must choose to enroll in an ECF CHOICES participating MCO in order to enroll in ECF CHOICES.
2. If an individual enrolled in the ECF CHOICES program elects to transition to an MCO that is not participating in ECF CHOICES, the individual is choosing to voluntarily disenroll from ECF CHOICES. Because this is a voluntary decision, advance notice and the right to a fair hearing shall not be provided. However, the individual may elect to transition back to an ECF CHOICES participating MCO in order to resume enrollment in ECF CHOICES.

(ed) TennCare Dental Benefits Manager (DBM).

TennCare children shall be assigned to the Dental Benefits Manager (DBM) under contract with the Bureau to provide dental benefits through the TennCare Program. TennCare adults age 21 and older enrolled in ECF CHOICES shall be assigned to the DBM under contract with the Bureau to provide Adult Dental Services through the ECF CHOICES program as defined in 1200-13-01-.02.

(3) Disenrollment.

- (a) When it has been determined that an individual no longer meets the criteria for TennCare eligibility, that individual shall be disenrolled from the TennCare Program, including the CHOICES and ECF CHOICES program, as applicable. Services provided by the TennCare MCO in which the individual has been placed, as well as the PBM and DBM, if applicable, shall be terminated upon disenrollment. Such disenrollment action will be accompanied by appropriate due process procedures as described elsewhere in this Chapter. Disenrollment from the CHOICES program shall proceed as described in Rule 1200-13-01-.05. Disenrollment from the ECF CHOICES program shall proceed as described in Rule 1200-13-01-.31.

1200-13-13-.04 Covered Services.

(1) Benefits covered under the managed care program.

- (a) TennCare MCCs shall cover the following services and benefits subject to any applicable limitations described in this Chapter. TennCare MCCs shall cover TennCare CHOICES services and benefits for individuals enrolled in the TennCare CHOICES program in accordance with Rule 1200-13-01-.05 and ECF CHOICES services and benefits for individuals enrolled in the ECF CHOICES program in accordance with Rule 1200-13-01-.31.
- (b) The following physical health and mental health benefits are covered under the TennCare managed care program. Benefits offered under the TennCare CHOICES program are also covered under the TennCare managed care program, as described in Rule 1200-13-01-.05. Benefits offered under the ECF CHOICES program are also covered under the TennCare managed care program, as described in Rule 1200-13-01-.31. There are some exclusions to the benefits listed below. The exclusions are listed in this rule and in Rule 1200-13-13-.10.

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
25. Pharmacy Services [defined at 42 CFR §440.120(a) and obtained directly from an ambulatory retail pharmacy setting, outpatient hospital pharmacy, mail order pharmacy, or those administered to a long-term care facility (nursing facility) resident].		(C) Pharmacy services with no quantity limits on the number of prescriptions per month for the following non-Medicare enrollees only: <del>individuals enrolled in CHOICES 1 or CHOICES 2;</del> <u>adults age 21 and older enrolled in CHOICES 1 or CHOICES 2; adults age 21 and older enrolled in ECF CHOICES who meet nursing facility level of care or transitioned from a Section 1915(c) waiver into ECF CHOICES and granted an exception by TennCare based on ICF/IID level of care; non-Medicare PACE enrollees; and persons receiving TennCare-reimbursed services in an Intermediate Care Facility for Individuals with Intellectual Disabilities or a Home and Community Based Services Waiver for Individuals with Intellectual Disabilities.</u>

(2) Use of Cost Effective Alternative Services.

(a) MCCs shall be allowed, but are not required, to use cost effective alternative services if and only if:

2. These services are provided under the CHOICES program for individuals enrolled in the CHOICES program in accordance with Rule 1200-13-01-.05 or the ECF CHOICES program for individuals enrolled in the ECF CHOICES program in accordance with Rule 1200-13-01-.31; and

1200-13-13-.05 Enrollee Cost Sharing.

(2) The following adult groups are exempt from copay:

- (c) ~~Individuals who are receiving services in a Nursing Facility, an Intermediate Care Facility for persons with Mental Retardation (or pursuant to federal law, Intermediate Care Facility for the Mentally Retarded), the CHOICES program or a~~ Individuals with Intellectual Disabilities, CHOICES Group 2, or a Home and Community Based Services waiver for individuals with intellectual disabilities.
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1200-13-13-.08 Providers.

(2) Non-Participating Providers.

- (e) Non-Participating Providers who furnish covered ECF CHOICES services are reimbursed in accordance with Rule 1200-13-01-.31.

1200-13-13-.10 Exclusions.

- (3) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115 waiver program unless excepted by paragraph (2) herein. Some of these services may be covered under the CHOICES or ECF CHOICES programs or outside the managed care program ~~TennCare~~ under a Section 1915(c) Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with the appropriate TennCare Home and Community Based Services waiver rule.

GW10316215.redline

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 09/28/2016 (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: 07/15/16

Rulemaking Hearing(s) Conducted on: (add more dates). 09/12/16

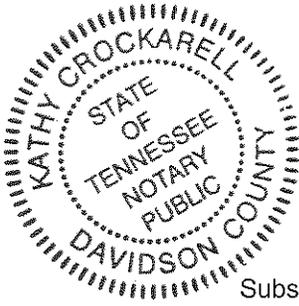
Date: 9/28/16

Signature: Patti Killingsworth

Name of Officer: Patti Killingsworth

Assistant Commissioner and Chief of Long-Term Services and Supports, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration



Subscribed and sworn to before me on: 9/28/16

Notary Public Signature: Kathy Crockarell

My commission expires on: 11/8/2019

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.

Herbert H. Slattery III  
Herbert H. Slattery III

Attorney General and Reporter

9/29/2016

Date

**Department of State Use Only**

Filed with the Department of State on: 9/30/16

Effective on: 12/29/16

Tre Hargett

Tre Hargett  
Secretary of State

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2016 SEP 30 AM 9:00  
SECRETARY OF STATE  
PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: TennCare Standard - Employment and Community First (ECF) program

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-202, 71-5-105, and 71-5-109

EFFECTIVE DATES: December 29, 2016 through June 30, 2017

FISCAL IMPACT: The promulgation of rules relating to TennCare Long-Term Care Programs, TennCare Medicaid, and TennCare Standard is anticipated to increase state government expenditures by \$24,179,400.

STAFF RULE ABSTRACT: These rulemaking hearing rules are being promulgated to replace emergency rules which allowed for the implementation of the Employment and Community First (ECF) CHOICES 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.

One commenter suggested that TennCare's existing pharmacy limits should not apply to participants in the ECF CHOICES program. In response, HCFA noted that pharmacy limits applicable to individuals enrolled in ECF CHOICES are set forth in the State's approved 1115 waiver, and applied consistently across all long-term care programs and services in accordance with the Medicaid State Plan. As with other adults enrolled in TennCare, adults enrolled in ECF CHOICES who meet the institutional level of care are exempt from pharmacy limits; adults who do not meet such level of care are subject to the same limits as other adults enrolled in TennCare.

One commenter requested information on the eligibility criteria for ECF CHOICES and suggested that the rule appeared to "tighten" eligibility criteria. In response, HCFA noted that the financial eligibility requirements for ECF CHOICES are the same as those applicable to the state's existing Section 1915(c) waiver programs for individuals with intellectual disabilities and that the rule does not represent a "tightening" of eligibility criteria. HCFA referred the commenter to additional information on TennCare financial eligibility criteria available in Rule Chapter 1200-13-20.

## **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

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.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules are being promulgated to replace emergency rules which allowed for the implementation of the Employment and Community First (ECF) CHOICES program.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The Rules are lawfully adopted by the Bureau of TennCare in accordance with §§ 4-5-202, 71-5-105 and 71-5-109.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The persons and entities most directly affected by these Rules are the TennCare enrollees, providers, and managed care contractors. The governmental entity most directly affected by these Rules is the Bureau of TennCare, Tennessee Department of Finance and Administration.

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

The Rules were approved by the Tennessee Attorney General. No additional opinion was given or requested.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The promulgation of the TennCare Long-Term Care Programs, TennCare Medicaid and TennCare Standard rules is anticipated to increase state government expenditures by \$24,179,400.

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Donna K. Tidwell  
Deputy General Counsel

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

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310 Great Circle Road  
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donna.tidwell@tn.gov

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

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GW10116215

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Sequence Number: 09-39-16  
Rule ID(s): 6324  
File Date: 9/30/16  
Effective Date: 12/29/16

# Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

<b>Agency/Board/Commission:</b>	Tennessee Department of Finance and Administration
<b>Division:</b>	Bureau of TennCare
<b>Contact Person:</b>	George Woods
<b>Address:</b>	310 Great Circle Road
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**Revision Type (check all that apply):**

- Amendments  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. 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-.02	Eligibility
1200-13-14-.03	Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS)
1200-13-14-.04	Covered Services
1200-13-14-.05	Enrollee Cost Sharing
1200-13-14-.08	Providers
1200-13-14-.10	Exclusions

Rules  
of  
Tennessee Department of Finance and administration  
Bureau of TennCare

Chapter 1200-13-14  
TennCare Standard

1200-13-14-.01 Definitions.

- (7) Benefits shall mean the health care package of services developed by the Bureau of TennCare and which define the covered services available to TennCare enrollees. Additional benefits are available through the TennCare CHOICES program, as described in Rule 1200-13-01-.05, and the ECF CHOICES program, as described in Rule 1200-13-01-.31. CHOICES benefits are available only to persons who qualify for and are enrolled in the CHOICES program. ECF CHOICES benefits are available only to persons who qualify for and are enrolled in the ECF CHOICES program.
- (#) Employment and Community First (ECF) CHOICES shall mean the program defined in Rule 1200-13-01-.02 and described in Rule 1200-13-01-.31.
- (62) Home Health Services shall mean:
- (b) Home health providers shall only provide services to the recipient that have been ordered by the treating physician and are pursuant to a plan of care and shall not provide other services such as general child care services, cleaning services, preparation of meals, or services to other household members. Because children typically have non-medical care needs which must be met, to the extent that home health services are provided to a person under 18 years of age, a responsible adult (other than the home health care provider) must be present at all times in the home during the provision of home health services unless all of the following criteria are met:
4. No other children requiring adult care or supervision shall be present in the home during the time the home health provider is present in the home without the presence of another responsible adult, unless these children meet all the criteria stated above and are also receiving TennCare-reimbursed home health services.

1200-13-14-.02 Eligibility.

- (1) Delineation of agency roles and responsibilities.
- (b) The Bureau of TennCare (Bureau) is the administrative unit within F&A with the responsibility for day-to-day operations of the TennCare Program. The Bureau is responsible for establishing policy and procedural requirements and criteria for TennCare.
3. With respect to the eligibility of individuals applying for the ECF CHOICES program, the Bureau is responsible for determining that the individual meets all applicable eligibility and enrollment criteria, including target population, medical or level of care eligibility, categorical and financial eligibility, the state's ability to provide appropriate ECF HCBS (as defined in Rule 1200-13-01-.02) as determined by the availability of slots under the established enrollment target for each ECF CHOICES Group in accordance with Rule 1200-13-01-.31 and pursuant to intake and enrollment policies and processes described in 1200-13-01-.31 and in TennCare policies and protocols, and for confirming a determination by a TennCare Managed Care Organization that the individual can be safely and appropriately served in the community and at a cost that does not exceed the individual's expenditure cap pursuant to Rule 1200-13-01-.31.
- (3) Technical and financial eligibility requirements for TennCare Standard.
- (b) Provide a statement from his employer, if employed, concerning the availability of group health insurance. (Access to insurance is not considered in determining eligibility in the Standard Spend Down category or the CHOICES 217-Like Group any CHOICES or ECF CHOICES demonstration category.)

- (g) Not be eligible for or have purchased other health insurance as defined at Rule 1200-13-14-.01, except for persons in the category of uninsured children under the age of nineteen (19) whose family income is below two hundred percent (200%) of poverty and who have been continuously enrolled in TennCare Standard since at least December 31, 2001. (Access to insurance is not considered in determining eligibility in the Standard Spend Down category or the CHOICES 217-Like-Group any CHOICES or ECF CHOICES demonstration category.)
- (h) Not be enrolled in, or eligible for participation in, Medicare. (Access to insurance is not considered in determining eligibility in the Standard Spend Down category or the CHOICES 217-Like-Group any CHOICES or ECF CHOICES demonstration category.)

(8) TennCare Standard: ECF CHOICES 217-Like Group.

(a) Coverage group. Individuals with I/DD of all ages who meet the NF LOC criteria who need and are receiving HCBS, and who would be eligible in the same manner as specified under Section 1902(a) of the Social Security Act and 42 C.F.R. § 435.217, if the HCBS were provided under a Section 1915(c) waiver. Enrollment in this group shall be subject to the enrollment targets established for each applicable ECF CHOICES benefit group. An Applicant may qualify in the ECF CHOICES 217-Like Group only when there is an available slot for enrollment into an ECF CHOICES benefit group for which the Applicant meets all eligibility and enrollment criteria, including prioritization criteria for enrollment into ECF CHOICES as established in these Rules, and when the Applicant upon approval of financial eligibility, will be enrolled by TennCare into such ECF CHOICES group.

(b) Eligibility criteria:

1. Must have an intellectual or developmental disability as defined in Rule 1200-13-01-.02;
2. Must meet the Nursing Facility level of care requirements;
3. Must have a current determination by the TennCare MCO to which the individual is assigned, that he is able to be safely and appropriately served in the community and within his expenditure cap as defined in Rule 1200-13-01-.31, except in instances where the Applicant is not eligible for TennCare at the time of ECF CHOICES application, in which case, such determination shall be made by the MCO upon enrollment into ECF CHOICES;
4. May be enrolled in accordance with requirements pertaining to the enrollment target for each ECF CHOICES Group, including prioritization criteria for enrollment into ECF CHOICES, as described in Rule 1200-13-01-.31;
5. Will be enrolled and begin receiving Home and Community Based Services (HCBS) upon determination of financial eligibility by TennCare and continue to receive HCBS as an ECF CHOICES participant. Qualifying for enrollment into ECF CHOICES is not sufficient to establish eligibility in the ECF CHOICES 217-Like Group if the person will not actually be enrolled and receiving HCBS; and
6. Would be eligible in the same manner as specified under Section 1902(a) of the Social Security Act and 42 C.F.R. § 435.217, if the Home and Community Based Services (HCBS) were provided under a section 1915(c) waiver.

(c) Application procedures:

1. To be eligible for the ECF CHOICES 217-Like Group, each individual must meet all technical and financial requirements applicable to this category as described in Rule Chapter 1200-13-20.
2. The effective date of eligibility in the ECF CHOICES 217-Like Group shall be the date the application is approved by TennCare. In no instance shall the effective date of eligibility precede the date the application was filed with TennCare.

(9) TennCare Standard: Interim ECF CHOICES At-Risk Group.

(a) Coverage group. Individuals who have an intellectual or developmental disability as defined in Rule 1200-13-01-.02 who meet the financial eligibility standards for the ECF CHOICES 217-Like Group; do not meet the Nursing Facility (NF) level of care criteria, but in the absence of ECF CHOICES HCBS, are At Risk for Institutionalization as defined in Rule 1200-13-01-.02; and who need and are receiving ECF CHOICES HCBS. The Interim ECF CHOICES At-Risk Demonstration Group will open to new enrollment only until such time that the Employment and Community First CHOICES At-Risk Demonstration Group (with income up to one hundred and fifty percent (150%) of the FPL) and the Employment and Community First CHOICES Working Disabled Demonstration Groups can be established. Persons enrolled in the Interim ECF CHOICES At-Risk Demonstration Group as of the date new enrollment into the group closes may continue to qualify in the group as long as they continue to meet nursing facility financial eligibility standards and are At-Risk for Institutionalization as defined in Rule 1200-13-01-.02, and remain continuously eligible and enrolled in the Interim ECF CHOICES At-Risk Demonstration Group. Enrollment in this group shall be subject to the enrollment targets established for each applicable ECF CHOICES benefit group. An Applicant may qualify in the Interim ECF CHOICES At-Risk Group only when there is an available slot for enrollment into an ECF CHOICES benefit group for which the Applicant meets all eligibility and enrollment criteria, including prioritization criteria for enrollment into ECF CHOICES as established in Rule 1200-13-01-.31, and when the Applicant, upon approval of financial eligibility, will be enrolled by TennCare into such ECF CHOICES group.

(b) Eligibility criteria:

1. Must have an intellectual or developmental disability as defined in Rule 1200-13-01-.02;
2. Must meet the financial eligibility standards for the ECF CHOICES 217-Like Group;
3. Do not meet the Nursing Facility level of care, but in the absence of ECF CHOICES HCBS, are At Risk for Institutionalization as defined in Rule 1200-13-01-.02;
4. Must have a current determination by the TennCare MCO to which the individual is assigned, that he is able to be safely and appropriately served in the community and within his expenditure cap as defined in Rule 1200-13-01-.31, except in instances where the Applicant is not eligible for TennCare at the time of ECF CHOICES application, in which case, such determination shall be made by the MCO upon enrollment into ECF CHOICES; and
5. May be enrolled in accordance with requirements pertaining to the enrollment target for each ECF CHOICES Group, including prioritization criteria for enrollment into ECF CHOICES as described in Rule 1200-13-01-.31; and
6. Will be enrolled and begin receiving Home and Community Based Services (HCBS) upon determination of financial eligibility by TennCare and continue to receive HCBS as an ECF CHOICES participant. Qualifying for enrollment into ECF CHOICES is not sufficient to establish eligibility in the Interim ECF CHOICES At-Risk Group if the person will not actually be enrolled and receiving ECF CHOICES HCBS.

(c) Application procedures:

1. To be eligible for the Interim ECF CHOICES At-Risk Group, each individual must meet all technical and financial requirements applicable to this category as described in Rule Chapter 1200-13-20.
2. The effective date of eligibility in the Interim ECF CHOICES At-Risk Group shall be the date the application is approved by TennCare. In no instance shall the effective date of eligibility precede the date the application was filed with TennCare.

(108) Redetermination of eligibility in TennCare Standard (other than CHOICES 217-Like Group, ECF CHOICES 217-Like Group, and Interim ECF CHOICES At-Risk Group).

(1240) Losing eligibility for TennCare Standard.

- (a) Eligibility for TennCare Standard shall cease when it has been determined that the enrollee, as the result of one of the following events, no longer meets the criteria for the program. Eligibility for TennCare Standard shall end if:
1. The enrollee becomes eligible for participation in a group health insurance plan, as defined in this Chapter, either directly or indirectly through a family member. (Access to insurance is not considered in determining eligibility in the Standard Spend Down category or ~~the CHOICES 217-Like Group~~ any CHOICES or ECF CHOICES demonstration category);
  2. The enrollee becomes eligible for Medicare. (Access to insurance is not considered in determining eligibility in the Standard Spend Down category or ~~the CHOICES 217-Like Group~~ any CHOICES or ECF CHOICES demonstration category);
  3. The enrollee is determined eligible for Medicaid (this does not apply to the ~~CHOICES 217-Like Group~~ CHOICES 1 and 2 Carryover Group or the PACE Carryover Group; does not apply to the CHOICES 217-Like Group, CHOICES At-Risk Demonstration Group or any ECF CHOICES demonstration category unless the enrollee begins receiving SSI);
  4. The enrollee purchases an individual health insurance plan as defined by this Chapter. (Access to insurance is not considered in determining eligibility in the Standard Spend Down category or ~~the CHOICES 217-Like Group~~ any CHOICES or ECF CHOICES demonstration category);
  5. The enrollee fails to comply with TennCare Program requirements, subject to federal and state laws and regulations;
  6. The enrollee dies;
  7. It is determined that any of the technical eligibility requirements found in this Rule are no longer met;
  8. The enrollee has failed to respond to a redetermination process requirement, as described in this Rule, to assure that the enrollee and other family members, as appropriate, remain eligible for TennCare Standard;
  9. The enrollee sends a voluntary written request for termination of eligibility for TennCare Standard to the DHS county office in the county in which he resides;
  10. The enrollee no longer qualifies as a resident of Tennessee under federal and state law;
  11. The enrollee fails to complete the redetermination process within the timeframes specified within this Rule;
  12. The enrollee becomes incarcerated as an inmate;
  13. The Bureau determines that the enrollee does not actually have the medical condition(s) which rendered him "medically eligible" for TennCare Standard;
  14. The enrollee attains the age of nineteen (19) and has not been determined eligible in an open Medicaid category; or
  15. An enrollee in the ~~CHOICES 217-Like Group~~ any CHOICES or ECF CHOICES demonstration category no longer satisfies one or more of the eligibility criteria applicable for the category as specified in this Rule.
- (b) TennCare Standard enrollees who are disenrolled from TennCare pursuant to this Rule shall be allowed to re-enroll in the TennCare program at any time if they become TennCare Medicaid-eligible or eligible ~~for the CHOICES 217-Like Group~~ in a CHOICES or ECF CHOICES demonstration category for which enrollment remains open, in accordance with this Rule, and shall not be required

to pay arrearages as a condition of re-enrollment. However, nothing in this provision shall eliminate the enrollee's responsibility for unpaid premiums or copayments incurred under any previous period of eligibility.

1200-13-14-.03 Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS).

(1) Enrollment.

There are three (3) different types of managed care entities that provide services to TennCare enrollees. Enrollment procedures differ according to the type of managed care entity, the geographic area, and the number of managed care entities operating in each geographic area. Enrollment procedures also differ for ECF CHOICES, as described in subparagraph (c) below.

(a) TennCare Managed Care Organizations (MCOs) other than TennCare Select.

1. Except as provided in subparagraph (c), individuals or families determined eligible for TennCare shall select a health plan (Managed Care Organization/MCO) at the time of application. The health plan must be available in the Grand Division of the State in which the enrollee lives. All family members living in the same household and enrolled in TennCare must be assigned to the same MCO except children determined by the Bureau to be eligible to enroll in TennCare Select. An enrollee is given his choice of MCOs when possible. If the requested MCO cannot accept new enrollees, the Bureau will assign each enrollee to an MCO that is accepting new enrollees. If no MCO is available to enroll new members in the enrollee's Grand Division, the enrollee will be assigned to TennCare Select until such time as another MCO becomes available. The Bureau may also assign TennCare children with special health care needs to TennCare Select.
2. Except as provided in subparagraph (c), a TennCare enrollee may change MCOs one (1) time within the initial forty-five (45) calendar days (inclusive of mail time) from the date of the letter informing him of his MCO assignment, if there is another MCO in the enrollee's Grand Division that is currently permitted by the Bureau to accept new enrollees. No additional changes will be allowed except as otherwise specified in these rules. An enrollee shall remain a member of the designated plan until he is given an opportunity to change once each year during an annual change period. The annual change period will occur each year in March for enrollees in West Tennessee, in May for enrollees in Middle Tennessee, and in July for enrollees in East Tennessee. Thereafter, an MCO change is permitted only during an annual change period, unless the Bureau authorizes a change as the result of the resolution of an appeal requesting a "hardship" reassignment as specified in paragraph (2)(b) below. When an enrollee changes MCOs, the enrollee's medical care will be the responsibility of the current MCO until he is enrolled in the requested MCO.

(c) TennCare Managed Care Organizations (MCOs) for ECF CHOICES. Individuals enrolled in ECF CHOICES may select from only the MCOs participating in ECF CHOICES.

1. If an individual enrolled in an MCO other than an ECF CHOICES participating MCO wants to enroll in the ECF CHOICES program, the individual must choose to enroll in an ECF CHOICES participating MCO in order to enroll in ECF CHOICES.
2. If an individual enrolled in the ECF CHOICES program elects to transition to an MCO that is not participating in ECF CHOICES, the individual is choosing to voluntarily disenroll from ECF CHOICES. Because this is a voluntary decision, advance notice and the right to a fair hearing shall not be provided. However, the individual may elect to transition back to an ECF CHOICES participating MCO in order to resume enrollment in ECF CHOICES.

(de) TennCare Dental Benefits Manager (DBM).

TennCare children shall be assigned to the Dental Benefits Manager (DBM) under contract with the Bureau to provide dental benefits through the TennCare Program. TennCare adults age 21 and older enrolled in ECF CHOICES shall be assigned to the DBM under contract with the Bureau to provide

Adult Dental Services through the ECF CHOICES program as defined in 1200-13-01-.02.

(3) Disenrollment.

- (a) When it has been determined that an individual no longer meets the criteria for TennCare eligibility, that individual shall be disenrolled from the TennCare Program, including the CHOICES and ECF CHOICES program, as applicable. Services provided by the TennCare MCO in which the individual has been enrolled placed, as well as the PBM and DBM, if applicable, shall be terminated upon disenrollment. Such disenrollment action will be accompanied by appropriate due process procedures as described elsewhere in this Chapter. Disenrollment from the CHOICES program shall proceed as described in Rule 1200-13-01-.05. Disenrollment from the ECF CHOICES program shall proceed as described in Rule 1200-13-01-.31.

1200-13-14-.04 Covered Services.

(1) Benefits covered under the managed care program

- (a) TennCare MCCs shall cover the following services and benefits subject to any applicable limitations described in this Chapter. TennCare MCCs shall cover TennCare CHOICES services and benefits for individuals enrolled in the TennCare CHOICES program in accordance with Rule 1200-13-01-.05 and ECF CHOICES services and benefits for individuals enrolled in the ECF CHOICES program in accordance with Rule 1200-13-01-.31.
- (b) The following physical health and mental health benefits are covered under the TennCare managed care program. Benefits offered under the TennCare CHOICES program are also covered under the TennCare managed care program, as described in Rule 1200-13-01-.05. Benefits offered under the ECF CHOICES program are also covered under the TennCare managed care program, as described in Rule 1200-13-01-.31. There are some exclusions to the benefits listed below. The exclusions are listed in this rule and in Rule 1200-13-14-.10.

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
25. Pharmacy Services [defined at 42 CFR §440.120(a) and obtained directly from an ambulatory retail pharmacy setting, outpatient hospital pharmacy, mail order pharmacy, or those administered to a long-term care facility (nursing facility) resident].		(C) For non-Medicare enrollees in the CHOICES 217-Like Group, the CHOICES 1 and 2 Carryover Group, <u>adults age 21 and older enrolled in ECF CHOICES who meet nursing facility level of care or transitioned from a Section 1915(c) waiver into ECF CHOICES and granted an exception by TennCare based on ICF/IID level of care,</u> and the PACE Carryover Group, covered with no quantity limits on the number of prescriptions per month.

(2) Use of Cost Effective Alternative Services.

- (a) MCCs shall be allowed, but are not required, to use cost effective alternative services if and only if:

2. These services are provided under the CHOICES program for individuals enrolled in the

CHOICES program in accordance with Rule 1200-13-01-.05 or the ECF CHOICES program for individuals enrolled in the ECF CHOICES program in accordance with Rule 1200-13-01-.31; and

1200-13-14-.05 Enrollee Cost Sharing.

(2) Copays.

(a) The following TennCare Standard enrollees are exempt from TennCare copays:

3. Enrollees who are enrolled in any of the following CHOICES groups or ECF CHOICES demonstration categories:

(iv) The ECF CHOICES 217-Like Group

(c) Pharmacy copays. The following TennCare Standard enrollees have pharmacy copays of \$3.00 per covered brand name prescription and \$1.50 per covered generic prescription:

4. Adults age 21 and older in the interim ECF CHOICES AT-Risk Demonstration Group.

(d) Copays for other TennCare services. The following copays are applicable to TennCare Standard children, except children enrolled in ECF CHOICES.

1200-13-14-.08 Providers.

(2) Non-Participating Providers.

(e) Non-Participating Providers who furnish covered ECF CHOICES services are reimbursed in accordance with Rule 1200-13-01-.31.

1200-13-14-.10 Exclusions.

(3) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115 waiver program unless excepted by paragraph (2) herein. Some of these services may be covered under the CHOICES or ECF CHOICES programs or outside the managed care program ~~TennCare~~ under a Section 1915(c) Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with the appropriate approved TennCare Home and Community Based Services rule waiver.

GW10116216dkt

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 09/28/2016 (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: 07/15/16

Rulemaking Hearing(s) Conducted on: (add more dates). 09/12/16

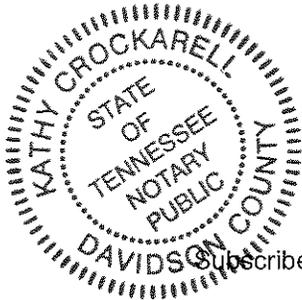
Date: 9/28/16

Signature: [Handwritten Signature]

Name of Officer: Patti Killingsworth

Assistant Commissioner and Chief of Long-Term Services and Supports, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration



Subscribed and sworn to before me on: 9/28/16

Notary Public Signature: [Handwritten Signature]

My commission expires on: 1/8/2019

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.

[Handwritten Signature]

Herbert H. Slattery III  
Attorney General and Reporter

9/29/2016

Date

**Department of State Use Only**

Filed with the Department of State on: 9/30/16

Effective on: 12/29/16

[Handwritten Signature]

Tre Hargett  
Secretary of State

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**G.O.C. STAFF RULE ABSTRACT**

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: TennCare CHOICES Program

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-202, 71-5-105, 71-5-109

EFFECTIVE DATES: December 29, 2016 through June 30, 2017

FISCAL IMPACT: The promulgation of the TennCare Long-Term Care Programs, TennCare Medicaid and TennCare Standard rules is anticipated to increase state government expenditures by \$24,179,400.

STAFF RULE ABSTRACT: These rulemaking rules are being promulgated to replace emergency rules which allowed for the implementation of the Employment and Community First (ECF) CHOICES 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.

HCFA received comments from five individuals or entities concerning these rules. The comments and HCFA's responses to the comments are summarized below.

One commenter suggested that the prioritization criteria in the definition of "potential applicant" be clarified. HCFA noted that the prioritization criteria and the process for applying them are discussed in the rule at 1200-13-01-.31(11).

One commenter suggested that the rule should clarify the notice and hearing rights regarding ECF CHOICES service determinations and applicable expenditure limits. In response, HCFA modified the rule to add clarifying language regarding adverse actions and notice and appeal procedures.

One commenter suggested that the rule should be amended to clarify applicants' and enrollees' right to rely on any relevant and material evidence regarding their needs and abilities as it affects their ECF CHOICES eligibility and services. HCFA noted that there is no language in the rule that limits TennCare's ability to have all relevant, credible, and determinative information before making determinations, and that this has always been part of individuals' due process rights. HCFA also modified the rule by adding clarifying language specifying that members may present all relevant and material evidence pertaining to an adverse action.

One commenter suggested that eligibility for ECF CHOICES should not be limited to persons who are eligible for SSI or TennCare Standard. In response, HCFA noted that the eligibility categories set forth in the rule reflect the federal authority granted in TennCare's 1115 waiver approved by CMS.

One commenter suggested that eligibility for ECF CHOICES should not be limited to persons who meet the nursing facility level of care criteria or the level of care criteria for persons at risk of institutionalization. In response, HCFA noted that – prior to program implementation – adjustments had been made to the level of care process in order to account for the unique needs of individuals with intellectual and developmental disabilities, and that the criteria and processes described in the rule are appropriate for ECF CHOICES.

One commenter suggested that the rule should not require the use of the Supports Intensity Scale to determine whether an enrollee in ECF CHOICES Group 6 may be granted an exception to his expenditure cap. In response, HCFA noted that the Supports Intensity Scale is a widely used, standardized assessment tool specifically designed to measure the pattern and intensity of supports an adult with developmental disabilities needs to be successful, and maintained that the use of the SIS is appropriate for the purpose described in the rule. HCFA also noted that the rule has been modified to clarify enrollee appeal rights when adverse actions concerning the enrollee occur.

One commenter expressed concern that potential applicants who do not meet ECF CHOICES criteria are not afforded their due process rights. In response, HCFA clarified that the prioritization criteria and criteria for reserve capacity slots are processes used for managing the ECF CHOICES referral list; these criteria are not eligibility criteria for the ECF CHOICES program. As stated in the rule, the application process begins when there is an available slot that a person could enroll into if eligibility and enrollment criteria are met. Notice and fair hearings rights are provided upon an adverse action, as required by federal regulation.

One commenter suggested that the rules be modified to include the priority criteria. HCFA noted that the prioritization criteria and the process for applying them are discussed in the rule at 1200-13-01-.31(11).

One commenter suggested that the rule be modified to clarify that the medical evidence an applicant can submit to establish an acuity score for the ECF CHOICES program cannot be limited. HCFA modified the rule to clarify that applicants may submit additional evidence to support the applicant's individual acuity score or total score on the level of acuity scale.

One commenter suggested that applicants under age 21 should be allowed to receive the services available to persons enrolled in ECF CHOICES Groups 5 and 6. In response, HCFA noted that waiver programs such as ECF CHOICES provide flexibility to target certain benefits to specific populations groups. In the ECF CHOICES program, certain employment benefits are available to individuals under age 21 who are enrolled in ECF CHOICES Group 4. Other benefits available only ECF CHOICES Groups 5 and 6 are available as the individuals turn 21 and elect to transition to one of those benefit groups.

One commenter suggested that persons enrolled in CHOICES Group 1 should be permitted to request transfer to ECF CHOICES. In response, HCFA noted that the rule does not limit in any way a member's ability to elect transition out of a nursing facility setting at any time. In addition, HCFA modified the rule by adding language to make clear a person's right to request transition at any time.

One commenter suggested that the rule should define "community living supports" and "community living supports-family model." HCFA noted that these terms are already defined at Rule 1200-13-01-.02.

One commenter requested information about the use of the federal poverty level (FPL) in eligibility determinations for ECF CHOICES. In response, HCFA noted that current ECF CHOICES eligibility categories are not based on the FPL. Currently, eligibility for ECF CHOICES is based on one's status as an SSI recipient, or on one's income based on institutional income standards (as is the case for TennCare's existing 1915(c) waiver programs). Future ECF CHOICES eligibility categories will be available to persons with incomes up to 250 percent of the FPL.

One commenter requested information on assessments used in ECF CHOICES. In response, HCFA provided the commenter with information about the adaptive behavior (or life skills) assessment tool. HCFA also noted that a comprehensive needs assessment must take place upon a person's enrollment into ECF CHOICES for planning purposes, and that the standards for these assessments are specified in contracts with TennCare managed care organizations.

One commenter indicated that HCFA is behind in completing Supports Intensity Scale (SIS) assessments. In response, HCFA noted that within the ECF CHOICES program, the SIS is only used for individuals who are enrolled in ECF CHOICES Group 6, and that no ECF CHOICES SIS assessments are behind. HCFA noted that the use of SIS assessments in other TennCare HCBS programs is outside the scope of this rulemaking; however, HCFA invited the commenter to share information about delays in any SIS assessments.

One commenter requested clarification on the application of criteria for multiple complex health conditions, and whether these criteria would lead to additional institutional placements for persons who would otherwise be supported in community settings. In response, HCFA clarified that the purpose of these criteria is to help ensure that persons with more complex needs who are unable to work but who need supports to maintain their current community living arrangement and avoid nursing facility placement would have access to those supports. HCFA noted that these criteria were developed with input with several disability advocacy groups in advance of the program's implementation.

One commenter expressed support for the recent move toward managed care and reallocation of resources so that more persons with intellectual and developmental disabilities can access services. This commenter also expressed concern about transition-aged young adults aged 18-21 who need access to the services available in ECF CHOICES Group 5, as well as those with the most significant needs who be because of behavioral-, health-, or disability-related needs may not be able to work. In response, HCFA responded that it intends to pursue discussions with CMS to allow greater flexibility for transition-aged adults aged 18-21. HCFA also noted the use of prioritization criteria, including Emergent Circumstance criteria and Multiple Complex Health Conditions criteria, to help ensure access to services for individuals with the most severe needs.

One commenter questioned the need and/or benefit of limiting certain services to persons in certain benefit groups. This commenter also suggested that the person-centered support plan should drive the services authorized. This commenter also questioned why there are caps on certain services. In response, HCFA noted that the benefits available to individuals enrolled in ECF CHOICES are set forth in the state's 1115 waiver approved by CMS. The services available to the persons in different benefit groups were designed based on stakeholder feedback regarding what was most important for families providing supports to someone in the family home, and what was important for individuals receiving supports outside of the family home. HCFA noted that it is committed to continuous review of the program and willing to entertain appropriate adjustments going forward.

One commenter commented on the use of the term "individualized, integrated self-employment" and noted that some self-employment takes place in settings that do not involve face-to-face contact with others. HCFA noted

the definition of the individualized, integrated self-employment in the state's 1115 waiver approved by CMS is "sustained paid self-employment that is home-based or conducted in an integrated setting(s) where net income in relation to hours worked is equivalent to no less than the state's minimum wage, after a reasonable self-employment start-up period." HCFA noted that this definition acknowledges home-based self-employment as an option for persons in ECF CHOICES, while recognizing the goal of supporting employment (including self-employment) options that provide opportunities for integration whenever possible.

One commenter expressed concern that persons with very significant disabilities may be excluded from employment because they present as a challenge to employ. In response, HCFA noted that ECF CHOICES has been carefully designed to ensure that the array of employment services available in ECF CHOICES helps to create a pathway to employment, even for persons with the most significant disabilities. The employment informed choice process is designed to help to ensure that employment is considered the preferred option for every person of working age, regardless of their level of disability. Further, the program's reimbursement structure for employment services is specifically designed to recognize the additional challenges that may be required in helping to develop and achieve employment opportunities for people with significant disabilities by providing for outcome-based reimbursement for job development that is tiered based on a person's level of need, and tiered reimbursement for job coaching based on part on a the person's level of need.

One commenter expressed concern about the discussion of emergent circumstances in rule and the determination that enrollment into ECF CHOICES is the most appropriate way to provide needed supports. This commenter also questioned language in the rule specifying that in order to participate in ECF CHOICES, an individual's needs must be able to be met safely in the community and at a cost that does not exceed an expenditure cap. This commenter questioned what alternatives to ECF CHOICES enrollment are available in these circumstances, and whether this increased the risk of institutional placements. HCFA noted that the Interagency Review Committee has reviewed certain circumstances where other programs and services offered a more appropriate benefit array. HCFA also noted that the ECF CHOICES program has been specifically designed to help keep individuals with intellectual and developmental disabilities in the community and to support their transition from nursing facility settings to community settings wherever possible. However, HCFA has an obligation to administer services in a manner that assures the health and safety of program participants and cannot provide services if the expectation of assuring someone's safety in their chosen setting cannot reasonably be met. HCFA also noted that MCOs do not make enrollment decisions for ECF CHOICES; TennCare makes all eligibility and enrollment determinations.

One commenter questioned the inclusion of home health and private duty nursing services within a member's expenditure cap, and commented that this would encourage more persons with intellectual or developmental disabilities to use institutional settings. In response, HCFA noted that the inclusion of these services within the higher institutional expenditure cap for ECF CHOICES Group 6 is consistent with the federal regulatory formula for calculating cost neutrality, and with the individual cost neutrality cap applicable to persons enrolled in CHOICES Group 2.

One commenter expressed concern about the status of individuals with disabilities with aging caregivers if all reserve capacity slots are filled. In response, HCFA noted that it recognizes its statutory mandates relative to individuals with aging caregivers and intends to adjust reserve capacity slots as needed to ensure compliance.

One commenter suggested that the minimum age for career advancement services could be 18 instead of 16. HCFA declined to make the requested modification to the rule.

One commenter suggested that the description of community integration support services in the rule be modified to clarify that the requirement to discuss the pursuit of employment options at least semi-annually does not apply to retired persons. In response, HCFA modified the rule to clarify that the provision in question applies to individuals of legal working age.

One commenter expressed support for the provision of the rule that provides support for participation in community activities and clubs/associations. HCFA acknowledged the commenter's support.

One commenter suggested that the rule be modified to provide additional clarification about the amount of time authorized for job coaching services, and whether transportation of the supported employee is included in the rate paid for the service. HCFA noted that the scope and definition of the benefit are specified in the 1115 waiver approved by CMS. HCFA also noted that the ECF CHOICES Handbook includes a benefit table with simple explanations of benefits and limitations.

One commenter suggested modifying the description of job development or self-employment start up in the rule to clarify the meaning of two calendar weeks of individualized integrated employment of self-employment. HCFA noted that the scope and definition of the benefit are specified in the 1115 waiver approved by CMS. HCFA also noted that the ECF CHOICES Handbook includes a benefit table with simple explanations of benefits and limitations.

One commenter asked whether persons providing transportation to ECF CHOICES members as natural supports or through self-direction are expected to undergo background checks. In response, HCFA clarified that natural supports are not required to undergo background checks. Persons paid to provide community transportation services require background checks only if they are also providing other paid services, such as personal assistance, supportive home care, or respite, for which a background check is required.

One commenter suggested that a qualifier regarding number of hours is missing in the rule's description of co-worker supports. In response, HCFA clarified that the lack of qualifier was intentional and that the phrase in question is only intended to pertain to whether a person is working (regardless of the number of hours of employment).

One commenter requested additional information about training in best practices for peer-to-peer support services. This commenter further recommended that providers of these services should be able to choose their own training. In response, HCFA noted that the rule provides broad flexibility for providers in this area.

One commenter suggested that the rule be modified to clarify that a person with a court-appointed guardian or conservator has the opportunity to direct his person-centered planning process. HCFA made the requested modification to the rule.

One commenter suggested that all options for respite services should be available through consumer direction. In response, HCFA noted that it has been unable to find a way to allow daily and hourly respite to be provided through consumer direction while remaining compliant with FLSA. HCFA expressed a willingness to continue to work with the commenter on this issue in the future.

One commenter suggested that cell phone purchases under ECF CHOICES not be limited to pre-paid, pre-programmed phones, and suggested that smart phone purchases also be allowed. In response, HCFA noted that the scope and definition of the benefit are specified in the state's 1115 waiver approved by CMS. HCFA expressed a willingness to continue to explore adjustments to services and definitions in the future.

One commenter suggested that stairway lifts should not be excluded as an option for minor home modifications. In response, HCFA noted that the scope and definition of the benefit are specified in the state's 1115 waiver approved by CMS. HCFA expressed a willingness to continue to explore adjustments to services and definitions in the future.

One commenter suggested that rule should be modified to clarify the PERS is an option for persons receiving less than 24-hour supports. In response, HCFA noted that the scope and definition of the benefit are specified in the state's 1115 waiver approved by CMS. HCFA expressed a willingness to continue to explore adjustments to services and definitions in the future.

One commenter expressed concern that requiring service providers to become Medicaid providers will significantly reduce the number of people willing to provide supports through self-direction, and that such a requirement creates unnecessary administrative burden on the enrollee. This commenter suggested that the rule be modified to remove this requirement. In response, HCFA noted that federal statute requires that all recipients of Medicaid funding must be registered Medicaid providers.

One commenter requested information about how persons on the referral lists will be enrolled into program slots once the enrollment targets in the various eligibility categories are met. In response, HCFA indicated that some details of this process are still to be determined and welcomed input from the commenter and other stakeholders regarding how best to manage this process.

Once commenter expressed concern about the use of the term "medically necessary" as it applies to HCBS. In response, HCFA noted that within the context of the rule, medically necessary is parenthetically referred to as "required in order to help ensure the Member's health, safety and welfare in the home or community setting and to delay or prevent the need for NF placement." HCFA expressed an openness to continued dialogue about how to best define medical necessity within the context of HCBS programs.

One commenter questioned the decision to have all budgets operate on a calendar year, and suggested it would be challenging for supports brokers to have all plans due at the same time. In response, HCFA clarified that for the most part, services available in consumer direction operate on a monthly budget; only respite is operated on an annual basis. However, all benefit limits and expenditure caps operate on a calendar year, which is easier for individuals to track and to operationalize. HCFA noted that annual plan dates are based on the dates in an individual's initial support plan and are not due for all enrollees at the same time.

One commenter requested an opportunity to review the consumer direction self-assessment tool. In response, HCFA shared a copy of the tool with the commenter.

One commenter suggested modifying the rule to clarify to whom a potential applicant may request an administrative review, and to whom a potential applicant may submit additional information that may affect his status on the referral list. In response, HCFA modified the rule to clarify that requests for administrative review should be submitted to TennCare, and additional information should be submitted to the person's MCO (if enrolled in an ECF CHOICES MCO) or to DIDD (if not enrolled in an ECF CHOICES MCO). This commenter also suggested that a person should have a process to appeal his status on the ECF CHOICES referral list. In response, HCFA noted that while a person cannot appeal their category on the referral list, they can always submit additional information or request additional review.

## **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

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.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules are being promulgated to replace emergency rules which allowed for the implementation of the Employment and Community First (ECF) CHOICES Program.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The Rules are lawfully adopted by the Bureau of TennCare in accordance with §§ 4-5-202, 71-5-105 and 71-5-109.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The persons and entities most directly affected by these Rules are the TennCare enrollees, providers, and managed care contractors. The governmental entity most directly affected by these Rules is the Bureau of TennCare, Tennessee Department of Finance and Administration.

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

The Rules were approved by the Tennessee Attorney General. No additional opinion was given or requested.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The promulgation of the TennCare Long-Term Care Programs, TennCare Medicaid and TennCare Standard rules is anticipated to increase state government expenditures by \$24,179,400.

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

Donna K. Tidwell  
Deputy General Counsel

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

Donna K. Tidwell  
Deputy General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

310 Great Circle Road  
Nashville, TN 37243  
(615) 507-6852  
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(l) Any additional information relevant to the rule proposed for continuation that the committee requests.

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**Department of State  
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Sequence Number: 09-40-16  
Rule ID(s): 6325  
File Date: 9/30/16  
Effective Date: 12/29/16

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

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

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

- Amendments  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1200-13-01	TennCare Long-Term Care Programs
Rule Number	Rule Title
1200-13-01-.01	Purpose
1200-13-01-.02	Definitions
1200-13-01-.05	TennCare CHOICES Program
1200-13-01-.08	Personal Needs Allowance (PNA), Patient Liability, Third Party Insurance and Estate Recovery for Persons Receiving LTSS
1200-13-01-.10	Medical (Level of Care) Eligibility Criteria for TennCare Reimbursement of Care in Nursing Facilities, CHOICES HCBS and PACE
1200-13-01-.25	Tennessee's Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled under Section 1915(c) of the Social Security Act (Statewide MR Waiver)
1200-13-01-.28	Home and Community Based Services Waiver for Persons with Mental Retardation Under Section 1915(c) of the Social Security Act (Arlington MR Waiver)
1200-13-01-.29	Tennessee's Self-Determination Waiver Under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver Program)
1200-13-01-.31	TennCare Employment and Community First CHOICES (ECF CHOICES) Program

RULES  
OF  
TENNESSEE DEPARTMENT OF FINANCE  
AND ADMINISTRATION  
BUREAU OF TENNCARE  
  
CHAPTER 1200-13-01  
TENNCARE LONG-TERM CARE PROGRAMS

**1200-13-01-.01 PURPOSE.**

(2) The Bureau of TennCare (Bureau) offers the following LTSS programs and services: Each of these programs is operated in accordance with the authority granted under the Medicaid State Plan or the applicable Waiver authority granted by CMS, and these rules.

(b) Employment and Community First (ECF) CHOICES (See Rule 1200-13-01-.31.)

(bc) Intermediate Care Facility services for persons with Mental Retardation (or pursuant to federal law, Intermediate Care Facility services for the Mentally Retarded) (ICFs/MR). (See Rule 1200-13-01-.30.)

(4) Acronyms. The following are acronyms used throughout this Chapter and the terms they represent:

(#) DD – Developmental Disability(ies)

(#) ECF CHOICES – Employment and Community First CHOICES

(#) FPL – Federal Poverty Level

(#) I/DD – Intellectual or Developmental Disability(ies)

(#) PCSP – Person-Centered Support Plan

**1200-13-01-.02 DEFINITIONS.**

**NEW DEFINITIONS (#):**

(#) Adult Dental Services. For purposes of ECF CHOICES only and limited to adults age 21 or older:

(a) Preventive dental services, fillings, root canals, extractions, periodontics, the provision of dentures, and other dental treatments to relieve pain and infection) which have dental procedure codes listed in the current TennCare Maximum Reimbursement Rate Schedule for Dental Services that is used specifically for adult dental services provided under the State's Section 1915(c) Waivers for individuals with intellectual disabilities; and intravenous sedation or other anesthesia services provided in the dentist's office by, and billed by, the dentist or by a nurse anesthetist or anesthesiologist who meets the Waiver provider qualifications. Orthodontic services are excluded from coverage.

(b) Dental services for adults age 21 or older enrolled in the ECF CHOICES program shall be reimbursed only for dates of services when the ECF CHOICES Member was enrolled in ECF CHOICES at the time the service was delivered, and subject to the amount approved for such services in the ECF CHOICES Member's PCSP.

(c) All Dental Services for children enrolled in the Waiver are provided through the TennCare EPSDT program. Dental Services shall not be covered through ECF CHOICES for children under age 21 years enrolled in ECF CHOICES (since it would duplicate TennCare/EPSDT benefits).

- (d) Adult Dental Services for adults age 21 or older enrolled in ECF CHOICES shall be limited to a maximum of \$5,000 per member per calendar year, and a maximum of \$7,500 per member across three (3) consecutive calendar years.
- (#) Aging Caregiver. Pursuant to T.C.A. § 33-5-112 as amended, the older custodial parent or custodial caregiver of an individual who has an intellectual disability and who is at least 75 years of age. A Potential Applicant for ECF CHOICES who has an Aging Caregiver shall, subject to all applicable eligibility and enrollment criteria, be enrolled into ECF CHOICES Group 5, unless the Applicant qualifies and elects to enroll in an available ECF CHOICES Group 4 slot, or cannot be safely served in ECF CHOICES Group 5 and meets eligibility criteria, including NF LOC, to enroll in an available ECF CHOICES Group 6 slot. Reserve capacity shall be established in ECF CHOICES Group 5 based on the number of persons with an intellectual disability who have an Aging Caregiver that are expected to be served in each program year.
- (#) Benefits Counseling. For purposes of ECF CHOICES only and limited to persons age 16 or older:
- (a) A service designed to inform the individual (and guardian, conservator and/or family, if applicable) of the multiple pathways to ensuring individualized integrated employment or self-employment that results in increased economic self-sufficiency (net financial benefit) through the use of various work incentives. This service should also repudiate myths and alleviate fears and concerns related to seeking and working in individualized integrated employment or self-employment through an accurate, individualized assessment. The service provides information to the individual (and guardian, conservator and/or family, if applicable) regarding the full array of available work incentives for essential benefit programs including SSI, SSDI, Medicaid, Medicare, ECF, housing subsidies, food stamps, etc.
- (b) The service also will provide information and education to the person (and guardian, conservator and/or family, if applicable) regarding income reporting requirements for public benefit programs, including the Social Security Administration.
- (c) Benefits counseling provides work incentives counseling and planning services to persons actively considering or seeking individualized integrated employment or self-employment, or career advancement in either of these types of employment.
- (d) This service is provided by a certified Community Work Incentives Coordinator (CWIC). In addition to ensuring this service is not otherwise available to the individual under Section 110 of the Rehabilitation Act of 1973, or the IDEA (20 U.S.C. §§ 1401, et seq.), ECF CHOICES may not fund this service if CWIC Benefits Counseling services funded through the Federal Work Incentives Planning and Assistance (WIPA) program are available to the individual.
- (e) Service must be provided in a manner that supports the person's communication style and needs, including, but not limited to, age-appropriate communications, translation/interpretation services for persons of limited English proficiency or who have other communication needs requiring translation including sign language interpretation, and ability to communicate with a person who uses an assistive communication device.
- (f) Benefits Counseling services are paid for on an hourly basis and limited in the following ways:
1. Initial Benefits Counseling for someone actively considering or seeking individualized integrated employment or self-employment, or career advancement in these types of employment: up to twenty (20) hours. This service may be authorized no more than once every two (2) years (with a minimum of two 365-day intervals between services).
  2. Supplementary Benefits Counseling for someone evaluating an individualized integrated job offer/promotion or self-employment opportunity: up to an additional six (6) hours. This service may be authorized up to three (3) times per year if needed.
  3. PRN Problem-Solving services for someone to maintain individualized integrated employment or self-employment: up to eight (8) hours per situation requiring PRN assistance. This service may be authorized up to four (4) times per year if necessary for the individual to maintain individualized integrated employment or self-employment.

(#) Career Advancement. For purposes of ECF CHOICES only and limited to persons age 16 or older:

(a) This is a time-limited career planning and advancement support service for persons currently engaged in individualized integrated employment or self-employment who wish to obtain a promotion and/or a second individualized integrated employment or self-employment opportunity. The service is time-limited and focuses on developing and successfully implementing a plan for achieving increased income and economic self-sufficiency through promotion to a higher paying position or through a second individualized integrated employment or self-employment opportunity.

(b) The outcomes of this service are:

1. The identification of the person's specific career advancement objective;
2. Development of a viable plan to achieve this objective; and
3. Implementation of the plan which results in the person successfully achieving his/her specific career advancement objective.

(c) Career Advancement is paid on an outcome basis, after key milestones are accomplished:

1. Outcome payment number one is paid after the written plan to achieve the person's specific career advancement objective is reviewed and approved. Note: The written plan must follow the template prescribed by TennCare.
2. Outcome payment number two is paid after the person has achieved his/her specific career advancement objective and has been in the new position or second job for a minimum of two (2) weeks.

(d) This service may not be included on a Person-Centered Support Plan if the PCSP also includes any of the following services: Integrated Employment Path Services, Exploration, Discovery, Situational Observation and Assessment, Job Development or Self-Employment Plan, or Job Development or Self-Employment Start-Up. This service may not be authorized retroactive to a promotion or second job being made available to a person. Supports for Career Advancement may be authorized and paid once every three (3) years (with a minimum of three 365-day intervals between services), if evidence exists that the individual is eligible for promotion or able to present as a strong candidate for employment in a second job (e.g. has strong reference, performance reviews and attendance record from current employer). The only exception is in situations where the provider previously authorized and paid for outcome payment number one but did not also earn outcome payment number two (because they did not successfully obtain a promotion or second job for the person). In this situation, reauthorization for outcome payments number one and two may occur a maximum of once per year (with a minimum 365-day interval between services), so long as the reauthorization involves the use of a new/different provider.

(#) Caregiver. For purposes of CHOICES or ECF CHOICES, a person who:

- (a) Is a family member or is unrelated to the member but has a close, personal relationship with the member; and
- (b) Is routinely involved in providing unpaid support and assistance to the member.
- (c) A person who satisfies the criteria for caregiver in (a) and (b) above may also be designated by the member as a representative for CHOICES or ECF CHOICES or for consumer direction of eligible CHOICES or ECF CHOICES HCBS.

(#) Community Integration Support Services. For purposes of ECF CHOICES only:

(a) Services which coordinate and provide supports for valued and active participation in integrated daytime and nighttime activities that build on the person's interests, preferences, gifts, and strengths while reflecting the person's goals with regard to community involvement and membership. This

service involves participation in one or more integrated community settings, in activities that involve persons without disabilities who are not paid or unpaid caregivers. Community Integration Support Services are designed to promote maximum participation in integrated community life while facilitating meaningful relationships, friendships and social networks with persons without disabilities who share similar interests and goals for community involvement and participation.

- (b) Community Integration Support Services shall support and enhance, rather than supplant, an individual's involvement in public education, post-secondary education/training and individualized integrated employment or self-employment (or services designed to lead to these types of employment).
- (c) Community Integration Support Services enable the person to increase or maintain his/her capacity for independent participation in community life and to develop age-appropriate social roles valued by the community by learning, practicing and applying skills necessary for full inclusion in the person's community, including skills in arranging and using public transportation for individuals aged 16 or older.
- (d) Community Integration Support Services provide assistance for active and positive participation in a broad range of integrated community settings that allow the person to engage with people who do not have disabilities who are not paid or unpaid caregivers. The service is expected to result in the person developing and sustaining a range of valued, age-appropriate social roles and relationships; building natural supports; increasing independence; and experiencing meaningful community integration and inclusion. Activities are expected to increase the individual's opportunity to build connections within his/her local community and include (but are not limited to) the following:

  1. Supports to participate in age-appropriate community activities, groups, associations or clubs to develop social networks with community organizations and clubs;
  2. Supports to participate in community opportunities related to the development of hobbies or leisure/cultural interests or to promote personal health and wellness (e.g. yoga class, walking group, etc.);
  3. Supports to participate in adult education and postsecondary education classes;
  4. Supports to participate in formal/informal associations or community/neighborhood groups;
  5. Supports to participate in volunteer opportunities;
  6. Supports to participate in opportunities focused on training and education for self-determination and self-advocacy;
  7. Supports for learning to navigate the local community, including learning to use public transportation and/or private transportation available in the local area; and
  8. Supports to maintain relationships with members of the broader community (e.g., neighbors, co-workers and other community members who do not have disabilities and who are not paid or unpaid caregivers) through natural opportunities and invitations that may occur.
- (e) This service includes a combination of training and supports as needed by the individual. The Community Integration Support Services provider shall be responsible for any personal assistance needs during the hours that Community Integration Support Services are provided; however, the personal assistance services may not comprise the entirety of the Community Integration Support Service. All providers of personal care under Community Integration Support Services meet the Personal Assistance provider qualifications.
- (f) This service shall be provided in a variety of integrated community settings that offer opportunities for the person to achieve his or her personally identified goals for community integration, involvement, exploration and for developing and sustaining a network of positive natural supports. All settings where Community Integration Support Services are provided must be non-disability specific and meet all federal standards for HCBS settings. This service is provided separate and apart from the person's

place of residence. This service does not take place in licensed facilities, sheltered workshops or any type of facility owned, leased or operated by a provider of this service.

(g) This service is available only:

1. For children not yet old enough to work and/or not yet eligible for employment services who are enrolled in Essential Family Supports; or
2. As "wrap-around" supports to employment or employment services (Supported Employment Individual or Small Group services and/or Integrated Employment Path Services) for individuals not receiving Community Living Supports or Community Living Supports-Family Model; or
3. For individuals who are of legal working age (16+) not receiving Community Living Supports or Community Living Supports-Family Model who, after an Employment Informed Choice Process as defined by TennCare, have decided not to pursue employment; or
4. For individuals of retirement age not receiving Community Living Supports or Community Living Supports-Family Model who have made a choice not to pursue further employment opportunities.

(h) For individuals receiving Community Integration Support Services who are of legal working age (16+), and not participating in employment or employment services, the option to pursue employment should be discussed at least semi-annually, unless the person is age 65 or older and has declined further interest in employment.

(i) For individuals receiving Community Living Supports or Community Living Supports-Family Model, all services necessary to support community integration and participation are part of the scope of benefits provided under the CLS or CLS-FM benefit and shall not be authorized, provided or reimbursed as a separate service.

(j) For individuals of appropriate age (18+), fading of the service and less dependence on paid support for ongoing participation in community activities and relationships is expected. Fading strategies, similar to those used in Supported Employment Job Coaching, should be utilized. Milestones for the reduction/fading of paid supports and the enhancement of natural supports must be established and monitored for this service.

(k) Payment for registration, materials and supplies for participation in classes, conferences and similar types of activities, or club/association dues can be covered, but cannot exceed \$500 per year for children under age 21 or \$1,000 per year for adults age 21 or older. These costs are not included in the rates paid to the providers of Community Integration Support Services and must be prior approved before being incurred.

(l) Transportation to and from the service is not included in the rate paid for the service; but transportation during the service (when no-cost forms of transportation are not available or not being accessed) is included in the rate paid for the service.

(m) Community Integration Support Services shall be limited as follows:

1. For persons not working in Individualized Integrated Employment, Individualized Integrated Self-Employment, or Small Group Employment in the community or receiving at least one employment service, no more than 20 hours per week of Community Integration Support Services and Independent Living Skills Training combined after completing an Employment Informed Choice process.
2. For persons who are working in Individualized Integrated Employment, Individualized Integrated Self-Employment, or Small Group Employment in the community (not a sheltered workshop) or receiving at least one employment service, no more than 30 hours per week of Community Integration Support Services, Independent Living Skills Training, and Individual or Small Group Employment Supports combined.

3. For persons who are working in Individualized Integrated Employment or Individualized Integrated Self-Employment (not in a small group or in a sheltered workshop), no more than 40 hours per week of Community Integration Support Services, Independent Living Skills Training, Job Coaching, Co-Worker Supports, and the hours worked without paid supports combined.
4. For persons who are working in Individualized Integrated Employment or Individualized Integrated Self-Employment (not in a small group or in a sheltered workshop) at least 30 hours per week, no more than 50 hours per week of Community Integration Support Services, Independent Living Skills Training, Job Coaching, Co-Worker Supports, and the hours worked without paid supports combined.

(#) Community Support Development, Organization and Navigation. For purposes of ECF CHOICES only and limited to members enrolled in ECF CHOICES Group 4 (Essential Family Supports):

(a) Assists individuals and families in:

1. Promoting a spirit of personal reliance and contribution, mutual support and community connection;
2. Developing social networks and connections within local communities; and
3. Emphasizing, promoting and coordinating the use of unpaid supports to address individual and family needs in addition to paid services.

(b) Supports provided include:

1. Helping individuals and family caregivers to develop a network for information and mutual support from others who receive services or family caregivers of individuals with disabilities;
2. Assisting individuals with disabilities and family caregivers with identifying and utilizing supports available from community service organizations, such as churches, schools, colleges, libraries, neighborhood associations, clubs, recreational entities, businesses and community organizations focused on exchange of services (e.g. time banks); and
3. Assisting individuals with disabilities and family caregivers with providing mutual support to one another (through service/support exchange), and contributions offered to others in the community.

(c) These services are provided by a Community Navigator and reimbursed on a per person (or family) per month basis, based on specific goals and objectives as specified in the person-centered support plan.

(#) Community Transportation. For purposes of ECF CHOICES only:

(a) Community Transportation services are non-medical transportation services offered in order to enable individuals, and their personal assistants as needed, to gain access to employment, community life, activities and resources that are identified in the person-centered support plan. These services allow individuals to get to and from typical day-to-day, non-medical activities such as individualized integrated employment or self-employment (if not home-based), the grocery store or bank, social events, clubs and associations and other civic activities, or attending a worship service. This service is made available when public or other no-cost community-based transportation services are not available and the person does not have access to transportation through any other means (including natural supports).

(b) Whenever possible, family, neighbors, co-workers, carpools or friends are utilized to provide transportation assistance without charge. When this service is authorized, the most cost-effective option should be considered first. This service is in addition to the medical transportation service offered under the Medicaid State Plan, which includes transportation to medical appointments as well as emergency medical transportation.

- (c) Community Transportation shall be limited to no more than \$225 per month for persons electing to receive this service through Consumer Direction.
- (#) Conservatorship and Alternatives to Conservatorship Counseling and Assistance. For purposes of ECF CHOICES only:
- (a) This service offers up to \$500 in one-time consultation, education and assistance to family caregivers in understanding conservatorship and alternatives to conservatorship. These services shall be provided in a manner that seeks to preserve the rights and freedoms of the individual to the maximum extent possible and appropriate. This service may include assistance with completing necessary paperwork and processes to establish an alternative to conservatorship or conservatorship, if appropriate. Reimbursable services may include payment of legal or court fees necessary to formalize an alternative to conservatorship or conservatorship, but only upon completion of education and consultation to help preserve the person's rights and freedoms to the maximum extent possible and appropriate.
- (b) Conservatorship and Alternatives to Conservatorship Counseling and Assistance shall be limited to \$500 per lifetime.
- (#) Consumer. Except when used regarding consumer direction of eligible CHOICES or ECF CHOICES HCBS, an individual who uses a mental health or substance abuse service.
- (#) Co-Worker Supports. For purposes of ECF CHOICES only and limited to persons age 16 or older:
- (a) This service involves a provider of Job Coaching for Individualized Integrated Employment entering into an agreement with an individual's employer to reimburse the employer for supports provided by one or more supervisors and/or co-workers, acceptable to the individual, to enable the person to maintain individualized integrated employment with the employer. This service cannot include payment for the supervisory and co-worker supports rendered as a normal part of the business setting and that would otherwise be provided to an employee without a disability. Additional natural supports for the individual, already negotiated with the employer, and provided through supervisors and co-workers, are not eligible for reimbursement under Co-Worker Supports. Only supports that must otherwise be provided by a Job Coach may be reimbursed under this service category. Co-Worker Supports would be authorized in situations where any of the following is true:
1. From the start of employment or at any point during employment, if the employer prefers (or the individual prefers and the employer agrees) to provide needed Job Coach supports, rather than having a Job Coach, either employed by a third party agency or self-employed, present in the business. Fading expectations should still be in place to maximize independence of the employed individual.
  2. At any point in the individual's employment where needed Job Coaching supports can be most cost effectively provided by Co-Worker Supports and both the employer and individual agree to the use of Co-Worker Supports. Fading of Job Coaching supports may or may not still be occurring, but Co-Worker Supports should always be considered when ongoing fading of Job Coaching has stopped occurring.
  3. For individuals who are expected to be able to transition to working only with employer supports available to any employee and additional negotiated natural supports if applicable. In this situation, Co-Worker Supports are authorized as a temporary (maximum twelve months) bridge to relying only on employer supports, and additional negotiated natural (unpaid) supports if applicable, to maintain employment. The supervisor(s) and/or co-worker(s) identified to provide the support to the individual must meet the qualifications for a legally responsible individual as provider of this service. The provider is responsible for ensuring these qualifications are met and also for oversight and monitoring of paid co-worker supports.
- (b) The amount of time authorized for this service is negotiated with the employer and reflective of the specific needs the individual has for Co-worker Supports above and beyond negotiated natural supports and supervisory/co-worker supports otherwise available to employees without disabilities. A

10% add-on to the 15 minute unit rate for the employer is applied to cover the service provider's role in administering Co-Worker Supports.

(c) Co-Worker Supports shall be limited as follows:

1. For persons who are working in Individualized Integrated Employment or Individualized Integrated Self-Employment (not in a small group or in a sheltered workshop), no more than 40 hours per week of Co-Worker Supports, Job Coaching, Community Integration Support Services, Independent Living Skills Training, and the hours worked without paid supports combined.
2. For persons who are working in Individualized Integrated Employment or Individualized Integrated Self-Employment (not in a small group or in a sheltered workshop) at least 30 hours per week, no more than 50 hours per week of Co-Worker Supports, Job Coaching, Community Integration Support Services, Independent Living Skills Training, and the hours worked without paid supports combined.

(#) Developmental Disability(ies) (DD).

(a) Pursuant to T.C.A. § 33-1-101, as amended, a developmental disability in a person over five (5) years of age means a condition that:

- (i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (ii) Manifested before twenty-two (22) years of age;
- (iii) Is likely to continue indefinitely;
- (iv) Results in substantial functional limitations in three (3) or more of the following major life activities:
  1. Self-care;
  2. Receptive and expressive language;
  3. Learning;
  4. Mobility;
  5. Self-direction;
  6. Capacity for independent living; or
  7. Economic self-sufficiency; and
- (v) Reflects the person's need for a combination and sequence of special interdisciplinary or generic services, supports, or other assistance that is likely to continue indefinitely and need to be individually planned and coordinated.

(b) Developmental disability in a person up to five (5) years of age means a condition of substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disability as defined for persons over five (5) years of age if services and supports are not provided.

(c) For purposes of ECF CHOICES, the determination that an Applicant has substantial functional limitations in three (3) or more major life activities shall be made by TennCare using an adaptive behavior (or life skills) assessment tool, and review of supporting medical evidence. Information gathered through such adaptive behavior (or life skills) assessment may be used by an Applicant for purposes of supporting functional deficits described in Rule 1200-13-01-.10, or an Individual Acuity

Score or an Applicant's total score on the NF LOC Acuity Scale, in accordance with criteria specified in 1200-13-01-.10.

- (#) Discovery. For purposes of ECF CHOICES only and limited to persons age 14 or older:
- (a) This is a time-limited and targeted service for an individual who wishes to pursue individualized integrated employment or self-employment but for whom more information is needed to determine the following prior to pursuing individualized integrated employment or self-employment:
    - 1. Strongest interests toward one or more specific aspects of the labor market;
    - 2. Skills, strengths and other contributions likely to be valuable to employers or valuable to the community if offered through self-employment;
    - 3. Conditions necessary for successful employment or self-employment.
  - (b) Discovery involves a comprehensive analysis of the person in relation to Parts 1., 2., and 3. above. Activities include observation of the person in familiar places and activities, interviews with family, friends and others who know the person well, observation of the person in an unfamiliar place and activity, and identification of the person's strong interests and existing strengths and skills that are transferable to individualized integrated employment or self-employment. Discovery also involves identification of conditions for success based on experience shared by the person and others who know the person well, and observation of the person during the Discovery process. The information developed through Discovery allows for activities of typical life to be translated into possibilities for individualized integrated employment or self-employment.
  - (c) Discovery results in the production of a detailed written Profile, using a standard template prescribed by TennCare, which summarizes the process, learning and recommendations to inform identification of the person's individualized integrated employment or self-employment goal(s) and strategies to be used in securing this employment or self-employment for the person.
  - (d) If Discovery is paid for through ECF CHOICES, the person should be assisted to apply to Vocational Rehabilitation (VR) for services to obtain individualized integrated employment or self-employment.
  - (e) The Discovery Profile should be shared with VR staff to facilitate the expeditious development of an Individual Plan for Employment (IPE).
  - (f) Discovery shall be limited to no more than ninety (90) calendar days from the date of service initiation. This service is expected, on average, to involve fifty (50) hours of service.
  - (g) The provider shall document each date of service, the activities performed that day, and the duration of each activity. The written Profile is due no later than fourteen (14) days after the last date of service is concluded. Discovery is paid on an outcome basis, after the written Profile is received and approved, and the provider submits documentation detailing each date of service, the activities performed that day, and the duration of each activity.
  - (h) After an individual has received the service for the first time, re-authorization may occur a maximum of once every three years (with a minimum of three 365-day intervals between services), and only if the person, at the time of re-authorization, is not already engaged in individualized integrated employment or self-employment, or other services to obtain such employment, and the person has a goal to obtain individualized integrated employment or self-employment within twelve (12) months.
- (#) Employment and Community First CHOICES (ECF CHOICES). A managed long-term services and supports program that offers home and community-based services to eligible individuals with intellectual and developmental disabilities enrolled in the program in order to promote competitive employment and integrated community living as the first and preferred option.
- (#) ECF CHOICES 217-Like Group. Individuals with I/DD of all ages who meet the NF LOC criteria who need and are receiving HCBS, and who would be eligible in the same manner as specified under 42 C.F.R. § 435.217, 42 C.F.R. § 435.726, and Section 1924 of the Social Security Act, if the HCBS were provided

under a Section 1915(c) Waiver. Enrollment in this group shall be subject to the enrollment targets established for each applicable ECF CHOICES benefit group. An Applicant may qualify in the ECF CHOICES 217-Like Group only when there is an available slot for enrollment into an ECF CHOICES benefit group for which the Applicant meets all eligibility and enrollment criteria, including prioritization criteria for enrollment into ECF CHOICES as established in these Rules, and when the Applicant upon approval of financial eligibility, will be enrolled by TennCare into such ECF CHOICES group.

- (#) ECF CHOICES Group (Group). One of the three groups of TennCare enrollees who are enrolled in ECF CHOICES, and for which a particular package of ECF CHOICES HCBS benefits and limitations pertaining thereto is available. All groups in ECF CHOICES receive services in the community. These Groups are:
  - (a) Group 4 (Essential Family Supports). Children under age twenty one (21) with I/DD living at home with family who meet the NF LOC and need and are receiving HCBS as an alternative to NF Care, or who, in the absence of HCBS, are "At Risk for Institutionalization," as defined in these rules, and adults age 21 or older with I/DD living at home with family who meet the NF LOC and need and are receiving HCBS as an alternative to NF care, or who, in the absence of HCBS, are "At Risk for Institutionalization," as defined in these rules, and elect to be in this group. To qualify in this group, an individual must be SSI eligible or qualify in the ECF CHOICES 217-Like Group, Interim ECF CHOICES At-Risk Demonstration Group, or upon implementation of Phase 2 of ECF CHOICES, the ECF CHOICES At-Risk or ECF CHOICES Working Disabled Demonstration Groups. "Family" shall be interpreted to mean individual(s) to whom the child or adult with I/DD is legally related, whether the relationship is by blood, by marriage, or by adoption. "Family" shall not include a foster care or paid living arrangement.
  - (b) Group 5 (Essential Supports for Employment and Independent Living). Adults age twenty-one (21) or older with I/DD who do not meet nursing facility level of care, but who, in the absence of HCBS are "At Risk for Institutionalization," as defined in these rules. To qualify in this group, the adult must be SSI eligible or qualify in the Interim ECF CHOICES At-Risk Demonstration Group, or upon implementation of Phase 2 of ECF CHOICES, the ECF CHOICES At-Risk or ECF CHOICES Working Disabled Demonstration Groups.
  - (c) Group 6 (Comprehensive Supports for Employment and Community Living). Adults age twenty-one (21) or older with I/DD who meet nursing facility level of care and need and are receiving specialized services for I/DD. To qualify in this group, an individual must be SSI eligible or qualify in the ECF CHOICES 217-Like Demonstration Group, or upon implementation of Phase 2 of ECF CHOICES, the ECF CHOICES Working Disabled Demonstration Group.
- (#) ECF CHOICES Home and Community-Based Services (HCBS). Services that are available only to eligible persons enrolled in ECF CHOICES Groups 4, 5 or 6 as an alternative to long-term care institutional services in a nursing facility or to delay or prevent placement in a nursing facility. Only certain ECF CHOICES HCBS are eligible for Consumer Direction. ECF CHOICES HCBS do not include home health or private duty nursing services or any other HCBS that are covered by Tennessee's Title XIX State Plan or under the TennCare demonstration for all eligible enrollees, although such services are subject to estate recovery and shall, for members enrolled in ECF CHOICES Group 6 who are granted an exception to the expenditure cap based on exceptional medical and/or behavioral needs, be counted for purposes of determining whether an ECF CHOICES member's needs can be safely met in the community within his or her individual expenditure cap.
- (#) ECF CHOICES Member. A member who has been enrolled by TennCare into ECF CHOICES.
- (#) ECF CHOICES Referral List. The listing of Potential Applicants that have completed a screening process to express their interest in applying for enrollment into the ECF CHOICES program.
- (#) Eligible. Any person certified by TennCare as eligible to receive services and benefits under the TennCare program. As it relates to CHOICES and ECF CHOICES a person is eligible to receive CHOICES or ECF CHOICES benefits only if he/she has been enrolled in CHOICES or ECF CHOICES by TennCare.
- (#) Eligible ECF CHOICES HCBS. Personal assistance, supportive home care, hourly respite, community transportation, and/or any other ECF CHOICES HCBS specified in TennCare rules as eligible for consumer direction which an ECF CHOICES member is determined to need and elects to direct and manage (or have

a representative direct and manage) certain aspects of the provision of such services – primarily the hiring, firing and day-to-day supervision of consumer-directed workers delivering the needed service(s) and the delivery of each eligible ECF CHOICES HCBS within the authorized budget for that service. Eligible ECF CHOICES HCBS do not include home health or private duty nursing services.

- (#) Emergent Circumstances. For purposes of reserve capacity in ECF CHOICES, a limited number of individuals who meet one or more emergent circumstances criteria as specified in these Rules and for which enrollment into ECF CHOICES is the most appropriate way to provide needed supports, as determined by an Interagency Review Committee, including both TennCare and DIDD.
- (#) Employment Informed Choice. The process the MCOs must complete for working age members (ages 16 to 62) enrolled in ECF CHOICES who are eligible for, and want to receive, Community Integration Support Services and/or Independent Living Skills Training services when the member is not engaged in or pursuing integrated employment (with or without Supported Employment Individual or Small Group services, Integrated Employment Path Services or comparable Vocational Rehabilitation/Special Education services). Members who receive Community Living Supports or Community Living Supports-Family Model services are not eligible to receive Community Integration Support Services and/or Independent Living Skills Training services. The Employment Informed Choice process includes, but is not limited to, an orientation to employment, self-employment, employment supports and work incentives provided by the member's support coordinator; the authorization and completion of Exploration services in order to experience various employment settings that are aligned with the member's interests, aptitudes, experiences and/or skills and ensure an informed choice regarding employment; and signed acknowledgment from the member/representative if the member elects not to pursue employment before Community Integration Support Services and/or Independent Living Skills Training may be authorized.
- (#) Enrollment. One of three (3) components of the referral list management process for ECF CHOICES that occurs only when a Potential Applicant has been determined to meet criteria for an available reserve capacity slot or for one of the categories for which enrollment into ECF CHOICES is currently open, and when there is an appropriate slot available for the person to enroll, subject to all applicable eligibility and enrollment criteria. Enrollment into ECF CHOICES may be approved only by TennCare, and subject to the availability of an appropriate slot for the person to enroll if all applicable eligibility and enrollment criteria are met.
- (#) Exploration. For purposes of ECF CHOICES only and limited to persons age 14 or older:

  - (a) This is a time-limited and targeted service designed to help a person make an informed choice about whether s/he wishes to pursue individualized integrated employment or self-employment, as defined above. The Exploration service shall be completed no more than thirty (30) calendar days from the date of service initiation. This service is not appropriate for ECF CHOICES members who already know they want to pursue individualized integrated employment or self-employment.
  - (b) This service includes career exploration activities to identify a person's specific interests and aptitudes for paid work, including experience and skills transferable to individualized integrated employment or self-employment. This service also includes exploration of individualized integrated employment or self-employment opportunities in the local area that are specifically related to the person's identified interests, experiences and/or skills through four to five uniquely arranged business tours, informational interviews and/or job shadows. (Each person receiving this service should participate in business tours, informational interviews and/or job shadows uniquely selected based on his or her individual interests, aptitudes, experiences, and skills most transferable to employment. All persons should not participate in the same experiences.) Each business tour, informational interview and/or job shadow shall include time for set-up, prepping the person for participation, and debriefing with the person after each opportunity.
  - (c) This service also includes introductory education on the numerous work incentives for individuals receiving publicly funded benefits (e.g. SSI, SSDI, Medicaid, Medicare, etc.). This service further includes introductory education on how Supported Employment services work (including Vocational Rehabilitation services). Educational information is provided to the person and the legal guardian/conservator and/or most involved family member(s), if applicable, to ensure legal guardian/conservator and/or family support for the person's choice to pursue individualized integrated employment or self-employment. The educational aspects of this service shall include addressing any

concerns, hesitations or objections of the person and the legal guardian/conservator and/or most involved family member(s), if applicable.

(d) This service is expected to involve, on average, forty (40) hours of service. The provider shall document each date of service, the activities performed that day, and the duration of each activity. This service culminates in a written report summarizing the process and outcomes, using a standard template prescribed by TennCare. The written report is due no later than fourteen (14) calendar days after the last date of service is concluded. Exploration is paid on an outcome basis, after the written report is received and approved, and the provider submits documentation detailing each date of service, the activities performed that day, and the duration of each activity.

(e) After an individual has received the service for the first time, re-authorization may occur a maximum of once per year (with a minimum 365-day interval between services) and only if the person, at the time of re-authorization, is not already engaged in individualized integrated employment or self-employment, or other services to obtain such employment.

(#) Family Caregiver Education and Training. For purposes of ECF CHOICES only and limited to members enrolled in ECF CHOICES Group 4 (Essential Family Supports):

(a) This service provides reimbursement up to \$500 per year to offset the costs of educational materials, training programs, workshops and conferences that help the family caregiver to:

1. Understand the disability of the person supported;
2. Achieve greater competence and confidence in providing supports;
3. Develop and access community and other resources and supports;
4. Develop advocacy skills; and
5. Support the person in developing self-advocacy skills.

(b) Other types of education and training shall not be reimbursed.

(c) Family Caregiver Education and Training is offered only for a family caregiver who is providing unpaid support, training, companionship, or supervision for a person participating in ECF CHOICES who is living in the family home. The intent of the service is to provide education and support to the caregiver that preserves the family unit and increases confidence, stamina and empowerment. Education and training activities are based on the family/caregiver's unique needs and are specifically identified in the person-centered support plan prior to authorization.

(d) In order to be reimbursed by the MCO, Family Caregiver Education and Training must be approved by the member's MCO before such education or training activities commence and shall be limited to no more than \$500 per calendar year.

(e) "Family" shall be interpreted to mean individual(s) to whom the child or adult with I/DD is legally related, whether the relationship is by blood, by marriage, or by adoption. "Family" shall not include a foster care or paid living arrangement. Caregiver shall be interpreted as defined in these rules.

(#) Family Caregiver Stipend in lieu of Supportive Home Care. For purposes of ECF CHOICES only and limited to members enrolled in ECF CHOICES Group 4 (Essential Family Supports):

(a) A monthly payment to the primary family caregiver of a person supported when the person lives with the family in the family home and the family is providing daily services and supports that would otherwise be defined within the scope of Supportive Home Care services. This service is available only in lieu of Supportive Home Care (including Personal Assistance) services and shall not be authorized for a person receiving Supportive Home Care (including Personal Assistance) services. The funds may be used to compensate lost wage earning opportunities that are entailed in providing support to a family member with a disability and to help offset the cost of other services and supports the person needs that are not covered under this program.

(b) For a child under age 18, the Family Caregiver Stipend shall be limited to \$500 per month. For an adult age 18 or older, the Family Caregiver Stipend shall be no more than \$1,000 per month. The amount of Family Caregiver Stipend approved shall be based on the needs of the individual taking into account the supports necessary for employment and community integration and participation, and shall ensure that supports necessary for employment and community integration and participation are provided first, or available to the person through other sources (whether paid or unpaid) or as part of the supports provided by the family caregiver in order for a Stipend to be approved.

(c) "Family" shall be interpreted to mean individual(s) to whom the child or adult with I/DD is legally related, whether the relationship is by blood, by marriage, or by adoption. "Family" shall not include a foster care or paid living arrangement. Caregiver shall be interpreted as defined in these rules.

(#) Family-to-Family Support. For purposes of ECF CHOICES only and limited to members enrolled in ECF CHOICES Group 4 (Essential Family Supports):

(a) These services provide information, resources, guidance, and support from an experienced and trained parent or other family member to another parent or family caregiver who is the primary unpaid support to a child with intellectual or developmental disabilities enrolled in ECF CHOICES. The service shall include facilitation of parent or family member "matches" and follow-up support to assure the matched relationship meets peer expectations.

(b) Family-to-Family Support shall be reimbursed on a per member per month basis for each Member enrolled in ECF CHOICES Group 4. The per member per month reimbursement of Family-to-Family Support shall not be counted against the member's expenditure cap.

(#) Health Insurance Counseling/Forms Assistance. For purposes of ECF CHOICES only and limited to members enrolled in ECF CHOICES Group 4 (Essential Family Supports):

(a) Health Insurance Counseling/Forms Assistance services offers training and assistance to individuals enrolled in ECF CHOICES and/or their family caregiver and policy holder in understanding the benefits offered through their private or public insurance program, completing necessary forms, accessing covered benefits, and navigating member appeal processes regarding covered benefits. An insurance company or its affiliate shall not be reimbursed for providing this service.

(b) This is a time-limited service intended to develop the person and/or family caregiver's understanding and capacity to self-manage insurance benefits. Reimbursement shall be limited to 15 hours per person per year.

(c) Persons choosing to receive this service must agree to complete an online assessment of its efficacy following the conclusion of counseling and/or forms assistance.

(#) Independent Living Skills Training. For purposes of ECF CHOICES only:

(a) Independent Living Skills Training services provide education and skill development or training to improve the person's ability to independently perform routine daily activities and utilize community resources as specified in the person's person-centered support plan. Services are instructional, focused on development of skills identified in the person-centered support plan and are not intended to provide substitute task performance. Daily living skills training may include only education and skill development related to:

1. Personal hygiene;
2. Food and meal preparation;
3. Home upkeep/maintenance;
4. Money management;

5. Accessing and using community resources;
6. Community mobility;
7. Parenting;
8. Computer use; and
9. Driving evaluation and lessons.

(b) Independent Living Skills Training is intended as a short-term service designed to allow a person not receiving Community Living Supports or Community Living Supports-Family Model to acquire specific additional skills that will support his/her transition to or sustained independent community living. Individuals receiving Independent Living Skills Training must have specific independent-living goals in their person-centered support plan that Independent Living Skills Training is specifically designed to support.

(c) The provider must prepare and follow a specific plan and strategy for teaching specific skills for the independent living goals identified in the person-centered support plan. Systematic instruction and other strategies used in Supported Employment Job Coaching should also be employed in this service. The provider must document monthly progress toward achieving each independent living skill identified in the person-centered support plan.

(d) This service will typically originate from the person's home and take place in the person's home and their home community. Providers of this service should meet people in these natural environments to provide this service rather than maintaining a separate service location.

(e) Transportation during the service (when no-cost forms of transportation are not available or not being accessed) is included in the rate paid for the service.

(f) Individuals receiving Community Living Supports or Community Living Supports-Family Model are not eligible to receive this service, since the scope of benefits provided to a person under the CLS and CLS-FM benefits include habilitation training and supports to help the person achieve maximum independence and sustained community living.

(g) Independent Living Skills Training shall be limited as follows:

1. For persons not working in Individualized Integrated Employment, Individualized Integrated Self-Employment, or Small Group Employment in the community or receiving at least one employment service, no more than 20 hours per week of Independent Living Skills Training and Community Integration Support Services combined after completing an Employment Informed Choice process.
2. For persons who are working in Individualized Integrated Employment, Individualized Integrated Self-Employment, or Small Group Employment in the community (not a sheltered workshop) or receiving at least one employment service, no more than 30 hours per week of Independent Living Skills Training, Community Integration Support Services, and Individual or Small Group Employment Supports combined.
3. For persons who are working in Individualized Integrated Employment or Individualized Integrated Self-Employment (not in a small group or in a sheltered workshop), no more than 40 hours per week of Independent Living Skills Training, Community Integration Support Services, Job Coaching, Co-Worker Supports, and the hours worked without paid supports combined.
4. For persons who are working in Individualized Integrated Employment or Individualized Integrated Self-Employment (not in a small group or in a sheltered workshop) at least 30 hours per week, no more than 50 hours per week of Independent Living Skills Training, Community Integration Support Services, Job Coaching, Co-Worker Supports, and the hours worked without paid supports combined.

- (#) Individual Education and Training Services. For purposes of ECF CHOICES only and limited to members enrolled in ECF CHOICES Group 5 (Essential Supports for Employment and Independent Living) or Group 6 (Comprehensive Supports for Employment and Community Living):
- Reimbursement up to \$500 per year to offset the costs of training programs, workshops and conferences that help the person develop self-advocacy skills, exercise civil rights, and acquire skills needed to exercise control and responsibility over other support services. Other types of education and training shall not be reimbursed. This service may include education and training for participants, their caregivers and/or legal representatives that is directly related to building or acquiring such skills. Managed care organizations assure that information about educational and/or training opportunities is available to participants and their caregivers and legal representatives. Covered expenses may include enrollment fees, books and other educational materials and transportation related to participation in training courses, conferences and other similar events. In order to be reimbursed by the MCO, Individual Education and Training Services must be approved by the member's MCO before such education or training activities commence and shall be limited to \$500 per individual per calendar year.
- (#) Individualized Integrated Employment. Sustained paid employment in a competitive or customized job with an employer for which an individual is compensated at or above the state's minimum wage, with the optimal goal being not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.
- (#) Individualized Integrated Self-Employment. Sustained paid self-employment that is home-based or conducted in an integrated setting(s) where net income in relation to hours worked is equivalent to no less than the state's minimum wage, after a reasonable self-employment start-up period.
- (#) Initial Support Plan (SP). As it pertains to ECF CHOICES, the Initial SP is a written plan developed by the Support Coordinator in accordance with policies and protocols established by TennCare which identifies ECF CHOICES HCBS that are needed by the ECF CHOICES member immediately upon enrollment in ECF CHOICES while the Support Coordinator develops the comprehensive Person-Centered Support Plan. Needed ECF CHOICES HCBS specified in the Initial SP shall be authorized for no more than thirty (30) calendar days, by which point the MCO shall develop and implement the member's comprehensive Person-Centered Support Plan.
- (#) Intake. One of three (3) components of the referral list management process for ECF CHOICES during which basic documentation is gathered to confirm information self-reported in the screening process, including whether a person has an intellectual or developmental disability (i.e., is in the target population for ECF CHOICES) and other information that will be used to prioritize the person for enrollment into ECF CHOICES based on established prioritization and enrollment criteria. Intake is generally performed during a face-to-face interview with the Potential Applicant. The result of intake could be 1) a decision to proceed with enrollment because a person with ID qualifies for an available reserve capacity slot based on an aging caregiver or meets certain prioritization criteria for a Category for which enrollment is open and there is an appropriate slot available for enrollment; 2) referral to the Interagency Review Committee because the person may meet criteria for a reserve capacity slot based on emergent circumstances or multiple complex health conditions; or 3) continued placement on the ECF CHOICES referral list in the appropriate category.
- (#) Integrated Employment Path Services (Time-Limited, Community-Based Prevocational Training). For purposes of ECF CHOICES only and limited to members age 16 or older:
- (a) The provision of time-limited learning and work experiences, including volunteering opportunities, where a person can develop general, non-job-task-specific strengths and skills that contribute to employability in individualized integrated employment or self-employment. Services are expected to specifically involve strategies that facilitate a participant's successful transition to individualized integrated employment or self-employment.
- (b) Individuals receiving Integrated Employment Path Services must have a desire to obtain some type of individualized integrated employment or self-employment and this goal must be documented in the PCSP as the goal that Integrated Employment Path Services are specifically authorized to address.
- (c) Services should be customized to provide opportunities for increased knowledge, skills and experiences specifically relevant to the person's specific individualized integrated employment and/or

self-employment goals and career goals. If such specific goals are not known, this service can also be used to assist a person with identifying his/her specific individualized integrated employment and/or self-employment goals and career goals.

(d) The expected outcome of this service is measurable gains in knowledge, skills and experiences that contribute to the individual achieving individualized integrated employment or self-employment. Integrated Employment Path Services are intended to develop and teach general skills that lead to individualized integrated employment or self-employment including but not limited to: ability to communicate effectively with supervisors, co-workers and customers; generally accepted community workplace conduct and dress; ability to follow directions; ability to attend to tasks; workplace problem solving skills and strategies; and general workplace safety and mobility training.

(e) Service limitations:

1. This service is limited to no more than twelve (12) months. One extension of up to twelve (12) months can be allowed only if the individual is actively pursuing individualized integrated employment or self-employment in an integrated setting and has documentation that a service(s) (i.e. Job Development or Self-Employment Start-Up funded by Tennessee Rehabilitation Services, ECF CHOICES or another similar source) is concurrently authorized for this purpose. The twelve (12) month authorization and one twelve (12) month reauthorization may be repeated only if a person loses individualized integrated employment or self-employment and is seeking replacement opportunities.

2. This service must be delivered in integrated, community settings and may not be provided in sheltered workshops or other segregated facility-based day, vocational or prevocational settings.

3. Integrated Employment Path Services shall not be provided or reimbursed if the person is receiving Job Coaching (for Individualized Integrated Employment or Self-Employment), Co-Worker Supports or is working in individualized integrated employment or self-employment without any paid supports. Integrated Employment Path Services are only appropriate for individuals who are not yet engaged in individualized integrated employment or self-employment.

4. Integrated Employment Path Services shall be limited to no more than 30 hours per week in combination with Supported Employment – Small Group, Community Integration Support Services, and Independent Living Skills Training.

(f) Transportation of the individual to and from this service is not included in the rate paid for this service but transportation during the service is included in the rate.

(g) ECF CHOICES will not cover services which are otherwise available to the individual under Section 110 of the Rehabilitation Act of 1973, or the IDEA (20 U.S.C. §§ 1401, et seq.). If this service is authorized, documentation is maintained that the service is not available to the individual under a program funded under Section 110 of the Rehabilitation Act of 1973 or the IDEA (20 U.S.C. §§ 1401, et seq.).

(h) This service will not duplicate other services provided through the Waiver or Medicaid State Plan services.

(#) Intellectual Disability(ies) (ID). Pursuant to T.C.A. § 33-1-101, an intellectual disability is defined as substantial limitations in functioning:

(a) As shown by significantly sub-average intellectual functioning that exists concurrently with related limitations in two (2) or more of the following adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work; and

(b) That are manifested before eighteen (18) years of age.

For purposes of ECF CHOICES, the determination that an Applicant has limitations in two (2) or more adaptive skill areas shall be made by TennCare using an adaptive behavior (or life skills) assessment tool, and review of supporting medical evidence. Information gathered through such adaptive behavior (or life skills) assessment shall not be used for purposes of evaluating functional deficits described in Rule 1200-13-01-.10, or in determining an Individual Acuity Score or an Applicants total score on the NF LOC Acuity Scale.

(#) Interagency Review Committee. The committee composed of staff from TennCare and DIDD that reviews requests submitted on behalf of a Potential Applicant in order to determine whether the Potential Applicant meets emergent circumstances or multiple complex health conditions criteria as defined in these rules. A determination by the Interagency Review Committee that a Potential Applicant meets emergent circumstances or multiple chronic health conditions criteria shall be required before DIDD or an MCO proceeds with an enrollment visit to determine if the Potential Applicant qualifies to enroll in ECF CHOICES in a reserve capacity slot designated for such purpose.

(#) Interim ECF CHOICES At-Risk Group. Individuals with I/DD of all ages who: are not eligible for Medicaid or TennCare under any other category; meet the financial eligibility standards for the ECF CHOICES 217-Like Group; do not meet NF LOC criteria but in the absence of ECF CHOICES, are At Risk for Institutionalization. The Interim ECF CHOICES At Risk Demonstration Group will open to new enrollment only until such time that the Employment and Community First CHOICES At-Risk Demonstration Group (with income up to one hundred and fifty percent (150%) of the FPL) and the Employment and Community First CHOICES Working Disabled Demonstration Groups can be established. Persons enrolled in the Interim ECF CHOICES At-Risk Demonstration Group as of the date new enrollment into the group closes may continue to qualify in the group as long as they continue to meet nursing facility financial eligibility standards and the NF LOC criteria, and remain continuously eligible and enrolled in the Interim ECF CHOICES At-Risk Demonstration Group. Enrollment in this group shall be subject to the enrollment targets established for each applicable ECF CHOICES benefit group. An Applicant may qualify in the Interim ECF CHOICES At-Risk Group only when there is an available slot for enrollment into an ECF CHOICES benefit group for which the Applicant meets all eligibility and enrollment criteria, including prioritization criteria for enrollment into ECF CHOICES as established in these Rules, and when the Applicant, upon approval of financial eligibility, will be enrolled by TennCare into such ECF CHOICES group.

(#) Job Coaching. For purposes of ECF CHOICES only and limited to members age 16 or older:

(a) Job Coaching for Individualized, Integrated Employment includes identifying, through job analysis, and providing services and supports that assist the individual in maintaining individualized integrated employment that pays at least minimum wage but ideally not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. Job coaching includes supports provided to the individual and his/her supervisor and/or co-workers, either remotely (via technology) or face-to-face. Supports during each phase of employment must be guided by a Job Coaching Fading Plan which incorporates an appropriate mix of best practices for the individual to achieve fading goals as identified in the Plan (e.g. systematic instruction utilizing task analysis to teach the individual to independently complete as much of his/her job duties as possible; high or low tech assistive technology; and effective engagement of natural supports including co-workers and supervisor(s) as needed). If progress on fading ceases at some point, adaptations to job duties, negotiated with the supervisor/employer, or transition to Co-Worker Supports may be utilized if no reduction in hours or hourly pay results.

1. The amount of time authorized for this service is a percentage of the individual's hours worked and is tiered based on the individual's level of disability and the length of time the person has been employed on the job. An exception policy applies for individuals with exceptional circumstances.

2. Transportation of the supported employee to and from the job site is not included in the rate paid for the service. Transportation of the supported employee, if necessary, during the provision of job coaching is included in the rate paid for the service.

(b) Job Coaching for Individualized, Integrated Self-Employment includes identification and provision of services and supports that assist the individual in maintaining self-employment. Job coaching for self-employment includes supports provided to the individual, either remotely (via technology) or face-to-

face. Supports must enable the individual to successfully operate the business (with assistance from other sources of professional services or suppliers of goods necessary for the type of business). Job Coaching supports should never supplant the individual's role or responsibility in all aspects of the business. Supports during each phase of self-employment must be guided by a Job Coaching Fading Plan which incorporates an appropriate mix of best practices for the individual to achieve fading goals as identified in the Plan (e.g., systematic instruction utilizing task analysis to teach the individual to independently complete as much of his/her roles and responsibilities as possible; high or low tech assistive technology; and effective engagement of any business partners and/or associates and/or suppliers of goods or services. If progress on fading ceases at some point, business plan adaptations may be utilized if no reduction in paid hours or net hourly pay results.

1. The amount of time authorized for this service is a percentage of the individual's hours engaged in self-employment and is tiered based on the individual's level of disability and the length of time the person has been self-employed in the current business. An exception policy applies for individuals with exceptional circumstances.

2. Transportation of the supported self-employed person to and from the place of work is not included in the rate paid for the service. Transportation of the supported self-employed person, if necessary, during the provision of job coaching is included in the rate paid for the service.

(c) Job Coaching (for Individualized, Integrated Employment or Individualized, Integrated Self-Employment) shall be limited as follows:

1. No more than 40 hours per week of Job Coaching, Co-Worker Supports, Community Integration Support Services, Independent Living Skills Training, and the hours worked without paid supports combined.

2. For persons who are working in Individualized Integrated Employment or Individualized Integrated Self-Employment (not in a small group or in a sheltered workshop) at least 30 hours per week, no more than 50 hours per week of Job Coaching, Co-Worker Supports, Community Integration Support Services, Independent Living Skills Training, and the hours worked without paid supports combined.

(#) Job Development or Self-Employment Start Up. For purposes of ECF CHOICES only and limited to members age 16 or older:

(a) This is a time-limited service designed to implement a Job Development or Self-Employment Plan as follows:

1. Job Development is support to obtain an individualized-competitive or customized job in an integrated employment setting in the general workforce, for which an individual is compensated at or above the minimum wage, but ideally not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. The Job Development strategy should reflect best practices and be adjusted based on whether the individual is seeking competitive or customized employment.

2. Self-Employment Start Up is support in implementing a self-employment business plan. The outcome of this service is expected to be the achievement of an individualized integrated employment or self-employment outcome consistent with the individual's personal and career goals, as determined through Exploration, Discovery and/or the Situational Observation and Assessment, if authorized, and as identified in the Job Development or Self-Employment Plan that guides the delivery of this service.

(b) This service will be paid on an outcome basis once the person has completed two calendar weeks of individualized integrated employment or self-employment. Outcome payment amounts are tiered based upon the assessed level of challenge anticipated to achieve the intended outcome of this service for the individual being served. Outcome payments are also paid over three phases to incentivize retention of the job or self-employment situation.

- (c) After an individual has received the service for the first time, re-authorization may occur a maximum of once per year (with a minimum 365-day interval between services), and only if the person, at the time of re-authorization, is not already engaged in individualized integrated employment or self-employment, or other services to obtain such employment, and the person has a goal to obtain individualized integrated employment or self-employment within nine (9) months.
- (#) Job Development Plan or Self-Employment Plan. For purposes of ECF CHOICES only and limited to members age 16 or older:
- (a) This is a time-limited and targeted service designed to create a clear and detailed plan for Job Development or for the start-up phase of Self-Employment. This service is limited to thirty (30) calendar days from the date of service initiation. This service includes a planning meeting involving the individual and other key people who will be instrumental in supporting the individual to become employed in individualized integrated employment or self-employment.
- (b) This service culminates in a written plan, using a template prescribed by TennCare, that incorporates the results of Exploration, Discovery, and/or Situational Observation and Assessment, if previously authorized. The written plan is due no later than thirty (30) calendar days after the service commences. For self-employment goals, this service results in the development of a self-employment business plan, including potential sources of business financing (such as VR, Small Business Administration loans, PASS plans), given that Medicaid funds may not be used to defray the capital expenses associated with starting a business. This service is paid on an outcome basis, after the written plan is received and approved, and the provider submits documentation detailing each date of service, the activities performed that day, and the duration of each activity.
- (c) After an individual has received the service for the first time, re-authorization may occur a maximum of once every three years (with a minimum of three 365-day intervals between services), and only if the person, at the time of re-authorization, is not already engaged in individualized integrated employment or self-employment, or other services to obtain such employment, and the person has a goal to obtain individualized integrated employment or self-employment within twelve (12) months.
- (#) Level of Need. The categorization of the intensity level of practical supports needed by a member enrolled in ECF CHOICES Group 6 based on an objective assessment utilizing the American Association of Intellectual and Developmental Disabilities Supports Intensity Scale®. The member's assessed level of need, including consideration of exceptional medical or behavioral needs as identified in the assessment, is used to establish the member's Expenditure Cap, required Support Coordinator-to-member ratios, and frequency of required Support Coordination contacts in the ECF CHOICES program.
- (#) Multiple Complex Health Conditions. For purposes of reserve capacity in ECF CHOICES, a limited number of individuals who have multiple complex chronic or acquired health conditions that present significant barriers or challenges to employment and community integration, and who are in urgent need of supports in order to maintain the current living arrangement and delay or prevent the need for more expensive services, and for which enrollment into ECF CHOICES is the most appropriate way to provide needed supports, as determined through an Interagency Committee review process, including both TennCare and DIDD. Multiple Complex Health Conditions shall be applicable only to individuals of working age.
- (#) One-Time ECF CHOICES HCBS. Specified ECF CHOICES HCBS other than employment services and supports which occur as a distinct event or which may be episodic in nature (occurring at less frequent irregular intervals or on an as needed basis for a limited duration of time). One-time ECF CHOICES HCBS include: Conservatorship and Alternatives to Conservatorship Counseling and Assistance, Minor Home Modifications, Individual Education and Training Services, Specialized Consultation and Training, Adult Dental Services, Community Support Development, Organization and Navigation, Family Caregiver Education and Training, Assistive Technology, Adaptive Equipment and Supplies, Peer-to-Peer Support and Navigation for Person Centered Planning, Self-Direction, Integrated Employment/Self Employment, and Independent Community Living, Respite, Family-to-Family Support, and Health Insurance Counseling/Forms Assistance.
- (#) Ongoing ECF CHOICES HCBS. Specified ECF CHOICES HCBS which are delivered on a regular and ongoing basis, generally one or more times each week, or in the case of community-based residential alternatives on a continuous basis, or which may be one component of a continuum of services intended to

achieve employment. Ongoing ECF CHOICES HCBS include: Supportive Home Care, Family Caregiver Stipend in lieu of Supportive Home Care, Independent Living Skills Training, Community Integration Support Services, Personal Assistance, Community Transportation, Community Living Supports (CLS), Community Living Supports Family Model (CLS-FM), Exploration, Discovery, Benefits Counseling, Situational Observation and Assessment, Job Development or Self-Employment Plan, Job Development or Self-Employment Start Up, Job Coaching (including Competitive, Integrated Employment and Self-Employment), Supported Employment – Small Group, Co-worker Supports, Career Advancement, and Integrated Employment Path Services (Time Limited Pre-Vocational Training).

(#) Peer-to-Peer Support and Navigation for Person-Centered Planning, Self-Direction, Integrated Employment/Self-Employment and Independent Community Living. For purposes of ECF CHOICES only and limited to members enrolled in ECF CHOICES Group 5 (Essential Supports for Employment and Independent Living) or Group 6 (Comprehensive Supports for Employment and Community Living):

(a) These services assist an individual and his/her family member(s) or conservator in one or more of the following areas:

1. Directing the person-centered planning process;
2. Understanding and considering self-direction;
3. Understanding and considering individualized integrated employment/self-employment;  
or
4. Understanding and considering independent community living options.

(b) The service involves addressing questions and concerns related to such options. Services are provided by a peer who has successfully directed his or her person-centered planning process, self-directed his or her own services, successfully obtained individualized integrated employment or self-employment and/or utilized independent living options.

(c) Peer-to-Peer Support and Navigation for Person-Centered Planning, Self-Direction, Integrated Employment/Self-Employment and Independent Community Living services are provided by individuals with intellectual or developmental disabilities (with paid supports if needed) who have successfully directed their person-centered planning processes, and/or self-directed their own services, and/or successfully utilized independent living options. Individuals with intellectual or developmental disabilities qualified to provide these services will have also completed training in best practices for offering peer to peer supports in the areas covered by this service.

(d) Peer-to-Peer Support and Navigation for Person-Centered Planning, Self-Direction, Integrated Employment/Self-Employment and Independent Community Living services are focused on mentoring and training others based upon their personal experience and success in one or more areas this service is focused on. A qualified service provider understands, empathizes with and can support three important areas important for enhancing self-esteem:

1. The human need for connections;
2. Overcoming the disabling power of learned helplessness, low expectations and the stigma of labels; and
3. Supporting self-advocacy, self-determination and informed choice in decision making.

(e) The Peer-to-Peer Support and Navigation for Person-Centered Planning, Self-Direction, Integrated Employment/Self-Employment and Independent Community Living service provider offers:

1. One-on-one training and information to encourage the person to lead their person-centered planning process, pursue self-direction, seek integrated employment/self-employment and/or independent community living options;
2. Education on informed decision making, risk taking, and natural consequences;

3. Education on self-direction, including recruiting, hiring and supervising staff;
  4. Planning support regarding integrated employment;
  5. Planning support regarding independent community living opportunities, including selection of living arrangements and housemates; and
  6. Assistance with identifying potential opportunities for community participation, the development of valued social relationships, and expanding unpaid supports to address individual needs in addition to paid services.
- (f) These services are intended to support an individual in knowledge and skill acquisition and should not be provided on an ongoing basis, nor should these services be provided for companionship purposes. Reimbursement shall be limited to \$1,500 per person per lifetime.
- (#) Person-Centered Support Plan (PCSP) – As it pertains to CHOICES and ECF CHOICES, the PCSP is a written plan developed by the Support Coordinator or Care Coordinator in accordance with person-centered planning requirements set forth in federal regulation, and in TennCare policies and protocols, using a person-centered planning process that accurately documents the member's strengths, needs, goals, lifestyle preferences and other preferences and outlines the services and supports that will be provided to the member to help them achieve their preferred lifestyle and goals, and to meet their identified unmet needs (after considering the availability and role of unpaid supports provided by family members and other natural supports) through paid services provided by the member's MCO and other payor sources. The person-centered planning process is directed by the member with long-term support needs, and may include a representative whom the member has freely chosen to assist the member with decision-making, and others chosen by the member to contribute to the process. If the member has a guardian or conservator, the member shall lead the planning process to the maximum extent possible, and the guardian or conservator shall have a participatory role as needed and defined by the individual, except as explicitly defined under State law and the order of guardianship or conservatorship. Any decisions made on the member's behalf should be made using principles of substituted judgment and supported decision making. This planning process, and the resulting PCSP, will assist the member in achieving a personally defined lifestyle and outcomes in the most integrated community setting, ensure delivery of services in a manner that reflects personal preferences and choices, and contribute to the assurance of health, welfare, and personal growth. Services in CHOICES and ECF CHOICES shall be authorized, provided, and reimbursed only as specified in the PCSP.
- (#) Personal Assistance. For purposes of ECF CHOICES only and limited to adults age 21 or older enrolled in ECF CHOICES Group 5 (Essential Supports for Employment and Independent Living) or Group 6 (Comprehensive Supports for Employment and Community Living);
- (a) A range of services and supports designed to assist an individual with a disability to perform activities and instrumental activities of daily living at the person's own home, on the job or in the community that the individual would typically do for themselves if he/she did not have a disability. Personal Assistance services may be provided outside of the person's home as long as the outcomes are consistent with the supports defined in the person-centered support plan with the goal of ensuring full participation and inclusion.
  - (b) Personal Assistance services may be used to:
    1. Support the person at home in getting ready for work and/or community participation;
    2. Support the person in getting to work and/or community participation opportunities; and
    3. Support the person in the workplace and/or in the broader community.
  - (c) The only exception is if Supported Employment Services or Community Integration Support Services are being provided, in which case the provider of Supported Employment and/or Community Integration Support Services shall be responsible for personal assistance needs during the hours that Supported Employment services are provided as long as the Personal Assistance Services do not

comprise the entirety of the Supported Employment or Community Integration Support Service. If a person only needs personal assistance to participate in employment or community opportunities, then this service should be authorized rather than Supported Employment or Community Integration Support Services.

(d) Personal Assistance services that are covered also include the following:

1. Support, supervision and engaging participation with eating, toileting, personal hygiene and grooming, and other activities of daily living as appropriate and needed to sustain community living, except when provided as a component of another covered service the person is receiving at that time; and
2. Direction and training to individuals in the person's social network or to his/her coworkers who choose to learn how to provide some of the Personal Assistance services.

(e) In ECF CHOICES Group 6 (Comprehensive Supports for Employment and Community Living), Personal Assistance services shall be limited to 215 hours per month. An MCO may authorize services in excess of the benefit limit as a cost-effective alternative to institutional placement or other medically necessary covered benefits.

(#) Potential Applicant. Individuals for whom TennCare or its designee shall perform referral and intake functions as specified in these rules. A Potential Applicant is entitled to a determination regarding his or her eligibility to enroll in the ECF CHOICES program and, if the application is denied, to due process, including notice and the right to request a fair hearing only when the Potential Applicant is determined to meet criteria for an available reserve capacity slot or meets prioritization criteria for an available program slot for which enrollment is currently open and will be enrolled into the program if all applicable eligibility and enrollment criteria are met.

(#) Referral. An expression of interest in applying for the ECF CHOICES program.

(#) Reserve capacity slot. For the purposes of ECF CHOICES, the state's authority to reserve a finite number of program slots in a particular ECF CHOICES Group for persons in specified circumstances; such as an Aging Caregiver of a person with ID, Emergent Circumstances, and Multiple Complex Health Conditions as defined.

(#) Respite. For purposes of ECF CHOICES only:

(a) Respite shall mean services provided to a person supported when unpaid caregivers are absent or need relief from routine caregiving responsibilities.

(b) Respite shall be limited to 30 days of service per person per calendar year or to 216 hours per person per calendar year, depending on the needs and preferences of the individual as reflected in the PCSP.

1. A member shall choose to receive Respite as either a daily or hourly service. The 2 limits cannot be combined in a calendar year.

2. If a member chooses to receive Respite as a daily service, each 24 hour time period within which Respite is provided and reimbursed shall count as one day regardless of the number of hours of Respite services reimbursed during that 24 hour period.

3. Only hourly Respite shall be available through Consumer Direction. Daily Respite shall not be available through Consumer Direction.

(c) Respite services shall be provided in settings that meet the federal HCBS regulatory standards, which promote community involvement and inclusion and which allow individuals to sustain their lifestyle and routines when an unpaid caregiver is absent for a period of time.

- (d) Respite shall be provided only for persons living with unpaid family caregivers, or living independently (not in a CBRA setting), but having unpaid caregivers who routinely (i.e., daily or almost daily) have responsibilities to provide support to the member, and relief from such support is needed.
- (#) Screening. One of three (3) components of the ECF CHOICES referral list management process which includes providing basic education about the program, including eligibility criteria and enrollment processes, and helps to gather basic information that can be used to determine if a Potential Applicant is likely to qualify for the program, and that allows the Potential Applicant to be prioritized for intake based on established prioritization and enrollment criteria.
- (#) Situational Observation and Assessment. For purposes of ECF CHOICES only and limited to members age 14 or older:
- (a) This is a time-limited service that involves observation and assessment of an individual's interpersonal skills, work habits and vocational skills through practical experiential, community integrated volunteer experiences and/or paid individualized, integrated work experiences that are uniquely arranged and specifically related to the interests, preferences and transferable skills of the job seeker as established through Discovery or a similar process. This service involves a comparison of the actual performance of the individual being assessed with core job competencies and duties required of a skilled worker in order to further determine the work competencies and skills needed by the individual to be successful in environments similar to where the Assessment is taking place. The individual shall be reimbursed at least the minimum wage and all applicable overtime for work performed, except as permitted pursuant to the Fair Labor Standards Act for unpaid internships.
- (b) Situational Observation and Assessment shall be limited to no more than thirty (30) calendar days from the date of service initiation. Each job seeker may be authorized for up to four (4) such experiences within the thirty (30) calendar day period. A summary report, using a standard template prescribed by TennCare, is due within ten (10) days after the last date of service is concluded. Reimbursement is paid on an outcome basis for each individual experience, which is expected to involve an average of twelve (12) hours of service per individual experience. The Situational Observation and Assessment outcome payment is made after the written summary report is received and approved, and the provider submits documentation detailing each date of service, the activities performed that day, and the duration of each activity.
- (c) The learning from this service described in the summary report is to be used to help inform the job development plan or self-employment plan.
- (d) After an individual has received the service for the first time, re-authorization may occur a maximum of once every three years (with a minimum of three 365-day intervals between services), and only if the person, at the time of re-authorization, is not already engaged in individualized integrated employment or self-employment, or other services to obtain such employment, and the person has a goal to obtain individualized integrated employment or self-employment within twelve (12) months.
- (#) Specialized Consultation and Training. For purposes of ECF CHOICES only, and limited to adults age 21 or older enrolled in ECF CHOICES Group 5 (Essential Supports for Employment and Independent Living) or Group 6 (Comprehensive Supports for Employment and Community Living):
- (a) Expertise, training and technical assistance in one or more specialty areas (behavior services, occupational therapy, physical therapy, speech language pathology, nutrition, orientation and mobility, or nurse education, training and delegation) to assist paid or natural or co-worker supports in supporting individuals who have long-term intervention needs, consistent with the person-centered support plan, therefore increasing the effectiveness of the specialized therapy or service. This service also is used to allow the specialists listed above to be an integral part of the person-centered planning team, as needed, to participate in team meetings and provide additional intensive consultation for individuals whose functional, medical or behavioral needs are determined to be complex. The consultation staff and the paid support staff are able to bill for their service time concurrently. Specialized Consultation and Training shall not include the ongoing provision of direct services. Activities that are covered include:
1. Observing the individual to determine and assess functional, medical or behavioral needs;

2. Assessing any current interventions for effectiveness;
  3. Developing a written, easy-to-understand intervention plan, which may include recommendations for assistive technology/equipment, workplace and community integration site modifications; the intervention plan will clearly define the interventions, activities and expected timeline for completion of activities;
  4. Identification of activities and outcomes to be carried out by paid and natural supports and co-workers;
  5. Training of family caregivers or paid support personnel on how to implement the specific interventions/supports detailed in the intervention plan; in the case of nurse education, training and delegation, shall include specific training, assessment of competency, and delegation of skilled nursing tasks to be performed as permitted under state law;
  6. Development of and training on how to observe, record data and monitor implementation of therapeutic interventions/support strategies;
  7. Monitoring the individual, family caregivers and/or the supports personnel during the implementation of the plan;
  8. Reviewing documentation and evaluating the activities conducted by relevant persons as detailed in the intervention plan with revision of that plan as needed to assure progress toward achievement of outcomes or revision of the plan as needed;
  9. Participating in team meetings; and/or,
  10. Tele-Consulting, as permitted under state law, through the use of two-way, real time interactive audio and video between places of greater and lesser clinical expertise to provide clinical consultation services when distance separates the clinical expert from the individual.
- (b) Specialized Consultation Services are provided by a certified, licensed, and/or registered professional or qualified assistive technology professional appropriate to carry out the relevant therapeutic interventions for purposes of teaching and training, and not for the ongoing provision of direct services.
- (c) Specialized Consultation Services are limited to \$5,000 per person per calendar year, except for adults in ECF CHOICES Group 6 (Comprehensive Supports for Employment and Community Living) determined by TennCare to have exceptional medical and/or behavioral support needs.
- (d) Only for adults age 21 or older in ECF CHOICES Group 6 (Comprehensive Supports for Employment and Community Living) determined by TennCare to have exceptional medical and/or behavioral support needs, Specialized Consultation Services shall be limited to \$10,000 per person per calendar year.
- (e) An MCO may authorize services in excess of the benefit limit as a cost-effective alternative to institutional placement or other medically necessary covered benefits.
- (#) Supported Employment – Small Group Supports. For purposes of ECF CHOICES only and limited to members age 16 or older:
- (a) This service provides employment services and training activities to support successful transition to individualized integrated employment or self-employment, or to supplement such employment and/or self-employment when it is only part-time. Service may involve small group career planning and exploration, small group Discovery classes/activities, other educational opportunities related to successful job acquisition and working successfully in individualized integrated employment. Service may also include employment in integrated business, industry and community settings. Examples include mobile crews, small enclaves and other small groups participating in integrated employment that is specifically related to the identified interests, experiences and/or skills of each of the persons in

the small group and that results in acquisition of knowledge, skills and experiences that facilitate transition to individualized integrated employment or self-employment, or that supplement such employment or self-employment when it is only part-time. Minimum staffing ratio is 1:3 for this service.

1. Career planning and exploration activities, Discovery classes/activities, other educational opportunities related to successful job acquisition and working successfully in individualized integrated employment or self-employment must be conducted in appropriate non-disability-specific settings (e.g. Job Centers, businesses, post-secondary education campuses, libraries, etc.) All settings must meet all HCBS setting standards and must not isolate participants from others who do not have disabilities.
  2. In the enclave model, a small group of people with disabilities (no more than three people) is trained and supervised to work among employees who are not disabled at the host company's work site. Persons in the enclave may work as a team at a single work area or may work in multiple areas throughout the company. The Supported Employment—Small Group provider is responsible for training, supervision, and support of participants. The provider is expected to conduct this service in integrated business, industry or community settings that meet all HCBS setting standards and do not isolate participants from others in the setting who do not have disabilities. The experience should allow opportunities for routine interactions with others without disabilities in the setting and involvement from supervisors and co-workers without disabilities (not paid to deliver this service) in the supervision and support of individuals receiving this service.
  3. In the mobile work crew model, a small crew of workers (including no more than three persons with disabilities and ideally also including workers without disabilities) work as a distinct unit and operate as a self-contained business that generates employment for their crew members by selling a service. The crew typically works at several locations within the community. The Supported Employment—Small Group provider is responsible for training, supervision, and support of participants. The provider is expected to conduct this service in integrated business, industry or community settings that meet all HCBS setting standards and do not isolate participants from others who do not have disabilities. The experience should allow opportunities for routine interactions with people without disabilities (including fellow crew members, customers, etc.) in the course of performing services.
- (b) Paid work under Supported Employment—Small Group must be compensated at minimum wage or higher.
- (c) Supported Employment—Small Group does not include vocational or prevocational services, employment or training provided in facility-based work settings. Supported Employment—Small Group service settings cannot be provider-owned, leased or operated settings. The settings must be integrated in, and support full access of participants to the greater community, including opportunities to learn about and seek individualized integrated employment or self-employment, engage in community life, and control their earned income.
- (d) The expected outcome of this service is the acquisition of knowledge, skills and experiences that facilitate career development and transition to individualized integrated employment or self-employment, or that supplement such employment and/or self-employment when it is only part-time. The individualized integrated employment or self-employment shall be consistent with the individual's personal and career goals.
- (e) Supported Employment—Small Group services shall be provided in a way that presumes all participants are capable of working in individualized integrated employment and/or self-employment. Participants in this service shall be encouraged, on an ongoing basis, to explore and develop their interests, strengths, and abilities relating to individualized integrated employment and/or self-employment. In order to reauthorize this service, the Person-Centered Support Plan (PCSP) must document that such opportunities are being provided through this service, to the individual, on an ongoing basis. The PCSP shall also document and address any barriers to the individual transitioning to individualized integrated employment or self-employment if the person is not already participating in individualized integrated employment or self-employment. Any individual using this service to

supplement part-time individualized integrated employment or self-employment shall be offered assistance to increase hours in individualized integrated employment and/or self-employment as an alternative or partial alternative to continuing this service.

- (f) As a component part of this service, Supported Employment—Small Group service providers shall support individuals in identifying and pursuing opportunities that will move them into individualized integrated employment or self-employment. A one-time incentive payment for full transition of a person from Supported Employment-Small Group services to individualized integrated employment or self-employment shall be paid to the Supported Employment—Small Group provider upon successful transition (defined as successfully completing at least four weeks in the individualized integrated employment or self-employment situation) out of Supported Employment—Small Group services to individualized integrated employment or self-employment.
- (g) Transportation of participants to and from the service is not included in the rate paid for the service; however transportation provided during the course of Supported Employment—Small Group services is considered a component part of the service and the cost of this transportation is included in the rate paid to providers of this service.
- (h) The Supported Employment—Small Group provider shall be responsible for any personal assistance needs during the hours that Supported Employment—Small Group services are provided; however, the personal assistance services may not comprise the entirety of the Supported Employment—Small Group service. All providers of personal care under Supported Employment—Small Group shall meet the Personal Assistance service provider qualifications, except that a separate PSSA license shall not be required.
- (i) Supported Employment—Small Group services exclude services available to an individual under a program funded under Section 110 of the Rehabilitation Act of 1973 or the IDEA (20 U.S.C. §§1401, et seq.).
- (j) Federal financial participation is not claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following:
  1. Incentive payments made to an employer to encourage or subsidize the employer's participation in supported employment;
  2. Payments that are passed through to users of supported employment services; or
  3. Payments for training that is not directly related to an individual's supported employment program.
- (k) Supported Employment—Small Group does not include supports provided in facility based (sheltered, prevocational, vocational or habilitation) work settings and does not include supports for volunteering.
- (l) Supported Employment—Small Group services shall be limited to no more than 30 hours per week of Supported Employment—Small Group, Integrated Employment Path Services, Community Integration Support Services, and Independent Living Skills training combined.
- (#) Supportive Home Care (SHC). For purposes of ECF CHOICES only, and limited to members enrolled in ECF CHOICES Group 4 (Essential Family Supports):
  - (a) This service involves the provision of services and supports in the home and community by a paid caregiver who does not live in the family home to an individual living with his or her family that directly assist the individual with activities of daily living and personal needs to insure adequate functioning in their home and maintain community living. Supportive Home Care services may be provided outside of the person's home as long as the outcomes are consistent with the supports defined in the person-centered support plan with the goal of ensuring full participation and inclusion.
  - (b) Services include:

1. Hands-on assistance with activities of daily living such as dressing/undressing, bathing, feeding, toileting, assistance with ambulation (including the use of a walker, cane, etc.), care of hair and care of teeth or dentures. This can also include preparation and cleaning of areas used during personal care activities such as the bathroom and kitchen.
2. Observation of the person supported to assure safety, oversight direction of the person to complete activities of daily living or instrumental activities of daily living.
3. Routine housecleaning and housekeeping activities performed for the person supported (and not other family members or persons living in the home, as applicable), consisting of tasks that take place on a daily, weekly or other regular basis, including: washing dishes, laundry, dusting, vacuuming, meal preparation and shopping for food and similar activities that do not involve hands-on care of the person.
4. Necessary cleaning of vehicles, wheelchairs and other adaptive equipment and home modifications such as ramps.

**Amended Definitions:**

- (4) Applicant. A person applying for TennCare-reimbursed LTSS, for whom a PAE has been submitted to TennCare, and/or by or on behalf of whom a Medicaid application has been submitted to DHSTennCare. An Applicant is entitled to a determination regarding his or her eligibility to enroll in the program for which the PAE has been submitted, and to due process, including notice and the right to request a fair hearing, if the application is denied. For purposes of compliance with the Linton Order, the term shall include all individuals who have affirmatively expressed an intent to be considered for current or future admission to a NF or requested that their name be entered on any NF "wait list." All individuals who contact a NF to casually inquire about the facility's services or admissions policies shall be informed by the facility of that individual's right to apply for admission and be considered for admission on a nondiscriminatory basis and in conformance with Rule 1200-13-01-.06.

- (8) Assistive Technology.

- (a) For purposes of CHOICES:

Assistive devices, adaptive aids, controls or appliances that enable an Enrollee to increase his ability to perform ADLs or to perceive or control his environment. Examples include, but are not limited to, "grabbers" to pick objects off the floor, a strobe light to signify the smoke alarm has been activated, etc.

- (b) For purposes of ECF CHOICES:

An item, piece of equipment or product system, whether acquired commercially, modified or customized, that is used to increase, maintain, or improve functional capabilities and to support the individual's increased independence in the home, community living and participation, and individualized integrated employment or self-employment. The service covers purchases, leasing, shipping costs, and as necessary, repair of equipment required by the person to increase, maintain or improve his/her functional capacity to perform daily tasks in the community and in employment that would not be possible otherwise. All items must meet applicable standards of manufacture, design and installation. The person-centered support plan must include strategies for training the individual and any others who the individual will or may rely on in effectively using the assistive technology or adaptive equipment (e.g. his/her support staff; co-workers and supervisors in the place of employment; natural supports).

1. Assistive Technology Equipment and Supplies also covers the following:

- (i) Evaluation and assessment of the assistive technology and adaptive equipment needs of the individual by an appropriate professional, including a functional evaluation of the impact of the provision of appropriate assistive technology and adaptive equipment through equipment trials and appropriate services to him/her in all environments with

which the person interacts over the course of any 24 hour day, including the home, integrated employment setting(s) and community integration locations;

(ii) Services consisting of selecting, designing, fitting, customizing, adapting, applying, maintaining, updating, repairing, or replacing assistive technology devices and adaptive equipment;

(iii) Adaptive equipment to enable the individual to feed him/herself and/or complete oral hygiene as indicated while at home, work or in the community (e.g. utensils, gripping aid for utensils, adjustable universal utensil cuff, utensil holder, scooper trays, cups, bowls, plates, plate guards, non-skid pads for plates/bowls, wheelchair cup holders, adaptive cups that are specifically designed to allow a person to feed him/herself or for someone to safely assist a person to eat and drink, and adaptive toothbrushes);

(iv) Coordination and use of necessary therapies, interventions, or services with assistive technology devices, such as therapies, interventions, or services associated with other services in the person-centered support plan;

(v) Training, programming, demonstrations or technical assistance for the individual and for his/her providers of support (whether paid or unpaid) to facilitate the person's use of the assistive technology and adaptive equipment;

(vi) Adaptive switches and attachments;

(vii) Adaptive toileting equipment;

(viii) Communication devices and aids that enable the person to perceive, control or communicate with the environment, including a variety of devices for augmentative communication;

(ix) Assistive devices for persons with hearing and vision loss (e.g. assistive listening devices, TDD, large visual display services, Braille screen communicators, FM systems, volume control telephones, large print telephones and teletouch systems and long white canes with appropriate tips to identify footpath information for people with visual impairment;

(x) Computer equipment, adaptive peripherals and adaptive workstations to accommodate active participation in the workplace and in the community;

(xi) Software also is approved when required to operate accessories included for environmental control;

(xii) Pre-paid pre-programmed cellular phones that allow an individual who is participating in employment or community integration activities without paid or natural supports and who may need assistance due to an accident, injury or inability to find the way home. The person's PCSP outlines a protocol that is followed if the individual has an urgent need to request help while in the community;

(xiii) Such other durable and non-durable medical equipment not available under the State Plan that is necessary to address functional limitations in the community, in the workplace, and in the home;

(xv) Repair of equipment is covered for items purchased through this Waiver or purchased prior to Waiver participation, as long as the item is identified within this service definition and the cost of the repair does not exceed the cost of purchasing a replacement piece of equipment. The individual must own any piece of equipment that is repaired.

2. A written recommendation by an appropriate professional must be obtained to ensure that the equipment will meet the needs of the person. The recommendation of the Job Accommodation

Networks (JAN) will meet this requirement for worksite technology. Depending upon the financial size of the employer or the public entity, those settings may be required to provide some of these items as part of their legal obligations under Title I or Title III of the ADA. Federal financial participation is not claimed for accommodations that are the legal responsibility of an employer or public entity, pursuant to Title I or Title III of the ADA.

3. ECF CHOICES will not cover Assistive Technology or Adaptive Equipment and services which are otherwise available to the individual under Section 110 of the Rehabilitation Act of 1973, or the IDEA (20 U.S.C. §§ 1401, et seq.). If this service is authorized, documentation is maintained that the service is not available to the individual under a program funded under Section 110 of the Rehabilitation Act of 1973 or the IDEA (20 U.S.C. §§ 1401, et seq.).
4. Assistive Technology, Adaptive Equipment and Supplies shall be limited to \$5,000 per person per calendar year.

(9) At Risk for Institutionalization.

(a) For purposes of CHOICES.

1. A requirement for eligibility to enroll in CHOICES Group 3 (including Interim CHOICES Group 3), whereby an individual does not meet the NF LOC criteria in place as of July 1, 2012, but meets the NF LOC criteria in place as of June 30, 2012, as defined in TennCare Rule 1200-13-01-.10(4) such that, in the absence of the provision of a moderate level of home and community based services and supports, the individual's condition and/or ability to continue living in the community will likely deteriorate, resulting in the need for more expensive institutional placement.
2. As it relates to CHOICES Group 3, includes only SSI eligible adults age sixty-five (65) or older or age twenty-one (21) or older with physical disabilities. As it relates to Interim CHOICES Group 3, open for enrollment only between July 1, 2012 and June 30, 2015, includes only adults age sixty-five (65) or older or age twenty-one (21) or older with physical disabilities who receive SSI or meet Nursing Facility Financial eligibility criteria.

(b) For purposes of ECF CHOICES:

The minimum medical eligibility (i.e., level of care) requirement to enroll in ECF CHOICES Group 4 or 5, whereby an Applicant does not meet NF LOC criteria, but has an intellectual or developmental disability as defined under Tennessee state law, including for an Applicant with ID, limitations in two (2) or more adaptive skill areas (i.e., communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work); and for an Applicant age five (5) or older with DD, substantial functional limitations in three (3) or more major life activities (i.e., self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; and economic self-sufficiency); such that, in the absence of the provision of a moderate level of ECF CHOICES home and community based services and supports, the individual's condition and/or ability to continue living in the community will likely deteriorate, resulting in the need for more expensive institutional placement.

(11) Back-up Plan. A written plan that is a required component of the plan of care for all CHOICES Mmembers receiving companion care or the plan of care or person-centered support plan, as appropriate, for CHOICES or ECF CHOICES members receiving non-residential CHOICES or ECF CHOICES HCBS in their own homes and which specifies unpaid persons as well as paid consumer-directed workers and/or contract providers (as applicable) who are available, have agreed to serve as back-up, and who will be contacted to deliver needed care or support in situations when regularly scheduled CHOICES or ECF CHOICES HCBS providers or workers are unavailable or do not arrive as scheduled. A CHOICES or ECF CHOICES member or his/her representative may not elect, as part of the back-up plan, to go without services. The back-up plan shall include the names and telephone numbers of persons and agencies to contact and the services to be provided by each of the listed contacts. The member and his/her representative (as applicable) shall have primary responsibility for the development and implementation of the back-up plan for consumer directed services. The FEA will assist as needed with the development and verification of the initial back-up plan for consumer direction. The care coordinator or support coordinator

shall be responsible for assistance as needed with implementing the back-up plan and for updating and verifying the back-up plan on an ongoing basis.

#### Back-up Plan

- (a) ~~A written plan that is a required component of the POC for all CHOICES Members receiving Companion Care or non-residential CHOICES HCBS in their own homes and that specifies unpaid persons and in the case of services provided through Consumer Direction, paid Consumer Directed Workers and/or Contract Providers (as applicable and in accordance with 1200-13-01-.05(9)(h)(8)) who are available, and have agreed to serve as back-up, and who will be contacted to deliver needed care in situations when regularly scheduled CHOICES HCBS providers or Workers are unavailable or do not arrive as scheduled.~~
  - (b) ~~A CHOICES Member or his Representative may not elect, as part of the Back-up Plan, to go without services.~~
  - (c) ~~The Back-up Plan shall include the names and telephone numbers of persons and agencies to contact and the services to be provided by each of the listed contacts. The Member and his Representative (as applicable) shall have primary responsibility for the development and implementation of the Back-up Plan for consumer-directed services with assistance from the FEA as needed.~~
- (24) CHOICES Home and Community-Based Services (HCBS). Services specified in ~~Rule 1200-13-01-.05(8)(i)~~ that are available only to eligible persons enrolled in CHOICES Group 2 or Group 3 as an alternative to long-term care institutional services in a Nursing Facility or to delay or prevent placement in a Nursing Facility. Only certain CHOICES HCBS are eligible for Consumer Direction. CHOICES HCBS do not include Home Health or Private Duty Nursing Services or any other HCBS that are covered by Tennessee's Title XIX State Plan or under the TennCare demonstration for all eligible enrollees, although such services are subject to estate recovery and shall be counted for purposes of determining whether a CHOICES Group 2 Member's needs can be safely met in the community within his or her individual cost neutrality cap.
- (28) Community-Based Residential Alternatives (CBRA) to institutional care. For purposes of CHOICES and ECF CHOICES:
- (a) Residential services that offer a cost-effective, community-based alternative to NF care for individuals who are elderly and/or adults with Physical Disabilities and for individuals with I/DD.
  - (b) CBRA include, but are not limited to:
    - 1. Services provided in a licensed facility such as an ACLF or Critical Adult Care Home, and residential services provided in a licensed home or in the person's home by an appropriately licensed provider such as Community Living Supports and Community Living Supports-Family Model; and
    - 2. Companion Care.
- (29) Community Living Supports (CLS). For the purposes of CHOICES and ECF CHOICES, this service is available only to CHOICES Group 2 and 3 Members and ECF CHOICES Group 5 and 6 Members as appropriate:
- (30) Community Living Supports Family Model (CLS-FM). For the purposes of CHOICES and ECF CHOICES, this service is available to CHOICES Group 2 and 3 Members and ECF CHOICES Group 5 and Group 6 Members as appropriate:
- (33) Consumer Direction of Eligible CHOICES or ECF CHOICES HCBS. The opportunity for a CHOICES or ECF CHOICES member assessed to need specified types of CHOICES or ECF CHOICES HCBS including for purposes of CHOICES, attendant care, personal care, in-home respite, companion care; and for purposes of ECF CHOICES, personal assistance, supportive home care, respite, and community transportation; and/or any other service specified in TennCare rules as available for consumer direction to elect to direct and manage (or to have a representative direct and manage) certain aspects of the provision

of such services—primarily, the hiring, firing, and day-to-day supervision of consumer-directed workers delivering the needed service(s) and for ECF CHOICES, the delivery of each eligible ECF CHOICES HCBS within the authorized budget for that service.

~~Consumer Direction (CD) of Eligible CHOICES HCBS. For purposes of CHOICES, the opportunity for a Member assessed to need Eligible CHOICES HCBS (limited to Attendant Care, Personal Care Visits, In-Home Respite Care, or Companion Care) to elect to direct and manage (or to have a Representative direct and manage) certain aspects of the provision of such services, primarily the hiring, firing, and day-to-day supervision of Consumer-Directed Workers delivering the needed service(s).~~

- (34) Consumer-Directed Worker (Worker). An individual who has been hired by a CHOICES or ECF CHOICES member participating in consumer direction of eligible CHOICES or ECF CHOICES HCBS or his/her representative to provide one or more eligible CHOICES or ECF CHOICES HCBS to the member. Worker does not include an employee of an agency that is being paid by an MCO to provide HCBS to the member.

~~Consumer-Directed Worker (worker):~~

~~(a) An individual who has been hired by a CHOICES Member participating in CD of Eligible CHOICES HCBS or by his Representative to provide one or more Eligible CHOICES HCBS to the Member.~~

~~(b) Does not include an employee of an agency that is being paid by an MCO to provide CHOICES HCBS to the Member.~~

- (36) Cost-Effective Alternative (CEA) Service.

(e) For purposes of ECF CHOICES, CEA services may include the provision of ECF CHOICES HCBS as an alternative to NF care when the Enrollment Target for the benefit group in which the Member will be enrolled has been reached as described in Rule 1200-13-01-.31.

- (39) Department of Intellectual and Developmental Disabilities (DIDD). The State entity contracted by TennCare to serve as the OAA for day-to-day operation of the Section 1915(c) HCBS Waivers for persons with ID. Formerly known as the Division of Intellectual Disabilities Services (DIDS), and is responsible for the performance of contracted functions for ECF CHOICES as specified in an interagency agreement.

- (42) Electronic Visit Verification (EVV) System. An electronic system into which provider staff and consumer-directed workers can check-in at the beginning and check-out at the end of each period of service delivery to monitor member receipt of specified CHOICES and ECF CHOICES HCBS and which may also be utilized for submission of claims.

~~Electronic Visit Verification (EVV) system: An electronic system that paid caregivers use to check-in at the beginning and check-out at the end of each period of service delivery. The system is used to monitor Member receipt of specified CHOICES HCBS and also to generate claims for submission by the provider.~~

- (44) Employer of Record. The Member participating in CD consumer direction of Eligible CHOICES or ECF CHOICES HCBS or a representative designated by the Member to assume the CD consumer direction of Eligible CHOICES or ECF CHOICES HCBS functions on the Member's behalf.

- (48) Expenditure Cap. The annual limit on expenditures for CHOICES or ECF CHOICES that a member enrolled in CHOICES Group 3 or ECF CHOICES, as applicable, can receive. For purposes of the Expenditure Cap for members in CHOICES Group 3 and ECF CHOICES Group 4, the cost of minor home modifications is not counted in calculating annual expenditures for CHOICES HCBS or ECF CHOICES HCBS. For purposes of the Expenditure Cap for members in ECF CHOICES Group 6 who are granted an exception to the Expenditure Cap based on exceptional medical and/or behavioral needs, the cost of home health and private duty nursing shall be counted against the member's Expenditure Cap

~~Expenditure Cap. For purposes of CHOICES Group 3, the annual limit on expenditures for CHOICES HCBS, excluding Minor Home Modifications, that a CHOICES Group 3 Member can receive. The Expenditure Cap shall be \$15,000 (fifteen thousand dollars) per Member per calendar year~~

(52) Fiscal Employer Agent (FEA). An entity contracting with the ~~Bureau~~State and/or an MCO ~~one of the State's contracted MCOs that helps CHOICES and ECF CHOICES Mmembers participating in CD consumer direction of Eligible CHOICES or ECF CHOICES HCBS.~~ The FEA provides both financial administration and supports brokerage functions for CHOICES and ECF CHOICES Mmembers participating in CD consumer direction of Eligible CHOICES or ECF CHOICES HCBS. This term is used by the IRS to designate an entity operating under Section 3504 of the IRS code, Revenue Procedure 70-6, and Notice 2003-70, as the agent to Mmembers for the purpose of filing certain federal tax forms and paying federal income tax withholding, FICA and FUTA taxes. The FEA also files state income tax withholding and unemployment insurance tax forms and pays the associated taxes and processes payroll based on the eligible CHOICES or ECF CHOICES HCBS authorized and provided.

(55) Home and Community-Based Services (HCBS). Services that are provided pursuant to a Section 1915(c) Waiver or the CHOICES or ECF CHOICES program as an alternative to long-term care institutional services in a nursing facility or an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) or to delay or prevent placement in a nursing facility. HCBS may also include optional or mandatory services that are covered by Tennessee's Title XIX State Plan or under the TennCare demonstration for all eligible enrollees, including home health or private duty nursing. However, only CHOICES and ECF CHOICES HCBS are eligible for Consumer Direction. CHOICES and ECF CHOICES HCBS do not include home health or private duty nursing services or any other HCBS that are covered by Tennessee's Title XIX State Plan or under the TennCare demonstration for all eligible enrollees, although such services are subject to estate recovery and shall be counted for purposes of determining whether a CHOICES Group 2 member's needs can be safely met in the community within his or her individual cost neutrality cap. The cost of home health and private duty nursing shall also be counted against the member's Expenditure Cap for members in ECF CHOICES Group 6 who are granted an exception to the Expenditure Cap based on exceptional medical and/or behavioral needs.

~~Home and Community-Based Services (HCBS). Services that are provided under the authority of a Section 1915(c) HCBS waiver or (in the case of CHOICES) a Section 1115 waiver pursuant to a written POC as an alternative to institutional LTSS in a NF or an ICF/IID to individuals for whom there has been a determination that, but for the provision of such services, the individuals would require the LOC provided in the institution to which the HCBS offer an alternative, or in the case of CHOICES Group 3, are At Risk for Institutionalization. HCBS may also include optional or mandatory services that are covered by Tennessee's Title XIX State Plan or under the TennCare demonstration for all eligible enrollees, including Home Health or Private Duty Nursing.~~

(57) Home-Delivered Meals.

(a) Nutritionally well-balanced meals, other than those provided under Title III C-2 of the Older Americans Act, that provide at least one-third but no more than two-thirds of the current daily Recommended Dietary Allowance (as estimated by the Food and Nutrition Board of Sciences – National Research Council) and that will be served in the Enrollee's home. Special diets shall be provided in accordance with the individual POC when ordered by the Enrollee's physician.

(b) Regardless of payer, Home-Delivered Meals shall not be provided to Members living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA (including Companion Care) or Short-Term NF services, provided however, that an MCO may authorize Home-Delivered Meals for a CHOICES member receiving Companion Care or Community Living Supports (not Community Living Supports-Family Model) in their own home (not a provider-controlled residence) when such service is medically necessary in order to 1) address health risks related to food insecurity; 2) support improved management of chronic health conditions; 3) reduce risk of hospital readmissions related to such chronic health conditions; 4) improve physical or mental health outcomes; or 5) delay or prevent nursing home placement.

(65) Individual Acuity Score. The weighted value assigned by TennCare to:

(a) The response to a specific ADL or related question in the PAE for NF LOC that is supported by the medical evidence submitted with the PAE; or

(b) A specific skilled or rehabilitative service determined by TennCare to be needed by the applicant on a daily basis or at least five (5) days per week for rehabilitative services based on the medical evidence

submitted with the PAE and for which TennCare would authorize level 2 or Enhanced Respiratory Care Reimbursement in a NF.

(c) An Individual Acuity Score shall be based only on the response to the specific ADL or related question on the PAE, and the supporting medical evidence submitted with the PAE pertaining to such question on the PAE, and not by any other assessment instrument, including the adaptive behavior (or life skills) assessment used to determine whether a person has an intellectual or developmental disability; provided, however, that all available information, including the adaptive behavior (or life skills) assessment shall be taken into account in a Safety Determination (see Rule 1200-13-01-.02 and Rule 1200-13-01-.05(6)).

(90) Minor Home Modifications. For purposes of CHOICES and ECF CHOICES:

(a) Included are the following:

1. The provision and installation of certain home mobility aids, including but not limited to:
  - (i) Wheelchair ramps and modifications directly related to and specifically required for the construction or installation of the ramps;
  - (ii) Hand rails for interior or exterior stairs or steps; or
  - (iii) Grab bars and other devices.
2. Minor physical adaptations to the interior of a Member's place of residence that are necessary to ensure his health, welfare and safety, or which increase his mobility and accessibility within the residence, including but not limited to:
  - (i) Widening of doorways; or
  - (ii) Modification of bathroom facilities.

(b) Excluded are the following:

1. Installation of stairway lifts or elevators;
2. Adaptations that are considered to be general maintenance of the residence;
3. Adaptations that are considered improvements to the residence;
4. Adaptations that are of general utility and not of direct medical or remedial benefit to the individual, including but not limited to:
  - (i) Installation, repair, replacement or roof, ceiling, walls, or carpet or other flooring;
  - (ii) Installation, repair, or replacement of heating or cooling units or systems;
  - (iii) Installation or purchase of air or water purifiers or humidifiers;
  - (iv) Installation or repair of driveways, sidewalks, fences, decks, and patios; and
  - (v) Adaptations that add to the total square footage of the home are excluded from this benefit.

(c) All services shall be provided in accordance with applicable State or local building codes.

(d) Regardless of payer, Minor Home Modifications shall not be provided to Members living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting. Minor Home Modifications shall not be provided to Members receiving Short-Term NF services, except as provided in Rule 1200-13-01-.05 to facilitate transition to the community.

- (e) Minor home modifications are subject to a limit of \$6,000 per project, \$10,000 per calendar year, and \$20,000 per lifetime.

(105) Personal Emergency Response System (PERS). For purposes of CHOICES:

- (a) An electronic device that enables certain Members at high risk of institutionalization to summon help in an emergency. The Member may also wear a portable "help" button to allow for mobility. The system is programmed to signal a response center once the "help" button is activated. The response center is staffed by trained professionals who assess the nature of the emergency, and obtain assistance for the individual, as needed. PERS services are limited to those Members who have demonstrated mental and physical capacity to utilize such system effectively and who live alone or who are alone with no caregiver for extended periods of time, such that the Member's safety would be compromised without access to a PERS.
- (b) Regardless of payer, PERS shall not be provided to Members living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA (including Companion Care) or Short-Term NF services, provided however, that an MCO may authorize PERS for a CHOICES member receiving Companion Care, Community Living Supports, or Community Living Supports-Family Model services when such service provides less than 24-hour staff support and PERS is medically necessary in order to help sustain or increase the member's independence in the home, reduce risk of safety concerns, and delay or prevent nursing home placement.

(119) Qualified Assessor. A practicing professional who meets the qualifications established by TennCare to certify the accuracy of a level of care assessment as reflected in the PAE application. For the CHOICES program, Qualified Assessors shall include only the following: a licensed physician, nurse practitioner, physician assistant, registered or licensed nurse, licensed social worker, or an individual who has a bachelor's degree in social work, nursing, education or other human service (e.g., psychology or sociology) and is also prior approved by TennCare on a case-by-case basis. For the ECF CHOICES program, Qualified Assessors shall include the preceding individuals and shall also include individuals who meet the federal requirements for a Qualified Intellectual Disabilities Professional or Qualified Developmental Disabilities Professional or individuals who have five (5) or more years' experience as an independent support coordinator or case manager for service recipients in a 1915(c) HCBS Waiver and have completed Personal Outcome Measures Introduction and Assessment Workshop trainings as established by the Council on Quality and Leadership and are prior approved by TennCare on a case-by-case basis.

(122) Representative.

- (a) In general, for CHOICES and ECF CHOICES Mmembers, a individual person who is at least eighteen (18) years of age and is authorized by the Mmember to participate in care or support planning and implementation and to speak and/or make decisions on the Mmember's behalf, including but not limited to identification of needs, preference regarding services and service delivery settings, and communication and resolution of complaints and concerns, provided that any decision making authority not specifically delegated to a legal representative (e.g., a guardian or conservator) is retained by the member unless he or she chooses to allow a (non-legal) representative whom he or she has freely chosen to make such decisions.
- (b) As it relates to CD consumer direction of Eligible CHOICES or ECF CHOICES HCBS, a Representative person is an individual who is authorized by the Mmember to direct and manage the Mmember's worker(s), and signs a Rrepresentative Agreement. The Rrepresentative for CD consumer direction of Eligible CHOICES or ECF CHOICES HCBS must also: be at least eighteen (18) years of age; have a personal relationship with the member and understand his/her support needs; know the member's daily schedule and routine, medical and functional status, medication regimen, likes and dislikes, and strengths and weaknesses; and be physically present in the member's residence on a regular basis or at least at a frequency necessary to supervise and evaluate workers.

(123) Representative Agreement. The agreement between a CHOICES or ECF CHOICES Mmember electing CD consumer direction of eligible CHOICES or ECF CHOICES HCBS who has a Rrepresentative direct and manage the Member's consumer's Wworker(s) and the Mmember's Rrepresentative that specifies the roles and responsibilities of the Mmember and the Mmember's Rrepresentative.

(127) Safety Determination.

(a) A decision made by the Bureau in accordance with the process and requirements described in Rule 1200-13-01-.05(6) regarding whether:

1. An Applicant age 65 and older and is At Risk for Institutionalization as defined in Rule 1200-13-01-.02 or an Applicant age 21 and older who has a physical disability and is At Risk for Institutionalization as defined in Rule 1200-13-01-.02 would qualify to enroll in CHOICES Group 3 (including Interim CHOICES Group 3) or if there is sufficient evidence, as required and determined by the Bureau, to demonstrate that the necessary intervention and supervision needed by the Applicant cannot be safely provided within the array of services and supports that would be available if the Applicant was enrolled in CHOICES Group 3, including CHOICES HCBS up to the Expenditure Cap of \$15,000; non-CHOICES HCBS available through TennCare (e.g., home health); cost-effective alternative services (as applicable); services available through Medicare, private insurance or other funding sources; and natural supports provided by family members and other caregivers who are willing and able to provide such care, and which may impact the Applicant's NF LOC eligibility (see Rule 1200-13-01-.10(4)(b)2.(i)(II) and 1200-13-01-.10(4)(b)2.(ii)(II)).
2. An Applicant, age 21 and older who has an intellectual or developmental disability and is At Risk for Institutionalization as defined in Rule 1200-13-01-.02 would qualify to enroll in ECF CHOICES Group 5, or if there is sufficient evidence, as required and determined by the Bureau, to demonstrate that the necessary intervention and supervision needed by the Applicant cannot be safely provided within the array of services and supports that would be available if the Applicant was enrolled in ECF CHOICES Group 5, including ECF CHOICES HCBS up to the Expenditure Cap of \$30,000; one-time emergency assistance up to \$6,000; non-ECF CHOICES HCBS available through TennCare (e.g., home health); cost-effective alternative services (as applicable); services available through Medicare, private insurance or other funding sources; and natural supports provided by family members and other caregivers who are willing and able to provide such care, and which may impact the Applicant's NF LOC eligibility (see Rule 1200-13-01-.10(4)(b)2.(ii)(III)).
3. An Applicant under age 18 who has an intellectual or developmental disability and is At Risk for Institutionalization as defined in Rule 1200-13-01-.02 would not qualify financially for TennCare unless the deeming of the parent's income to the child is waived, and absent the availability of benefits in ECF CHOICES Group 4, including ECF CHOICES HCBS up to the Expenditure Cap of \$15,000, non-ECF CHOICES HCBS available through TennCare (e.g., home health); cost-effective alternative services (as applicable); services available through Medicare, private insurance or other funding sources; and natural supports provided by family members and other caregivers who are willing and able to provide such care, the child is at imminent risk of placement outside the home, and which may impact the Applicant's NF LOC eligibility (see Rule 1200-13-01-.10(4)(b)2.(ii)(IV)).

~~(a) A decision made by the Bureau in accordance with the process and requirements described in Rule 1200-13-01-.05(6) regarding whether an Applicant would qualify to enroll in CHOICES Group 3 (including Interim CHOICES Group 3) or if there is sufficient evidence, as required and determined by the Bureau, to demonstrate that the necessary intervention and supervision needed by the Applicant cannot be safely provided within the array of services and supports that would be available if the Applicant was enrolled in CHOICES Group 3, including CHOICES HCBS up to the Expenditure Cap of \$15,000, non-CHOICES HCBS available through TennCare (e.g., home health), cost-effective alternative services (as applicable), services available through Medicare, private insurance or other funding sources, and natural supports provided by family members and other caregivers who are willing and able to provide such care, and which may impact the Applicant's NF LOC eligibility (see Rule 1200-13-01-.10(4)(b)2.(i)(II) and 1200-13-01-.10(4)(b)2.(ii)(II)).~~

(b) Such determination shall include review of information submitted to the Bureau as part of the Safety Determination request, including, but not limited to:

1. ongoing skilled and/or rehabilitative interventions and treatment by licensed professional

staff;

2. A pattern of recent falls resulting in injury or with significant potential for injury;
  3. An established pattern of recent emergent hospital admissions or emergency department utilization for emergent conditions;
  4. Recent nursing facility admissions, including precipitating factors and length of stay;
  5. An established pattern of self-neglect that increases risk to personal health, safety and/or welfare requiring involvement by law enforcement or Adult Protective Services;
  6. A determination by a community-based residential alternative provider that the Applicant's needs can no longer be safely met in a community setting; and
  7. The need for and availability of regular, reliable natural supports, including changes in the physical or behavioral health or functional status of family or unpaid caregivers; and
  8. For Applicants who have an intellectual or developmental disability, the Applicant's adaptive and maladaptive behaviors as determined by the life skills assessment tool developed or selected by TennCare and the Maladaptive Behavior Index (MBI or problem behavior) portion of the Inventory for Client and Agency Planning (ICAP) Assessment to capture behaviors requiring extraordinary support to ensure the safety of the individual.
- (130) ~~Service Agreement. The agreement between a CHOICES or ECF CHOICES Mmember electing CD of Eligible CHOICES HCBS (or the Mmember's Rrepresentative) electing consumer direction of HCBS and the Mmember's consumer-directed worker that specifies the roles and responsibilities of the Mmember (or the Mmember's Rrepresentative) and the member's worker.~~
- (139) Supports Broker. An individual assigned by the FEA to each CHOICES or ECF CHOICES member participating in consumer direction who assists the member/representative as needed in performing certain employer of record functions as follows: developing job descriptions; recruiting, interviewing, and hiring workers; member and worker enrollment in consumer direction and consumer direction training; and developing (as part of the onboarding process for new workers) a schedule for the member's workers that comports with the schedule at which services are needed by the member as reflected in the plan of care or PCSP, as applicable. The supports broker shall also assist the member as needed with developing and verifying the initial back-up plan for consumer direction. The supports broker collaborates with the member's care coordinator or support coordinator, as appropriate. The supports broker does not have authority or responsibility for consumer direction. The member or member's representative must retain authority and responsibility for consumer direction.

~~Supports Broker. For purposes of CD:~~

- ~~(a) An individual assigned by the FEA to each CHOICES Member participating in CD who assists the Member/Representative in performing the Employer of Record functions, including, but not limited to: developing job descriptions; locating, recruiting, interviewing, scheduling, monitoring, and evaluating Workers.~~
- ~~(b) The Supports Broker collaborates with, but does not duplicate, the functions of the Member's Care Coordinator.~~
- ~~(c) The Supports Broker does not have authority or responsibility for CD. The Member or Member's Representative must retain authority and responsibility for CD.~~

(143) TennCare Tennessee Pre-Admission Evaluation Tracking System (PAE Tracking System TPAES) – A component of the State’s Medicaid Management Information System and the system of record for all Pre-Admission Evaluation (i.e., level of care LOC) submissions and level of care LOC determinations, as well as enrollments into and transitions between LTSS programs, including CHOICES, ECF CHOICES, and the State’s ~~Money Follows the Person~~ MFP Rebalancing Demonstration (MFP), as a tracking mechanism for referral list management in ECF CHOICES, and which shall also be used to gather data required to comply with tracking and reporting requirements pertaining to MFP.

1200-13-01-.05 TennCare CHOICES Program.

(6) Safety Determination Requests for CHOICES and ECF CHOICES.

(a) For purposes of the Need for Inpatient Nursing Care, as specified in TennCare Rule 1200-13-01-.10(4)(b)2.(i)(II) and 1200-13-01-.10(4)(b)2.(ii)(II)-(IV), a Safety Determination by TennCare regarding ~~whether a CHOICES Applicant would qualify for enrollment into CHOICES Group 3~~ shall be made upon request of the Applicant, the Applicant’s Representative, or the entity submitting the PAE, including the AAAD, DIDD, MCO, NF, or PACE Organization if an Applicant for CHOICES is in the target population for CHOICES as specified in Rule 1200-13-01-.05 and is At Risk for Institutionalization as defined in Rule 1200-13-01-.02, or an Applicant for ECF CHOICES is in the target population for ECF CHOICES as specified in Rule 1200-13-01-.31 and is At Risk for Institutionalization as defined in Rule 1200-13-01-.02, and at least one of the following criteria are met.

1. The Applicant has an approved total acuity score of at least five (5) but no more than eight (8);
2. The Applicant has an approved individual acuity score of at least three (3) for the Orientation measure and the absence of frequent intermittent or continuous intervention and supervision would result in imminent and serious risk of harm to the Applicant and/or others (documentation of the impact of such deficits on the Applicant’s safety, including information or examples that would support and describe the imminence and seriousness of risk shall be required);
3. The Applicant has an approved individual acuity score of at least two (2) for the Behavior measure; and the absence of intervention and supervision for behaviors at the frequency specified in the PAE would result in imminent and serious risk of harm to the Applicant and/or others (in addition to information submitted with the PAE, information or examples that would support and describe the imminence and seriousness of risk resulting from the behaviors shall be required);
4. The Applicant has an approved individual acuity score of at least three (3) for the mobility or transfer measures or an approved individual acuity score of at least two (2) for the toileting measure, and the absence of frequent intermittent assistance for mobility and/or toileting needs would result in imminent and serious risk to the Applicant’s health and safety (documentation of the mobility/transfer or toileting deficits and the lack of availability of assistance for mobility/transfer and toileting needs shall be required);
5. The Applicant has experienced a significant change in physical or behavioral health or functional needs or the Applicant’s caregiver has experienced a significant change in physical or behavioral health or functional needs which impacts the availability of needed assistance for the Applicant;
6. The Applicant has a pattern of recent falls resulting in injury or with significant potential for injury or a recent fall under circumstances indicating a significant potential risk for further falls;
7. The Applicant has an established pattern of recent emergent hospital admissions or emergency department utilization for emergent conditions or a recent hospital or NF admission or episode of treatment in a hospital emergency department under circumstances sufficient to indicate that the person may not be capable of being safely maintained in the community (not every hospital or NF admission or emergency department episode will be sufficient to indicate such).

8. The Applicant's behaviors or a pattern of self-neglect has created a risk to personal health, safety and/or welfare that has prompted intervention by law enforcement or Adult Protective Services (APS). A report of APS or law enforcement involvement shall be sufficient by itself to require the conduct of a Safety Determination (but not necessarily the approval of a Safety Determination).
  9. The Applicant has recently been discharged from a community-based residential alternative setting (or such discharge is pending) because the Applicant's needs can no longer be safely met in that setting.
  10. The Applicant is a CHOICES Group 1 or Group 2 member or PACE member enrolled on or after July 1, 2012 (pursuant to level of care rules specified in 1200-13-01-.10(4)(b)2.(i) and (ii)) and has been determined upon review to no longer meet nursing facility level of care based on a total acuity score of 9 or above.
  11. The applicant has diagnosed complex acute or chronic medical conditions which require frequent, ongoing skilled and/or rehabilitative interventions and treatment by licensed professional staff.
  12. The Applicant's MCO has determined, upon enrollment into Group 3 based on a PAE submitted by another entity, that the Applicant's needs cannot be safely met within the array of services and supports available if enrolled in Group 3 (see 1200-13-01-.02(+25)), such that a higher level of care is needed.
  13. An Applicant who has an intellectual or developmental disability has a General Maladaptive Index value of -21 or lower, as determined on the Maladaptive Behavior Index (MBI) portion of the Inventory for Client and Agency Planning (ICAP).
  14. An Applicant under age 18 who has an intellectual or developmental disability will not qualify financially for TennCare unless the deeming of the parent's income to the child is waived, and absent the availability of benefits in ECF CHOICES Group 4, the child is at imminent risk of placement outside the home.
- (b) Any of these criteria shall be sufficient to warrant review of a Safety Determination request by the Bureau; however except as provided in Subpart (f)1.(i) below, no criterion shall necessarily be sufficient, in and of itself, to justify that such Safety Determination request (and NF LOC) will be approved. The Bureau may also, at its discretion, review a Safety Determination request when none of the criteria in (a) above have been met, but other safety concerns have been submitted which the Bureau determines may impact the person's ability to be safely served in CHOICES Group 3, or ECF CHOICES Group 5, as applicable, along with sufficient medical evidence to make a safety determination. The Bureau's Safety Determination shall be based on a review of the medical evidence in its entirety, including consideration of the Applicant's medical and functional needs, and the array of services and supports that would be available if the Applicant was enrolled in CHOICES Group 3 or ECF CHOICES Group 4 (for children under age 18) or Group 5 (for adults age 21 and older), as applicable for the target population in which the Applicant will be enrolled, if eligible, including CHOICES HCBS or ECF CHOICES HCBS up to the Expenditure Cap of \$15,000 or \$30,000, as applicable, and one-time emergency assistance up to \$6,000, as applicable; non-CHOICES HCBS available through TennCare (e.g., home health);; cost effective alternative services (as applicable);; services available through Medicare, private insurance or other funding sources and unpaid supports provided by family members and other caregivers who are willing and able to provide such care.
- (c) PAEs may be submitted by more than one entity on behalf of an applicant. If Entity #1 (e.g., the MCO) believes that an applicant's needs can be safely met if enrolled in Group 3 and a Safety Determination is not needed for the applicant, but Entity #2 (e.g., the NF) believes that a Safety Determination is appropriate, then Entity #2 (e.g., the NF) may also submit a PAE on behalf of the applicant, along with a completed Safety Determination request, to the Bureau for review.
- (d) If one or more of the criteria specified in (a) above are met and the medical evidence received by the Bureau is insufficient to make a Safety Determination, the Bureau may request a face-to-face

assessment by the AAAD or DIDD (for non Medicaid-eligible Applicants), the MCO (for Medicaid-eligible Applicants), or other designee in order to gather additional information needed by the Bureau to make a final Safety Determination. In such instances, the PAE shall be deemed incomplete, and the time for disposition of the PAE shall be tolled for a reasonable period of time (not to exceed 10 business days, except when such delay is based on the reasonable needs or request of the Applicant, and only for a specific additional period not to exceed a total period of 30 calendar days, occasioned by the Applicant's needs or request) while such additional evidence is gathered.

- (e) Except as specified in Subpart (f)1.(i) below, Documentation required to support a Safety Determination request shall include all of the following:
1. A completed PAE, including detailed explanation of each ADL or related deficiency, as required by the Bureau, a completed Safety Determination request, and medical evidence sufficient to support the functional and related deficits identified in the PAE and the health and safety risks identified in the Safety Determination request;
  2. A comprehensive needs assessment which shall include all of the following:
    - (i) An assessment of the Applicant's physical, behavioral, and psychosocial needs not reflected in the PAE, including the specific tasks and functions for which assistance is needed by the Applicant, the frequency with which such tasks must be performed, and the Applicant's need for safety monitoring and supervision;
    - (ii) The Applicant's living arrangements and the services and supports the Applicant has received for the six (6) months prior to submission of the Safety Determination request, including unpaid care provided by family members and other caregivers, paid services and supports the Applicant has been receiving regardless of payer (e.g., non-CHOICES HCBS available through TennCare such as home health and services available through Medicare, private insurance or other funding sources); and any anticipated change in the availability of such care or services from the current caregiver or payer; and
    - (iii) Detailed explanation regarding any recent significant event(s) or circumstances that have impacted the Applicant's need for services and supports, including how such event(s) or circumstances impact the Applicant's ability to be safely supported within the array of covered services and supports that would be available if the Applicant were enrolled in CHOICES Group 3; or ECF CHOICES Group 5, as applicable, or for a child under age 18 who has an intellectual or developmental disability, how such event(s) or circumstances would impact the Applicant's ability to remain in the family home.
  3. A person-centered plan of care or support plan, as applicable, developed by the MCO Care Coordinator or Support Coordinator, NF, or PACE Organization (i.e., the entity submitting the Safety Determination request) which specifies the tasks and functions for which assistance is needed by the Applicant, the frequency with which such tasks must be performed, the Applicant's need for safety monitoring and supervision; and the amount (e.g., minutes, hours, etc.) of paid assistance that would be necessary to provide such assistance; and that would be provided by such entity upon approval of the Safety Determination. (A plan of care or support plan is not required for a Safety Determination submitted by the AAAD or DIDD.) In the case of a Safety Determination request submitted by an MCO or AAAD for a NF resident, the plan of care shall be developed in collaboration with the NF, as appropriate; and
  4. An explanation regarding why an array of covered services and supports, including CHOICES HCBS up to the Expenditure Cap of \$15,000, ECF CHOICES HCBS up to the Expenditure Cap of \$30,000 and one-time emergency assistance up to \$6,000; and non-CHOICES or non-ECF CHOICES HCBS (e.g., home health); services available through Medicare, private insurance or other funding sources; and unpaid supports provided by family members and other caregivers would not be sufficient to safely meet the Applicant's needs in the community, or for a child under age 18 who has an intellectual or developmental disability, why the availability of benefits in ECF CHOICES Group 4, including ECF CHOICES HCBS up to the Expenditure Cap of \$15,000, non-ECF CHOICES HCBS available through TennCare (e.g., home health); cost-effective alternative services (as applicable); services available through Medicare, private

insurance or other funding sources; and natural supports provided by family members and other caregivers who are willing and able to provide such care, are necessary to prevent the child's imminent placement outside the home.

(f) Approval of a Safety Determination Request.

1. A Safety Determination request shall be approved if there is sufficient evidence, as required and determined by the Bureau, to demonstrate that the necessary intervention and supervision needed by the Applicant cannot be safely provided within the array of services and supports that would be available if the Applicant was enrolled in CHOICES Group 3 or ECF CHOICES Group 5, as applicable for the target population in which the Applicant will be enrolled, if eligible, including CHOICES HCBS or ECF CHOICES HCBS up to the Expenditure Cap of \$15,000 or \$30,000, as applicable, and one-time emergency assistance up to \$6,000, as applicable; non-CHOICES HCBS available through TennCare (e.g., home health);; cost-effective alternative services (as applicable);; services available through Medicare; private insurance or other funding sources; and unpaid supports provided by family members and other caregivers who are willing and able to provide such care;; or for a child under age 18 who has an intellectual or developmental disability, that the Applicant will not qualify financially for TennCare unless the deeming of the parent's income to the child is waived, and absent the availability of benefits in ECF CHOICES Group 4, including ECF CHOICES HCBS up to the Expenditure Cap of \$15,000; non-ECF CHOICES HCBS available through TennCare (e.g., home health); cost-effective alternative services (as applicable); services available through Medicare, private insurance or other funding sources; and natural supports provided by family members and other caregivers who are willing and able to provide such care, the child is at imminent risk of placement outside the home:
  - (i) An applicant with I/DD whose GMI score is at or below -31 (categorized as "Serious" or "Very Serious") shall qualify for NF LOC on the basis of the safety determination, regardless of their score on the PAE Acuity Scale. No minimum acuity score and no other information shall be required as part of the safety determination.
  - (ii) A maladaptive behavior index value of -21 to -30 (categorized as "Moderately Serious") shall be sufficient to warrant a Safety Determination review upon request, but shall not automatically qualify for approval of NF LOC on the basis of safety. The decision shall be based on a review of the entirety of the person's needs and circumstances and in accordance with documentation requirements specified herein.
  - (iii) For applicants with I/DD who have a maladaptive behavior index value of -20 and above, the problem behavior assessment and the life skills assessment shall be taken into account along with other documentation requirements specified herein in determining whether any safety determination request submitted should be approved.
2. When a Safety Determination request is approved, the Applicant's NF LOC eligibility shall be approved (see Rule 1200-13-01-.10(4)(b)2.(i)(II) and 1200-13-01-.10(4)(b)2.(ii)(II)-(IV)).
3. If enrolled in CHOICES Group 1 or 2, ~~or in~~ PACE, or in ECF CHOICES, based upon approval of a Safety Determination request, the NF, MCO, or PACE Organization, respectively, shall implement any plan of care or initial support plan developed by such entity and submitted as part of the Safety Determination request to demonstrate the services needed by the Applicant, subject to changes in the Applicant's needs which shall be reflected in a revised plan of care or person-centered support plan and signed by the Applicant (or authorized representative).
4. The lack of availability of suitable community housing or the need for assistance with routine medication management, discharge from another service system (e.g., state custody or a mental health institute), or release from incarceration shall not be sufficient by itself to justify approval of a Safety Determination request.

(g) Denial of a Safety Determination Request for CHOICES or ECF CHOICES.

1. Pursuant to Rule 1200-13-01-.10(7)(b), when a PAE is denied, including instances where a

Safety Determination has been requested and denied, a written Notice of denial shall be sent to the Applicant and, where applicable, to the Designated Correspondent. In instances where such denial is based in part on a Safety Determination that has been requested and denied, such Notice shall advise the Applicant of the Bureau's LOC decision, including denial of the Safety Determination request. This notice shall advise the Applicant of the right to appeal the PAE denial decision, which includes the Safety Determination, as applicable, within 30 calendar days.

2. If enrolled in CHOICES Group 3 or in ECF CHOICES Group 5 based upon denial of a Safety Determination Request, the MCO shall implement any plan of care or initial support plan, as applicable, developed by the MCO and submitted as part of the Safety Determination process to demonstrate that the Applicant's needs can be safely met in CHOICES Group 3 or ECF CHOICES Group 5, as applicable, including covered medically necessary CHOICES HCBS or ECF CHOICES HCBS, and non-CHOICES or non-ECF CHOICES HCBS available through TennCare and cost-effective alternative services upon which denial of the Safety Determination was based, subject to changes in the Applicant's needs which shall be reflected in a revised plan of care or person-centered support plan and signed by the Applicant (or authorized representative).
- (h) Duration of Nursing Facility Level of Care Based on an Approved Safety Determination Request.
1. Pursuant to 1200-13-01-.10(2)(h), Nursing Facility level of care based on an approved Safety Determination request may be approved by the Bureau for an open ended period of time or a fixed period of time with an expiration date based on an assessment by the Bureau of the Applicant's medical condition and anticipated continuing need for inpatient nursing care, and how long it is reasonably anticipated that the Applicant's needs cannot be safely and appropriately met in the community within the array of services and supports available if enrolled in CHOICES Group 3 or ECF CHOICES Group 5, as applicable, or for a child under age 18, when the child turns age 18 and the parent's income is no longer deemed to the child. This may include periods of less than 30 days as appropriate, including instances in which it is determined that additional post-acute inpatient treatment of no more than 30 days is needed for stabilization, rehabilitation, or intensive teaching as specified in the plan of care following an acute event, newly diagnosed complex medical condition, or significant progression of a previously diagnosed complex medical condition in order to facilitate the Applicant's safe transition back to the community.
  2. Pursuant to Rule 1200-13-01-.10(7)(f), when a PAE for NF LOC is approved for a fixed period of time with an expiration date based on an assessment by the Bureau of the Applicant's medical condition and anticipated continuing need for inpatient nursing care, and how long it is reasonably-anticipated that the Applicant's needs cannot be safely and appropriately met in the community within the array of services and supports available if enrolled in CHOICES Group 3 or ECF CHOICES Group 5, or for a child under age 18, when the child turns age 18 and the parent's income is no longer deemed to the child, the Applicant shall be provided with a Notice of appeal rights, including the opportunity to submit an appeal within 30 calendar days of receipt of this notice. Nothing in this section shall preclude the right of the Applicant to submit a new PAE (including a new Safety Determination request) establishing medical necessity of care before the Expiration Date has been reached or anytime thereafter.
- (8) Benefits in the TennCare CHOICES Program
- (l) CHOICES HCBS covered under TennCare CHOICES and applicable limits are specified below. The benefit limits are applied across all services received by the Member regardless of whether the services are received through CD and/or a traditional provider agency. Corresponding limitations regarding the scope of each service are defined in Rule 1200-13-01-.02 and in Subparagraphs (a) through (k) above.

Service	Benefits for CHOICES 2 Members	Benefits for Consumer Direction  ("Eligible HCBS")
5. Home-Delivered Meals	<p>Covered with a limit of 1 meal per day, per Member.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care, <u>provided however, that an MCO may authorize Home-Delivered Meals for a CHOICES Member receiving Companion Care or Community Living Supports (not Community Living Supports-Family Model) in their own home (not a provider-controlled residence) when such service is medically necessary in order to 1) address health risks related to food insecurity; 2) support improved management of chronic health conditions; 3) reduce risk of hospital readmissions related to such chronic health conditions; 4) improve physical or mental health outcomes; or 5) delay or prevent nursing home placement.</u></p>	No
11. PERS	<p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care, <u>provided however, that an MCO may authorize PERS for a CHOICES Member receiving Companion Care, Community Living Supports, or Community Living Supports-Family Model services when such service provides less than 24-hour staff support and PERS is medically necessary in order help sustain or increase the Member's independence in the home, reduce risk of safety concerns, and delay or prevent nursing home placement.</u></p>	No

Service	Benefits for CHOICES 3 Members	Benefits for Consumer Direction  ("Eligible HCBS")

Service	Benefits for CHOICES 3 Members	Benefits for Consumer Direction  ("Eligible HCBS")
5. Home-Delivered Meals	<p>Covered with a limit of 1 meal per day, per Member.</p> <p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care, <u>provided however, that an MCO may authorize Home-Delivered Meals for a CHOICES Member receiving Companion Care or Community Living Supports (not Community Living Supports-Family Model) in their own home (not a provider-controlled residence) when such service is medically necessary in order to 1) address health risks related to food insecurity; 2) support improved management of chronic health conditions; 3) reduce risk of hospital readmissions related to such chronic health conditions; 4) improve physical or mental health outcomes; or 5) delay or prevent nursing home placement.</u></p>	No
11. PERS	<p>Not covered (regardless of payer), when the Member is living in an ACLF, Adult Care Home, Residential Home for the Aged or other group residential setting, or receiving CBRA services (including Companion Care) or Short-Term NF Care, <u>provided however, that an MCO may authorize PERS for a CHOICES Member receiving Companion Care, Community Living Supports, or Community Living Supports-Family Model services when such service provides less than 24-hour staff support and PERS is medically necessary in order help sustain or increase the member's independence in the home, reduce risk of safety concerns, and delay or prevent nursing home placement.</u></p>	No

(p) Community Based Residential Alternatives (CBRAs)

5. Requirements for Community Living Supports (CLS).

(i) Providers of CLS services in the CHOICES program shall:

- (l) Be contracted with the Member's MCO for the provision of CLS services, and licensed by the DJDD in accordance with T.C.A. Title 33 and TDMHSAS Rules 0940-5-24, 0940-5-28 or 0940-5-32 as applicable, and contracted by the DJDD to provide residential services pursuant to an approved Section 1915(c) waiver;
- 6. Requirements for Community Living Supports Family Model (CLS-FM) Services.
  - (i) Providers of CLS-FM services in the CHOICES program shall:
    - (l) Be contracted with the Member's MCO for the provision of CLS-FM services, and licensed by the DJDD in accordance with T.C.A. Title 33 and TDMHSAS Rule 0940-5-26, and contracted by the DJDD to provide residential services pursuant to an approved Section 1915(c) waiver;
- 7. Reimbursement of CLS and CLS-FM Services.
  - (xiii) Except as permitted pursuant to Rule 1200-13-01-05(8)(l), Personal Care Visits, Attendant Care, and Home-Delivered Meals shall not be authorized or reimbursed for a Member receiving CLS or CLS-FM services.
- (9) Consumer-Direction (CD).
  - (i) Consumer-Directed Workers (Workers).
    - 2. Qualifications of Consumer-Directed Workers. Workers must meet the following requirements prior to providing services:
      - (i) Be at least eighteen (18) years of age or older;~~;~~
      - (ii) ~~Pass~~Complete a background check that includes a criminal background check (including fingerprinting), or, as an alternative, a background check from a licensed private investigation company;~~;~~
      - (iii) Verification that the person's name does not appear on the State abuse registry;~~;~~
      - (iv) Verification that the person's name does not appear on the State and national sexual offender registries and licensure verification, as applicable;~~;~~
      - (v) Verification that the person has not been excluded from participation in Medicare, Medicaid, SCHIP, or any Federal health care programs (as defined in Section 128B(f) of the Social Security Act);
      - (vi) Complete all required training;~~;~~
      - (vii) Complete all required applications to become a TennCare provider;~~;~~
      - (viii) Sign an abbreviated Medicaid agreement;
      - (ix) Be assigned a Medicaid provider ID number;~~;~~
      - (x) Sign a Service Agreement;~~;~~ and
      - (xi) If the Worker will be transporting the Member as specified in the Service Agreement, a valid driver's license and proof of insurance must also be provided.
    - 3. Disqualification from Serving as a Consumer-Directed Worker. A Member (or Representative for CD) cannot waive a background check for a potential Worker. A background check may reveal a potential Worker's past criminal conduct that may pose an unacceptable risk to the

Member. Any of tThe following findings shall may place the Member at risk and may disqualify a person from serving as a Worker:

- (i) Conviction of an offense involving physical, sexual or emotional abuse, neglect, financial exploitation or misuse of funds, misappropriation of property, theft from any person, violence against any person, or manufacture, sale, possession or distribution of any drug; and/or
- (ii) Entering of a plea of nolo contendere or when a jury verdict of guilty is rendered but adjudication of guilt is withheld with respect to a crime reasonably related to the nature of the position sought or held.
- ~~(iii) Identification on the abuse registry.~~
- ~~(iv) Identification on the State or national sexual offender registry.~~
- ~~(v) Failure to have a required license.~~
- ~~(vi) Refusal to cooperate with a background check.~~

#### 4. Individualized Assessment of a Consumer-Directed Worker with a Criminal Background.

~~(i) If a potential Worker's background check includes past criminal conduct, the Member (or Representative for CD) must review the past criminal conduct with the help of the FEA. The Member (or Representative for CD), with the assistance of the FEA, will consider the following factors:~~

~~(I) Whether or not the evidence gathered during the potential Worker's individualized assessment shows the criminal conduct is related to the job in such a way that could place the Member at risk;~~

~~(II) The nature and gravity of the offense or conduct, such as whether the offense is related to physical or sexual or emotional abuse of another person, if the offense involves violence against another person, or the manufacture, sale, or distribution of drugs; and~~

~~(III) The time that has passed since the offense or conduct and/or completion of the sentence.~~

~~(ii) After considering the above factors and any other evidence submitted by the potential Worker, the Member (or Representative for CD) must decide whether to hire the potential Worker.~~

~~(iii) If a Member (or Representative for CD) decides to hire the Worker, the FEA shall assist the Member (or Representative for CD) in notifying the Member's MCO of this decision and shall collaborate with the Member's MCO to amend the Member's risk agreement to reflect the Member's (or CD Representative's) decision to voluntarily assume risk associated with hiring an individual with a criminal history and that the Member (or Representative for CD) is solely responsible for any negative consequences stemming from that decision.~~

~~Exception to Disqualification of a Consumer-Directed Worker. If a Worker fails the background check, an exception to disqualification may be granted at the Member's discretion if all of the following conditions are met:~~

~~(i) Offense is a misdemeanor;~~

~~(ii) Offense occurred more than five (5) years prior to the background check;~~

~~(iii) Offense is not related to physical or sexual or emotional abuse of another person;~~

~~(iv) Offense does not involve violence against another person or the manufacture, sale, or distribution of drugs; and~~

~~(v) There is only one disqualifying offense.~~

1200-13-01-.08 Personal Needs Allowance (PNA, Patient Liability, Third Party Insurance and Estate Recovery for Persons Receiving LTSS.

- (1) Personal Needs Allowance (PNA). The PNA is established for each Enrollee receiving LTSS in accordance with the Tennessee Medicaid State Plan, approved Section 1915(c) Waiver applications, and these rules. It is deducted from the Enrollee's monthly income in calculating Patient Liability for LTSS.
  - (b) The maximum PNA for persons participating in CHOICES Group 2, ~~or~~ CHOICES Group 3, or ECF CHOICES is 300% of the SSI FBR.
- (2) Patient Liability.
  - (c) For Members of the CHOICES 217-Like Group, the CHOICES At-Risk Demonstration Group, the ECF CHOICES 217-Like Group, the Interim ECF CHOICES At-Risk Group, and upon implementation of Phase 2 of ECF CHOICES, the ECF CHOICES At-Risk and ECF CHOICES Working Disabled Demonstration Groups, the State uses institutional eligibility and post-eligibility rules for determining Patient Liability in the same manner as specified under 42 C.F.R. §§ 435.217, 435.236, and 435.726 and Section 1924 of the Social Security Act (42 U.S.C.A. § 1396r-5), if the HCBS were provided under a Section 1915(c) Waiver.
  - (d) For a Member of CHOICES Group 2, CHOICES Group 3, or ECF CHOICES receiving the Short-Term NF Care benefit (for up to 90 days) or an Enrollee in one of the State's Section 1915(c) Waiver programs who is temporarily placed in a medical institution, i.e., a hospital, NF or ICF/IID (for up to 90 days), the post-eligibility calculation shall be performed as if the individual is continuing to receive HCBS. The purpose is to ensure that the individual can maintain a community residence for transition back to the community. After 90 days, or as soon as it appears that the inpatient stay will not be a short-term stay, whichever comes first, a CHOICES Group 2, CHOICES Group 3, or ECF CHOICES Member will be transitioned to CHOICES Group 1 (see 1200-13-01-.31(6)(b) for requirements pertaining to ECF CHOICES Members), or a Waiver participant must be disenrolled from the Waiver, and the institutional post-eligibility calculation shall apply.
  - (e) Patient Liability shall be collected as follows:
    1. ~~If the Enrollee resides in a NF, ICF/IID, or receives CBRA services other than Companion Care facility (i.e., ACLF, Critical Adult Care Home, Community Living Supports, or Community Living Supports – Family Model) (i.e., an ACLF or Critical Adult Care Home), the Enrollee must pay his Patient Liability to the residential facility or provider. The residential facility or provider shall reduce the amount billed to the Bureau or the MCO, as applicable, by the amount of the Enrollee's Patient Liability obligation, regardless of whether such amount is actually collected by the facility.~~
    2. If a CHOICES Group 2, CHOICES Group 3, or ECF CHOICES Member does not ~~reside in a receive CBRA facility services other than Companion Care,~~ i.e., the Member is receiving HCBS (including Companion Care) in his own home, and for all CHOICES Group 3 members (~~who are not eligible to receive CBRA services~~), the Member must pay his Patient Liability to the MCO. The amount of Patient Liability collected will be used to offset the cost of CHOICES Group 2, ~~or~~ CHOICES Group 3, or ECF CHOICES benefits or CEA services provided as an alternative to covered CHOICES Group 2, ~~or~~ CHOICES Group 3, or ECF CHOICES benefits that were reimbursed by the MCO for that month. The amount of Patient Liability collected by the MCO cannot exceed the cost of CHOICES Group 2, ~~or~~ CHOICES Group 3, or ECF CHOICES benefits (or CEA services provided as an alternative to CHOICES Group 2, ~~or~~ CHOICES Group 3 or ECF CHOICES benefits) reimbursed by the MCO for that month.
  - (f) A CHOICES or ECF CHOICES provider, including an MCO, may decline to continue to provide LTSS

to a CHOICES or ECF CHOICES Member who fails to pay his Patient Liability. If other Contract Providers or the other TennCare MCO(s) operating in the Grand Division are unwilling to provide LTSS to a CHOICES or ECF CHOICES Member who has failed to pay his Patient Liability, the Member may be disenrolled from the CHOICES or ECF CHOICES program in accordance with the procedures set out in this Chapter.

(3) TPL for LTSS

- (b) Applicants for the CHOICES or ECF CHOICES programs who have LTC insurance policies must report these policies to DHS TennCare upon enrollment in the CHOICES or ECF CHOICES program. Applicants may be subject to criminal prosecution for knowingly providing incorrect information.
- (c) Obligations of CHOICES or ECF CHOICES Members receiving NF or CBRA services (other than Companion Care) having insurance that will pay for care in a NF or other residential facility (including cash benefits to the Member for the cost of such services):
  - 1. If the benefits are assignable, the Member must assign them to the NF or residential facility or provider. These benefits will be used to reduce the amounts that the MCO would otherwise be required to pay the NF or the residential facility or provider for LTSS.
  - 2. If the benefits are not assignable, the Member must provide payment to the NF or the residential facility or provider immediately upon receipt of the benefits. These benefits will be used to reduce the amounts that the MCO would otherwise be required to pay the NF or the residential facility or provider for LTSS.
- (d) Obligations of CHOICES or ECF CHOICES Members receiving non-residential CHOICES HCBS or Companion Care services, or non-residential ECF CHOICES services having insurance that will pay for CHOICES HCBS or ECF CHOICES HCBS (including cash benefits to the Member for the cost of such services):
  - 1. If the benefits are assignable, the Member must assign them to the MCO. These benefits will be used to reduce the amounts that the MCO would otherwise be required to pay for CHOICES HCBS or ECF CHOICES HCBS for the Member.
  - 2. If the benefits are not assignable, the Member must make payment to the MCO immediately upon receipt of the benefits. These benefits will be used to reduce the amounts that the MCO would otherwise be required to pay for CHOICES HCBS or ECF CHOICES HCBS for the Member.

1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for TennCare Reimbursement of Care in Nursing Facilities, CHOICES HCBS and PACE.

(4) Level of Care Criteria for Medicaid Level 1 Reimbursement of Care in a Nursing Facility, CHOICES HCBS, ECF CHOICES HCBS and PACE.

- (b) An Applicant must meet both of the following LOC criteria in order to be approved for TennCare-reimbursed care in a NF, CHOICES HCBS, ECF CHOICES HCBS or PACE, as applicable:
  - 1. Medical Necessity of Care:
    - (ii) Applicants requesting HCBS in CHOICES, ECF CHOICES or PACE. HCBS must be required in order to allow the Applicant to continue living safely in the home or community-based setting and to prevent or delay placement in a NF, and such HCBS must be specified in an approved plan of care and needed on an ongoing basis.
      - (i) The need for one-time CHOICES HCBS or one-time ECF CHOICES HCBS is not sufficient to meet medical necessity of care for HCBS.
  - 2. Need for Inpatient Nursing Care:

- (i) Applicants requesting TennCare-reimbursed NF care.
  - (II) Meet one (1) or more of the ADL or related criteria specified in 1200-13-01-.10(4)(b)2.(iii) on an ongoing basis and be determined by TennCare through approval of a Safety Determination Request to not be able to be safely served within the array of services and supports that would be available if the Applicant was enrolled in CHOICES Group 3, including CHOICES HCBS up to the Expenditure Cap of \$15,000, non-CHOICES HCBS available through TennCare (e.g., home health), cost-effective alternative services (as applicable), services available through Medicare, private insurance or other funding sources, and natural supports provided by family members and other caregivers who are willing and able to provide such care. An Applicant who cannot be safely served in CHOICES Group 3 does not qualify to enroll in CHOICES Group 3 qualify for enrollment in CHOICES Group 3. An applicant who could be safely served in CHOICES Group 3 except that he does not meet Medicaid categorical and financial eligibility criteria for CHOICES Group 3 (i.e. is not an SSI recipient) shall not be eligible for CHOICES Group 1 or Group 2 as a result of a Safety Determination.
- (ii) Applicants eligible to receive care in a NF, but requesting HCBS in CHOICES Group 2, ECF CHOICES or PACE.

The Applicant must have a physical or mental condition, disability, or impairment that requires ongoing supervision and/or assistance with activities of daily living in the home or community setting. In the absence of ongoing CHOICES HCBS, ECF CHOICES HCBS or PACE, the Applicant would require and must qualify to receive NF services in order to remain eligible for HCBS. The Applicant must be unable to self-perform needed nursing care and must meet one (1) or more of the following criteria on an ongoing basis:

- (I) Have a total score of at least nine (9) on the TennCare NF LOC Acuity Scale; or
- (II) For a CHOICES Group 2 Applicant, Mmeet one (1) or more of the ADL or related criteria specified in 1200-13-01-.10(4)(b)2.(iii) on an ongoing basis and be determined by TennCare through approval of a Safety Determination Request to not be able to be safely served within the array of services and supports that would be available if the Applicant was enrolled in CHOICES Group 3, including CHOICES HCBS up to the Expenditure Cap of \$15,000, non-CHOICES HCBS available through TennCare (e.g., home health), cost-effective alternative services (as applicable), services available through Medicare, private insurance or other funding sources, and natural supports provided by family members and other caregivers who are willing and able to provide such care. An Applicant who cannot be safely served in CHOICES Group 3 does not qualify to enroll in CHOICES Group 3 qualify for enrollment in CHOICES Group 3. An applicant who could be safely served in CHOICES Group 3 except that he does not meet Medicaid categorical and financial eligibility criteria for CHOICES Group 3 (i.e. is not an SSI recipient) shall not be eligible for CHOICES Group 1 or Group 2 as a result of a Safety Determination; or -
- (III) For an ECF CHOICES Applicant age 21 or older, have an intellectual or developmental disability and be determined through approval of a Safety Determination Request to not be able to be safely served within the array of services and supports that would be available if the Applicant was enrolled in ECF CHOICES Group 5, including ECF CHOICES HCBS up to the Expenditure Cap of \$30,000; one-time emergency assistance up to \$6,000; non-ECF CHOICES HCBS available through TennCare (e.g., home health); cost-effective alternative services (as applicable); services available through Medicare, private insurance or other funding sources; and natural supports provided by family members and other caregivers who are willing and able to provide such care; or

(IV) For an ECF CHOICES Applicant under age 18 with an intellectual or developmental disability, to not qualify financially for TennCare unless the deeming of the parent's income to the child is waived, and absent the availability of benefits in ECF CHOICES Group 4, including ECF CHOICES HCBS up to the Expenditure Cap of \$15,000, non-ECF CHOICES HCBS available through TennCare (e.g., home health); cost-effective alternative services (as applicable); services available through Medicare, private insurance or other funding sources; and natural supports provided by family members and other caregivers who are willing and able to provide such care, the child is at imminent risk of placement outside the home.

(iv) Applicants not eligible to receive care in a NF, but at risk of NF placement and requesting HCBS in ECF CHOICES Group 4 or 5. The Applicant has an intellectual or developmental disability as defined under Tennessee state law, including for an Applicant with ID, limitations in two (2) or more adaptive skill areas (i.e., communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work); and for an Applicant age five (5) or older with DD, substantial functional limitations in three (3) or more major life activities (i.e., self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; and economic self-sufficiency); such that, in the absence of the provision of a moderate level of ECF CHOICES home and community based services and supports on an ongoing basis, the individual's condition and/or ability to continue living in the community will likely deteriorate, resulting in the need for more expensive institutional placement.

(6) TennCare Nursing Facility Level of Care Acuity Scale.

(a) Effective July 1, 2012, for all new enrollments into CHOICES Groups 1 and 2 and for approval of NF LOC for individuals applying for enrollment into ECF CHOICES, level of care (LOC) eligibility for TennCare-reimbursement of NF services shall be based on an assessment of the following measures:

1200-13-01-.25 Tennessee Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled Under Section 1915(c) of the Social Security Act (Statewide MR Waiver).

(4) Intake and Enrollment.

(d) Upon implementation of the ECF CHOICES program, all new enrollment into the Statewide Waiver shall be closed; provided, however, that a child age 18-21 who has an Intellectual Disability and is aging out of State custody or is determined by TennCare to no longer be able to safely continue living with their family may be enrolled into the Statewide Waiver subject to (b) above if all eligibility and enrollment criteria are met, only until such time that the State has authority under the terms and conditions of the 1115 Waiver to provide for enrollment of such child into ECF CHOICES, when appropriate.

1200-13-01-.28 Home and Community Based Services Waiver for Persons with Mental Retardation Under Section 1915(c) of the Social Security Act (Arlington MR Waiver).

(4) Intake and Enrollment.

(d) Upon implementation of the ECF CHOICES program, all new enrollment into the Arlington Waiver (effective upon its renewal on January 1, 2015, the Comprehensive Aggregate Cap Waiver) shall be limited to individuals who have been identified by the state as a former member of the certified class in the United States vs. State of Tennessee, et al. (Arlington Developmental Center), a current or former member of the certified class in the United States vs. the State of Tennessee, et al. (Clover Bottom Developmental Center), or a person discharged from a State Developmental Center (Clover Bottom or Greene Valley) or the Harold Jordan Center following a stay of at least 90 days.

1200-13-01-.29 Tennessee's Self-Determination Waiver Under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver Program).

(5) Intake and Enrollment.

- (c) Upon implementation of the ECF CHOICES program, all new enrollment into the Self-Determination Waiver shall be closed; provided, however, that a child age 18-21 who has an Intellectual Disability and is aging out of State custody or is determined by TennCare to no longer be able to safely continue living with their family may be enrolled into the Self-Determination Waiver subject to (b) above if all eligibility and enrollment criteria are met, only until such time that the State has authority under the terms and conditions of the 1115 Waiver to provide for enrollment of such child into ECF CHOICES, when appropriate.

1200-13-01-.31 TennCare Employment and Community First CHOICES (ECF CHOICES) Program.

(1) Definitions. See Rule 1200-13-01-.02.

- (2) Program components. The TennCare ECF CHOICES Program is a managed LTSS program that is administered by specified TennCare MCOs under contract with the Bureau. The specified MCOs are responsible for coordinating all covered physical, behavioral, and LTSS for their Members who qualify for and are enrolled in ECF CHOICES. The program consists of HCBS, as described in this Chapter.

(3) Eligibility for ECF CHOICES.

- (a) There are three (3) groups in ECF CHOICES:

1. ECF CHOICES Group 4 (Essential Family Supports).

- (i) Participation in ECF CHOICES Group 4 is limited to TennCare Members living at home with family who qualify for and are receiving TennCare-reimbursed ECF CHOICES HCBS. "Family" shall mean individual(s) to whom the child or adult with I/DD is legally related, whether the relationship is by blood, by marriage, or by adoption. "Family" shall not include a foster care or paid living arrangement. To be eligible for ECF CHOICES Group 4, Applicants must meet the following criteria:

(I) Be in one of the defined target populations;

(II) Qualify in the specified eligibility categories;

(III) Meet NF LOC or be "At Risk for Institutionalization," as defined in Rule 1200-13-01-.02;

(IV) Need and upon enrollment in ECF CHOICES Group 4, receive on an ongoing basis ECF CHOICES HCBS;

(V) Have needs that can be safely and appropriately met in the community and at a cost that does not exceed the Expenditure Cap, as described in Section 1200-13-01-.31(4)(d); and

(VI) Qualify in one of the priority categories for which enrollment into ECF CHOICES is currently open and for which a slot is available, or for an available reserve capacity slot.

- (ii) Target Populations for ECF CHOICES Group 4. Only persons in one of the target populations below may qualify to enroll in ECF CHOICES Group 4:

(I) Persons who have an intellectual disability as defined in Rule 1200-13-01-.02.

(II) Persons who have a developmental disability as defined in Rule 1200-13-01-.02.

- (iii) Eligibility Categories Served in ECF CHOICES Group 4. Participation in ECF CHOICES Group 4 is limited to TennCare Members who are in the ECF CHOICES Group 4 target population(s) and qualify in one of the following eligibility categories:

- (I) SSI eligible, who are determined eligible for SSI by the Social Security Administration. SSI eligibles are enrolled in TennCare Medicaid.
- (II) ECF CHOICES 217-Like Group as defined in Rule 1200-13-01-.02. Persons who qualify in the ECF CHOICES 217-Like Group are enrolled in TennCare Standard.
- (III) Interim ECF CHOICES At-Risk Group as defined in Rule 1200-13-01-.02. Persons who qualify in the Interim ECF CHOICES At-Risk Group are enrolled in TennCare Standard.

2. ECF CHOICES Group 5 (Essential Supports for Employment and Independent Living).

- (i) Participation in ECF CHOICES Group 5 is limited to TennCare Members who qualify for and are receiving TennCare-reimbursed ECF CHOICES HCBS. To be eligible for ECF CHOICES Group 5, Applicants must meet the following criteria:

- (I) Be in one of the defined target populations;
- (II) Qualify in the specified eligibility categories;
- (III) Do not meet NF LOC but are At Risk for Institutionalization, as defined in Rule 1200-13-01-.02, provided however, that an adult age 21 and older who meets NF LOC may choose to enroll in ECF CHOICES Group 5, subject to (V) below when the enrollment target for ECF CHOICES Group 6 has been reached;
- (IV) Need and upon enrollment in ECF CHOICES Group 5, receive on an ongoing basis ECF CHOICES HCBS;
- (V) Have needs that can be safely and appropriately met in the community and at a cost that does not exceed the Expenditure Cap, as described in Section 1200-13-01-.31(4)(d); and
- (VI) Qualify in one of the priority categories for which enrollment into ECF CHOICES is currently open and for which a slot is available, or for an available reserve capacity slot.

- (ii) Target Populations for ECF CHOICES Group 5. Only persons in one of the target populations below may qualify to enroll in ECF CHOICES Group-5:

- (I) Adults age 21 or older who have an intellectual disability, as defined in Rule 1200-13-01-.02.
- (II) Adults age 21 or older who have a developmental disability, as defined in Rule 1200-13-01-.02.

- (iii) Eligibility Categories Served in ECF CHOICES Group 5. Participation in ECF CHOICES Group 5 is limited to TennCare Members who are in the ECF CHOICES Group 5 target population(s) and qualify in one of the following eligibility categories:

- (I) SSI eligible, who are determined eligible for SSI by the Social Security Administration. SSI eligibles are enrolled in TennCare Medicaid.
- (II) ECF CHOICES 217-Like Group as defined in Rule 1200-13-01-.02. Persons who qualify in the ECF CHOICES 217-Like Group are enrolled in TennCare Standard.

(III) Interim ECF CHOICES At-Risk Group as defined in Rule 1200-13-01-.02. Persons who qualify in the Interim ECF CHOICES At-Risk Group are enrolled in TennCare Standard.

3. ECF CHOICES Group 6 (Comprehensive Supports for Employment and Community Living).

(i) Participation in ECF CHOICES Group 6 is limited to TennCare Members who qualify for and are receiving TennCare-reimbursed ECF CHOICES HCBS. To be eligible for ECF CHOICES Group 6, Applicants must meet the following criteria:

(I) Be in one of the defined target populations;

(II) Qualify in the specified eligibility categories:

(III) Meet NF LOC, provided however, that the State may grant an exception to individuals transitioning from the Statewide or Comprehensive Aggregate Cap Waivers who are At Risk for Institutionalization and meet the ICF/IID level of care but not the NF level of care;

(IV) Need and upon enrollment in ECF CHOICES Group 6, receive on an ongoing basis ECF CHOICES HCBS;

(V) Have needs that can be safely and appropriately met in the community and at a cost that does not exceed the Expenditure Cap, as described in Section 1200-13-01-.31(4)(d); and

(VI) Qualify in one of the priority categories for which enrollment into ECF CHOICES is currently open and for which a slot is available, or for an available reserve capacity slot.

(ii) Target Populations for ECF CHOICES Group 6. Only persons in one of the target populations below may qualify to enroll in ECF CHOICES Group 6:

(I) Adults age 21 or older who have an intellectual disability, as defined in Rule 1200-13-01-.02.

(II) Adults age 21 or older who have a developmental disability, as defined in Rule 1200-13-01-.02.

(iii) Eligibility Categories Served in ECF CHOICES Group 6. Participation in ECF CHOICES Group 6 is limited to TennCare Members who are in the ECF CHOICES Group 6 target population(s), meet NF LOC (except as provided in (i)(III) above, and qualify in one of the following eligibility categories:

(I) SSI eligible, who are determined eligible for SSI by the Social Security Administration. SSI eligibles are enrolled in TennCare Medicaid.

(II) ECF CHOICES 217-Like Group as defined in Rule 1200-13-01-.02. Persons who qualify in the ECF CHOICES 217-Like Group are enrolled in TennCare Standard.

(b) Level of Care (LOC). All Enrollees in TennCare ECF CHOICES must meet the applicable LOC criteria, as determined by the Bureau in accordance with Rule 1200-13-01-.10. Physician certification of LOC shall not be required for enrollment in ECF CHOICES.

1. Applicants shall meet NF LOC criteria or be At Risk for Institutionalization, as defined in Rule 1200-13-01-.02 in order to enroll in ECF CHOICES Group 4 (Essential Family Supports).

2. Applicants shall not be required to meet NF LOC, but shall be At Risk for Institutionalization as defined in Rule 1200-13-01-.02 in order to enroll in ECF CHOICES Group 5 (Essential Supports for Employment and Community Living), provided however, that an adult age 21 and older who

meets NF LOC may choose to enroll in ECF CHOICES Group 5, subject to requirements specified in 1200-13-01-.31(3)(a)(2)(i)(V) when the enrollment target for ECF CHOICES Group 6 has been reached;

3. Applicants shall meet NF LOC in order to enroll in ECF CHOICES Group 6 (Comprehensive Supports for Community Living). For enrollment in ECF CHOICES Group 6, the State may grant an exception to individuals transitioning from the Statewide or Comprehensive Aggregate Cap Waivers who are At Risk for Institutionalization and meet the ICF/IID level of care but not the NF level of care.
- (c) With respect to the PASRR process described in Rule 1200-13-01-.23, members in ECF CHOICES are not required to complete the PASRR process unless they are admitted to a NF for Short-Term NF Care described in Paragraph (8) of Rule 1200-13-01-.05 and defined in Rule 1200-13-01-.02.
- (d) All Members in TennCare ECF CHOICES must be determined by the MCO to be able to be served safely and appropriately in the community within the array of services and supports available in the ECF CHOICES Group in which the Member is or will be enrolled, including ECF CHOICES HCBS up to the applicable Expenditure Caps for each benefit group, as described in Rule 1200-13-01-.31(4)(d), non-ECF CHOICES HCBS available through TennCare (e.g., home health), services available through Medicare, private insurance or other funding sources, and unpaid supports provided by family members and other caregivers who are willing and able to provide such care.
- (4) Enrollment in TennCare ECF CHOICES. Enrollment into ECF CHOICES shall be processed by the Bureau as follows:
  - (a) There shall be separate Enrollment Targets for ECF CHOICES Groups 4, 5, and 6. The Enrollment Target for each ECF CHOICES Group functions as a cap on the total number of persons who can be enrolled into that ECF CHOICES Group at any given time.
    1. Effective July 1, 2016, the Enrollment Target for ECF CHOICES shall be five hundred (500) for Group 4, one thousand (1,000) for Group 5, and two hundred (200) for Group 6.
    2. Once the Enrollment Target (including Reserve Capacity as defined in Rule 1200-13-01-.02 and as described in Rule 1200-13-01-.31(4)(b) is reached for a particular ECF CHOICES Group, qualified Applicants shall not be enrolled into that ECF CHOICES Group or qualify in the ECF CHOICES 217-Like Group or the Interim ECF CHOICES At-Risk Group based on receipt of HCBS until such time that capacity within the Enrollment Target is available, with the following exceptions:
      - (i) NF-to-Community Transitions. A Member being served in CHOICES Group 1 or receiving services in an ICF/IID who meets requirements to enroll in ECF CHOICES Group 4, 5, or 6 can enroll in ECF CHOICES even though the Enrollment Target has been met. This Member will be served in ECF CHOICES outside the Enrollment Target but shall be moved within the ECF CHOICES Enrollment Target at such time that a slot becomes available. A request to transition a Member from CHOICES Group 1 or an ICF/IID to ECF CHOICES in excess of the ECF CHOICES Enrollment Targets must specify the name of the facility where the Member currently resides, the date of admission and the planned date of transition.
      - (ii) CEA Enrollment. An MCO with an SSI-eligible recipient who meets all other criteria for enrollment into ECF CHOICES Group 4, 5, or 6, but who cannot enroll in ECF CHOICES because the Enrollment Target for that group has been met, has the option, at its sole discretion, of offering HCBS as a CEA to the Member. Upon receipt of satisfactory documentation from the MCO of its CEA determination and assurance of provider capacity to meet the Member's needs, the Bureau will enroll the person into ECF CHOICES Group 4, 5, or 6, as applicable, based on all applicable eligibility and enrollment criteria, regardless of the Enrollment Targets. The person will be served in ECF CHOICES Group 4, 5 or 6 outside the Enrollment Target, but shall be moved within the ECF CHOICES Group 4, 5, or 6 Enrollment Target at such time that a slot becomes available. Satisfactory documentation of the MCO's CEA determination shall include an

explanation of the Member's circumstances that warrant the immediate provision of NF services unless HCBS are immediately available. Documentation of adequate provider capacity to meet the Member's needs shall include a listing of providers for each HCBS in the Member's PCSP which the MCO has confirmed are willing and able to initiate HCBS as required by TennCare upon the Member's enrollment into ECF CHOICES Group 4, 5, or 6.

- (iii) If a Potential Applicant is not permitted to proceed with application for enrollment into ECF CHOICES because the Enrollment Target has been reached, the Potential Applicant shall remain on the Referral List for ECF CHOICES.
- (iv) Once the ECF CHOICES Enrollment Target for an ECF CHOICES Group is reached, any persons enrolled in that Group in excess of the Enrollment Target in accordance with this Rule must receive the first available slots in that Group. Only after all persons enrolled in excess of the Enrollment Target have been moved under the Enrollment Target can additional persons be enrolled into the ECF CHOICES Group.

(b) Reserve Capacity.

1. The Bureau shall reserve 250 slots within the ECF CHOICES Groups 4, 5, 6 Enrollment Target. These slots are available only to the following:
  - (i) Applicants being discharged from a NF or ICF/IID;
  - (ii) Applicants being discharged from an acute care setting who are at imminent risk of being placed in a NF setting absent the provision of HCBS;
  - (iii) Applicants with ID who have an Aging Caregiver as defined in these rules;
  - (iv) Applicants determined by an Interagency Review Committee to meet one or more Emergent Circumstances criteria as defined in these rules; and
  - (v) Applicants determined by an Interagency Review Committee to meet Multiple Complex Health Conditions criteria as defined in these rules.
2. Only Applicants who meet specified reserve capacity criteria (including new Applicants seeking to establish eligibility in the ECF CHOICES 217-Like Group or the Interim ECF CHOICES At-Risk Group as well as current SSI-eligible individuals seeking enrollment into ECF CHOICES) may be enrolled into reserve capacity slots. TennCare may require confirmation of the NF or hospital discharge and in the case of hospital discharge, written explanation of the Applicant's circumstances that warrant the immediate provision of NF services unless HCBS are immediately available. TennCare may also require confirmation that an Applicant meets other applicable reserve capacity criteria, i.e., Aging Caregiver, Emergent Circumstances, or Multiple Complex Health Conditions.
3. Once all reserve capacity slots set aside for a particular purpose have been filled, persons who meet such criteria shall not proceed with the enrollment process, but shall remain on the Referral List for ECF CHOICES.
4. If a Potential Applicant does not meet criteria for a Reserve Capacity slot, the Potential Applicant shall not proceed with the enrollment process, but shall remain on the Referral List for ECF CHOICES.

(c) Enrollment into ECF CHOICES.

1. To qualify for enrollment into ECF CHOICES Group 4:
  - (i) An Applicant must be in one of the target populations: an individual with an intellectual or developmental disability;

- (ii) An Applicant must have an approved unexpired PAE for NF LOC or be determined to be At Risk for Institutionalization as defined in Rule 1200-13-01-.02;
- (iii) An Applicant must be approved by TennCare for TennCare reimbursement of LTSS as an SSI recipient, or in the ECF CHOICES 217-Like Group or the Interim ECF CHOICES At-Risk Group defined in Rule 1200-13-01-.02;
- (iv) The Bureau must have received a determination by the MCO that the Applicant's needs can be safely and appropriately met in the community, and at a cost that does not exceed his Expenditure Cap, as described in this Rule, except in instances where the Applicant is not eligible for TennCare at the time of ECF CHOICES application, in which case, such determination shall be made by the MCO upon enrollment into ECF CHOICES Group 4; and
- (v) There must be capacity within the established Enrollment Target to enroll the Applicant in accordance with this Rule which may include satisfaction of criteria for Reserve Capacity, as applicable; or the Applicant must meet specified exceptions to enroll even when the Enrollment Target has been reached.

2. To qualify for enrollment into ECF CHOICES Group 5:

- (i) An Applicant must be in one of the target populations: an individual with an intellectual or developmental disability who is over twenty-one (21) years old;
- (ii) An Applicant must have an approved unexpired PAE for NF LOC or be determined to be At Risk for Institutionalization as defined in Rule 1200-13-01-.02;
- (iii) An Applicant must be approved by TennCare for TennCare reimbursement of LTSS as an SSI recipient, or in the ECF CHOICES 217-Like Group or the Interim ECF CHOICES At-Risk Group defined in Rule 1200-13-01-.02;
- (iv) The Bureau must have received a determination by the MCO that the Applicant's needs can be safely and appropriately met in the community, and at a cost that does not exceed his Expenditure Cap, as described in this Rule, except in instances where the Applicant is not eligible for TennCare at the time of ECF CHOICES application, in which case, such determination shall be made by the MCO upon enrollment into ECF CHOICES Group 5; and
- (v) There must be capacity within the established Enrollment Target to enroll the Applicant in accordance with this Rule which may include satisfaction of criteria for Reserve Capacity, as applicable; or the Applicant must meet specified exceptions to enroll even when the Enrollment Target has been reached.

3. To qualify for enrollment into ECF CHOICES Group 6:

- (i) An Applicant must be in one of the target populations: an individual with an intellectual or developmental disability who is over twenty-one (21) years old;
- (ii) An Applicant must have an approved unexpired PAE for NF LOC and require specialized services/supports for their I/DD;
- (iii) An Applicant must be approved by TennCare for TennCare reimbursement of LTSS as an SSI recipient or in the ECF CHOICES 217-Like Group as defined in Rule 1200-13-01-.02;
- (iv) The Bureau must have received a determination by the MCO that the Applicant's needs can be safely and appropriately met in the community, and at a cost that does not exceed his Expenditure Cap, as described in this Rule, except in instances where the Applicant is not eligible for TennCare at the time of ECF CHOICES application, in which case, such

determination shall be made by the MCO upon enrollment into ECF CHOICES Group 6;  
and

(v) There must be capacity within the established Enrollment Target to enroll the Applicant in accordance with this Rule which may include satisfaction of criteria for Reserve Capacity, as applicable; or the Applicant must meet specified exceptions to enroll even when the Enrollment Target has been reached.

(d) Expenditure Caps for ECF CHOICES.

1. Each Member enrolling or enrolled in ECF CHOICES shall be subject to an Expenditure Cap on the benefit package assigned to that member, depending on the member's need. Each benefit package has a distinct Expenditure Cap, outlined below:

(i) For Members enrolled in Group 4, the expenditure cap shall be fifteen thousand dollars (\$15,000) per person per calendar year. The Expenditure Cap shall apply to Group 4 ECF CHOICES HCBS only (not other Medicaid services). For Members enrolled in Group 4, the cost of minor home modifications shall not count against the expenditure cap. There shall be no exceptions to the Expenditure Cap for a Member enrolled in Group 4.

(ii) For Members enrolled in Group 5, the Expenditure Cap shall be thirty thousand dollars (\$30,000) per person per calendar year. The Expenditure Cap shall apply to Group 5 ECF CHOICES HCBS only (not other Medicaid services). All ECF CHOICES HCBS shall be counted against a CHOICES Group 5 Member's Expenditure Cap, including the cost of minor home modifications.

(I) TennCare may grant an exception for emergency needs up to six thousand dollars (\$6,000) per calendar year. Any exception that may be granted shall apply only for the calendar year in which the exception is approved.

(II) Expenditures for ECF CHOICES HCBS for a Member enrolled in CHOICES Group 5 shall not exceed \$36,000 per calendar year.

(iii) The Expenditure Cap for a member enrolled in ECF CHOICES Group 6 shall depend on the Member's assessed level of need as defined in Rule 1200-13-01-.02.

(I) An ECF CHOICES Group 6 member assessed to have a low or moderate level of need shall have an Expenditure Cap of \$45,000 per calendar year.

(II) An ECF CHOICES Group 6 member assessed to have a high level of need shall have an Expenditure Cap of \$60,000 per calendar year.

(III) TennCare may grant an exception only for an ECF CHOICES Group 6 Member assessed to have exceptional medical or behavioral needs pursuant to the Level of Need process described in Rule 1200-13-01-.02. If an exception is granted, the Member's Expenditure Cap shall be based on the average annualized cost of the comparable level of care in an institution as follows:

I. For an ECF CHOICES Group 6 member who has an intellectual disability and is assessed pursuant to the Level of Need process described in Rule 1200-13-01-.02 to have exceptional medical or behavioral needs, the Member's Expenditure Cap shall be based on the average annualized cost of services in a private ICF/IID (Intermediate Care Facility for Individuals with Intellectual Disabilities).

II. For an ECF CHOICES Group 6 member who has a developmental disability and is assessed pursuant to the Level of Need process described in Rule 1200-13-01-.02 to have exceptional medical or behavioral needs, the Member's Expenditure Cap shall be based on the average annualized cost of nursing facility services plus the average annualized cost of specialized

services that a person with a developmental disability would be expected to need in a nursing facility. On a case-by-case basis and applicable only to an ECF CHOICES Group 6 member who has a developmental disability and is assessed pursuant to the Level of Need process described in Rule 1200-13-01-.02 to have exceptional medical or behavioral needs, and is receiving Community Living Supports (not Family Model) at the CLS-4 level of reimbursement, this Expenditure Cap may be exceeded when necessary to permit access to Supported Employment Individual Employment Support.

III. The average annualized cost of the comparable level of care in an institution (private ICF/IID or NF) shall be adjusted by TennCare each calendar year.

IV. The average annualized cost of specialized services that a person with a developmental disability would be expected to need in a nursing facility may also be adjusted each calendar year.

V. When an ECF CHOICES Group 6 member has exceptional medical or behavioral needs and has an Expenditure Cap based on the average annualized cost of care in a private ICF/IID or NF plus specialized services in the NF, the cost of any home health or private duty nursing reimbursed by TennCare shall be counted against the Member's Expenditure Cap.

2. The Expenditure Cap shall be used to determine:

(i) Whether or not an Applicant qualifies to enroll in an ECF CHOICES benefit group (4, 5, or 6);

(ii) Whether or not a Member qualifies to remain enrolled in an ECF CHOICES benefit group (4, 5, or 6);

(iii) The total cost of ECF CHOICES HCBS a Member can receive while enrolled in an ECF CHOICES Benefit Group, excluding only for Members in Group 4 the cost of Minor Home Modifications. The Expenditure Cap functions as a limit on the total cost of ECF CHOICES HCBS, excluding only for Members in Group 4 the cost of Minor Home Modifications, that can be provided by the MCO to the Member in the home or community setting. ECF CHOICES HCBS in excess of a Member's Expenditure Cap are non-covered benefits.

3. A Member shall not be entitled to receive services up to the amount of the Expenditure Cap. A Member shall receive only those services that are medically necessary (i.e., required in order to help ensure the Member's health, safety and welfare in the home or community setting and to delay or prevent the need for NF placement). Determination of the services that are needed shall be based on a comprehensive assessment of the Member's needs and the availability of Natural Supports and other (non-TennCare reimbursed) services to meet identified needs, which shall be conducted by the Member's Support Coordinator.

4. Application of the Expenditure Cap.

(i) When a Member is enrolled in any ECF CHOICES Group (including transition from another CHOICES or ECF CHOICES Group), the Member's Expenditure Cap shall be pro-rated for the remainder of that calendar year (i.e., the portion of the calendar year that the Member will actually be enrolled in the ECF CHOICES Group).

(ii) When an ECF CHOICES Group 6 member has exceptional medical or behavioral needs and has an Expenditure Cap based on the average annualized cost of care in a private ICF/IID or NF (plus specialized services in the NF), the cost of any home health or private duty nursing reimbursed by TennCare shall be counted against the Member's Expenditure Cap.

- (iii) Except as specified in Rule 1200-13-01-.31(4)(d)1.(iii)(III)V., TennCare services other than ECF CHOICES HCBS shall not be counted against a Member's Expenditure Cap.
  - (iv) The annual Expenditure Cap shall be applied on a calendar year basis. The Bureau and the MCOs will track utilization of ECF CHOICES HCBS excluding only for Members in Group 4 the cost of Minor Home Modifications, across each calendar year.
  - (v) A Member's Expenditure Cap must also be applied prospectively on a twelve (12) month basis. This is to ensure that a Member's PCSP does not establish a threshold level of supports that cannot be sustained over the course of time. This means that, for purposes of person-centered planning, the MCO will always project the total cost of ECF CHOICES HCBS (excluding only for Members in Group 4 the cost of Minor Home Modifications) forward for twelve (12) months in order to determine whether the Member's needs can continue to be met based on the most current PCSP that has been developed. The cost of one-time services such as short-term services or short-term increases in services must be counted as part of the total cost of ECF CHOICES HCBS for a full twelve (12) month period following the date of service delivery.
  - (vi) If it can be reasonably anticipated, based on the ECF CHOICES HCBS currently received or determined to be needed (in addition to non-CHOICES HCBS available through TennCare, e.g., home health, services available through Medicare, private insurance or other funding sources, and unpaid supports provided by family members and other caregivers) in order to safely meet the person's needs in the community, that the person will exceed his Expenditure Cap, then the person does not qualify to enroll in or to remain enrolled in ECF CHOICES.
5. As the setting of an individual's Expenditure Cap does not, in and of itself, result in any increase or decrease in a Member's services, notice of action shall not be provided regarding the Bureau's Expenditure Cap calculation.
- (i) A Member has a right to due process regarding his Expenditure Cap when services are denied or reduced, when a determination is made that an Applicant cannot be enrolled into ECF CHOICES, or a currently enrolled ECF CHOICES Member can no longer remain enrolled in ECF CHOICES because his needs cannot be safely and effectively met in the home and community-based setting at a cost that does not exceed his Expenditure Cap.
  - (ii) When an adverse action is taken, notice of action shall be provided, and the Applicant or Member shall have the right to a fair hearing regarding any valid factual dispute pertaining to such action, which may include, but is not limited to, whether his Expenditure Cap was calculated appropriately, and to present all relevant and material evidence pertaining to such action.
  - (iii) Denial of or reductions in ECF CHOICES HCBS based on a Member's Expenditure Cap shall constitute an adverse action, as defined in Rules 1200-13-13-.01 and 1200-13-14-.01, and shall give rise to notice of action and due process rights to request a fair hearing in accordance with Rules 1200-13-13-.11 and 1200-13-14-.11.
  - (iv) Denial of enrollment and/or involuntary disenrollment because a person's Expenditure Cap will be exceeded shall constitute an eligibility/enrollment action, and shall give rise to notice of action and due process rights to request a fair hearing in accordance with this rule.
- (5) Disenrollment from ECF CHOICES. A Member may be disenrolled from ECF CHOICES voluntarily or involuntarily.
- (a) Voluntary disenrollment from ECF CHOICES means the Member has chosen to disenroll, and no notice of action shall be issued regarding a Member's decision to voluntarily disenroll from ECF CHOICES. However, notice shall be provided regarding any subsequent adverse action that may occur as a result of the Member's decision, including any change in benefits, cost-sharing

responsibility, or continued eligibility for TennCare when the Member's eligibility was conditioned on receipt of LTSS. Voluntary disenrollment shall proceed only upon:

1. Election by the Member to receive institutional services (e.g., NF or ICF/IID services), including hospice services in a NF, which is not a LTSS, provided however, that a Member shall not be disenrolled from ECF CHOICES in order to receive Short-Term NF care as defined in 1200-13-01-.02;
2. Election by the Member to enroll in an MCO that does not administer the ECF CHOICES program (i.e., United Healthcare Community Plan until such time as specified by TennCare or TennCare Select, including Select Community); or
3. Receipt of a statement signed by the Member or his authorized Representative voluntarily requesting disenrollment.

(b) A Member may be involuntarily disenrolled from ECF CHOICES only by the Bureau, although such process may be initiated by a Member's MCO. Reasons for involuntary disenrollment include but are not limited to:

1. The Member no longer meets one or more criteria for eligibility and/or enrollment as specified in this Rule.
2. The Member's needs can no longer be safely met in the community. This may include but is not limited to the following instances:
  - (i) The home or home environment of the Member becomes unsafe to the extent that it would reasonably be expected that HCBS could not be provided without significant risk of harm or injury to the Member or to individuals who provide covered services to the Member.
  - (ii) The Member or his representative/conservator or caregiver refuses to abide by the PCSP.
  - (iii) Even though an adequate provider network is in place, there are no providers who are willing to provide necessary services to the Member.
  - (iv) The Member's decision to continue receiving services in the home or community poses an unacceptable level of risk.
3. The Member's needs can no longer be safely met in the community at a cost that does not exceed the Member's Expenditure Cap as described in this Rule.
4. The Member no longer needs or is no longer receiving LTSS.
5. The Member has refused to pay his or her Patient Liability. The MCO and/or its participating providers are unwilling to serve the Member in ECF CHOICES because he has not paid his or her Patient Liability, and/or no other MCO is willing to serve the Member in ECF CHOICES.

(6) Transitioning To and From ECF CHOICES.

(a) Transition from CHOICES Group 1 to ECF CHOICES.

1. A member may request to transition from CHOICES Group 1 to ECF CHOICES at any time. The member's MCO is responsible for assessing the member's services and supports needs in the community, developing and implementing a transition plan, as appropriate, and submitting the transition request to TennCare. Only an MCO may submit to TennCare a request to transition a Member from CHOICES Group 1 to ECF CHOICES. An MCO may request to transition a Member from CHOICES Group 1 to ECF CHOICES only when the Member chooses to transition from the NF to an HCBS setting and meets eligibility criteria to enroll in

that group, as specified in Rule 1200-13-01-.31(3). Members shall not be required to transition from CHOICES Group 1 to ECF CHOICES.

2. A Member that has already been discharged from the NF shall not be transitioned to ECF CHOICES. Once a Member has discharged from the NF, the Member has voluntarily disenrolled from CHOICES Group 1 and must be newly enrolled into ECF CHOICES, in accordance with these rules. A new PAE shall be required for enrollment into ECF CHOICES.
3. When Members move from CHOICES Group 1 to ECF CHOICES, TennCare must recalculate the Member's Patient Liability based on the Community PNA.

(b) Transition from ECF CHOICES to CHOICES Group 1.

1. An MCO may request to transition a Member from ECF CHOICES to CHOICES Group 1 only under the following circumstances:
  - (i) The MCO provides advance notification to TennCare, which shall include documentation of thoroughly exploring and exhausting all attempts to provide services in a more integrated community setting.
  - (ii) The member must meet the nursing facility level of care in place at the time of admission and make an informed choice to transition to a nursing facility and enroll in CHOICES Group 1. Informed choice requires thorough exploration and exhaustion of all integrated community setting options.
  - (iii) A PASRR shall be completed prior to admission, the member must be determined appropriate for placement in a nursing facility, and all identified specialized services must be coordinated by the MCO immediately upon admission.
2. When Members transition from ECF CHOICES to CHOICES Group 1, TennCare must recalculate the Member's Patient Liability based on the Institutional PNA.
3. At such time as a transition between ECF CHOICES and CHOICES Group 1 is made, the MCO shall issue notice of transition to the Member. Because the Member has elected the transition, such transition shall not constitute an adverse action. Thus, the notice will not include the right to appeal or request a fair hearing regarding the Member's decision.

(c) Individuals enrolled in a Section 1915(c) Waiver shall not be permitted to transition into ECF CHOICES, even if they meet applicable eligibility and enrollment criteria for ECF CHOICES, until such time that the State determines that such transitions can be permitted and in accordance with timeframes and procedures established by TennCare.

(d) Individuals enrolled in CHOICES Group 2 or 3 shall not be permitted to transition into ECF CHOICES, even if they meet applicable eligibility and enrollment criteria for ECF CHOICES, unless the State determines that the individual qualifies for ECF CHOICES, the individual's needs can be more appropriately met in ECF CHOICES, and in accordance with timeframes and procedures established by TennCare.

(7) Benefits in the TennCare ECF CHOICES Program.

(a) Members of ECF CHOICES receive HCBS as specified in an approved Initial Support Plan or PCSP, as applicable, in addition to medically necessary covered benefits available for TennCare Medicaid and TennCare Standard recipients, as specified in Rules 1200-13-13-.04 and 1200-13-14-.04. While receiving ECF CHOICES HCBS, Members are not eligible for NF care, except for Short-Term NF care, as described in this Chapter.

(b) Members are not eligible to receive any other HCBS during the time that Short-Term NF services are provided. ECF CHOICES HCBS such as Minor Home Modifications which are required to facilitate transition from the NF back to the home or community may be provided during the NF stay and billed with date of service being on or after discharge from the NF.

- (c) All ECF CHOICES HCBS must be authorized by the MCO in order for MCO payment to be made for the services. ECF CHOICES HCBS must be specified in an approved Initial Support Plan or PCSP, as applicable, and authorized by the MCO prior to delivery of the service in order for MCO payment to be made for the service.
- (d) ECF CHOICES HCBS covered under the ECF CHOICES Program and applicable limits are specified below. The benefit limits are applied across all services received by the Member regardless of whether the services are received through CD and/or a traditional provider agency. Corresponding limitations regarding the scope of each service are defined in Rule 1200-13-01-.02 and in Subparagraphs (a) through (c) above.

<u>Service</u>	<u>Benefits for ECF CHOICES Members</u>	<u>Benefits for Consumer Direction</u> <u>("Eligible ECF CHOICES HCBS")</u>
<u>1. Adult Dental Services</u>	<p><u>Covered for adults age 21 and older in accordance with limitations specified in Rule 1200-13-01-.02.</u></p> <p><u>Orthodontic services are excluded from coverage.</u></p> <p><u>Limited to a maximum of five thousand dollars (\$5,000) per person per calendar year, and a maximum of seven thousand five hundred dollars (\$7,500) per person across three (3) consecutive calendar years.</u></p>	<u>No</u>
<u>2. Assistive Technology, Adaptive Equipment and Supplies</u>	<p><u>Covered with a limit of five thousand dollars (\$5,000) per person per calendar year.</u></p> <p><u>Not covered under ECF CHOICES if available under Section 110 of the Rehabilitation Act of 1973, or the IDEA (20 U.S.C. §§ 1401 et seq.).</u></p>	<u>No</u>

<u>Service</u>	<u>Benefits for ECF CHOICES Members</u>	<u>Benefits for Consumer Direction</u>  <u>("Eligible ECF CHOICES HCBS")</u>
<u>3. Community Integration Support Services</u>	<p><u>Covered in accordance with limitations specified in Rule 1200-13-01-.02.</u></p> <p><u>Not covered as a separate service for persons receiving CLS or CLS-FM.</u></p> <p><u>For members not working in the community (excludes a facility-based setting) and not receiving any employment services: Up to 20 hours per week of Community Integration Support Services and Independent Living Skills Training combined after completing an Employment Informed Choice process.</u></p> <p><u>For members working in the community or receiving at least one employment service: Up to 30 hours per week of Community Integration Support Services, Independent Living Skills Training, and Individual or Small Group Employment Supports combined.</u></p> <p><u>For members working in individualized integrated employment or self-employment: Up to 40 hours per week of Community Integration Support Services, Independent Living Skills Training, Job Coaching, Co-Worker Supports and the hours worked without paid supports combined.</u></p> <p><u>For members working in individualized integrated employment or self-employment at least 30 hours a week: Up to 50 hours per week of Community Integration Support Services, Independent Living Skills Training, Job Coaching, Co-Worker Supports and the hours worked without paid supports combined.</u></p> <p><u>Payment for attendance and materials and supplies at classes and conferences and club/association dues can be covered, but cannot exceed five hundred dollars (\$500) per year for children under age twenty (21) or one thousand dollars (\$1,000) for adults age twenty-one (21) or older.</u></p>	<p><u>No</u></p>

<u>Service</u>	<u>Benefits for ECF CHOICES Members</u>	<u>Benefits for Consumer Direction</u>  <u>("Eligible ECF CHOICES HCBS")</u>
4. <u>Community Living Supports (CLS) and Community Living Supports—Family Model (CLS-FM)</u>	<u>Covered only for adults age 21 and older enrolled in ECF CHOICES Group 5 or 6.</u>	<u>No</u>
5. <u>Community Support Development, Organization and Navigation</u>	<u>Covered only for Members enrolled in ECF CHOICES Group 4.</u>	<u>No</u>
6. <u>Community Transportation</u>	<p><u>Covered for transportation to employment and to support participation in community activities when public or other community-based transportation services are not available or when assistance is needed in order to access such benefits.</u></p> <p><u>Shall not supplant NEMT available for medical appointments.</u></p> <p><u>Limited to \$225 per month for Members electing to receive this benefit through Consumer Direction.</u></p>	<u>Yes</u>
7. <u>Conservatorship Counseling and Assistance</u>	<p><u>Covered. Limited to five hundred dollars (\$500) in one-time assistance per member.</u></p> <p><u>Legal or court fees may be reimbursed only upon completion of counseling services to protect and preserve individual rights and freedoms.</u></p>	<u>No</u>
8. <u>Family Caregiver Education and Training</u>	<p><u>Covered only for Members enrolled in ECF CHOICES Group 4 when approved in advance by the Member's MCO.</u></p> <p><u>Limited to five hundred dollars (\$500) per calendar year.</u></p>	<u>No</u>
9. <u>Family Caregiver Stipend in lieu of SHC</u>	<p><u>Covered only for Members enrolled in ECF CHOICES Group 4 and only when supports for employment and community integration are provided.</u></p> <p><u>For a child under age eighteen (18), the Family Caregiver Stipend shall be limited to five hundred dollars (\$500) per month.</u></p> <p><u>For an adult age eighteen (18) or older, the Family Caregiver Stipend shall be no more than one thousand dollars (\$1,000) per month.</u></p>	<u>No</u>
10. <u>Family-to-Family Support</u>	<u>Covered only for Members enrolled in ECF CHOICES Group 4.</u>	<u>No</u>

<u>Service</u>	<u>Benefits for ECF CHOICES Members</u>	<u>Benefits for Consumer Direction</u>  <u>("Eligible ECF CHOICES HCBS")</u>
<u>11. Health Insurance Counseling/Forms Assistance</u>	<u>Covered only for Members enrolled in ECF CHOICES Group 4.</u>  <u>Limited to fifteen (15) hours per person per calendar year.</u>	<u>No</u>
<u>12. Independent Living Skills Training</u>	<u>Covered in accordance with limitations specified in Rule 1200-13-01-.02.</u>  <u>Not covered as a separate service for persons receiving CLS or CLS-FM.</u>  <u>For members not working in the community (excludes a facility-based setting) and not receiving any employment services: Up to 20 hours per week of Independent Living Skills Training and Community Integration Support Services combined after completing an Employment Informed Choice process.</u>  <u>For members working in the community or receiving at least one employment service: Up to 30 hours per week of Independent Living Skills Training, Community Integration Support Services, and Individual or Small Group Employment Supports combined.</u>  <u>For members working in individualized integrated employment or self-employment: Up to 40 hours per week of Independent Living Skills Training, Community Integration Support Services, Job Coaching, Co-Worker Supports and the hours worked without paid supports combined.</u>  <u>For members working in individualized integrated employment or self-employment at least 30 hours a week: Up to 50 hours per week of Independent Living Skills Training, Community Integration Support Services, Job Coaching, Co-Worker Supports and the hours worked without paid supports combined.</u>	<u>No</u>
<u>13. Individual Education and Training Services</u>	<u>Covered only for Members enrolled in ECF CHOICES Group 5 or 6 when approved in advance by the Member's MCO.</u>  <u>Limited to five hundred dollars (\$500) per Member per calendar year.</u>	<u>No</u>

<u>Service</u>	<u>Benefits for ECF CHOICES Members</u>	<u>Benefits for Consumer Direction</u>  <u>("Eligible ECF CHOICES HCBS")</u>
14. <u>Integrated Employment Path Services (time limited prevocational training)</u>	<p><u>Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02.</u></p> <p><u>Limited to no more than twelve (12) months. One extension of up to twelve (12) months can be allowed only if the individual is actively pursuing individualized employment in an integrated setting and has documentation that a service(s) (e.g. Job Development or Self-Employment Start-Up funded by Tennessee Rehabilitation Services, this Waiver or another similar source) is concurrently authorized for this purpose.</u></p> <p><u>Limited to 30 hours per week of Integrated Employment Path Services, other Individual or Small Group Employment Supports, Independent Living Skills Training, and Community Integration Support Services combined.</u></p>	<u>No</u>
15. <u>Minor Home Modifications</u>	<u>Covered in accordance with limitations specified in Rule 1200-13-01-.02 and with a limit of \$6,000 per project, \$10,000 per calendar year, and \$20,000 per lifetime.</u>	<u>No</u>
16. <u>Peer-to-Peer Support and Navigation for Person-Centered Planning, Self-Direction, Integrated Employment/Self-Employment and Independent Community Living</u>	<p><u>Covered only for Members enrolled in ECF CHOICES Group 5 or 6.</u></p> <p><u>Limited to one thousand five hundred dollars (\$1,500) per person per lifetime.</u></p>	<u>No</u>
17. <u>Personal Assistance</u>	<p><u>Covered only for ECF CHOICES Members enrolled in Group 5 or 6.</u></p> <p><u>In ECF CHOICES Group 6 (Comprehensive Supports for Employment and Community Living) benefit group, Personal Assistance is limited to two hundred fifteen (215) hours per month.</u></p>	<u>Yes</u>

<u>Service</u>	<u>Benefits for ECF CHOICES Members</u>	<u>Benefits for Consumer Direction</u>  <u>("Eligible ECF CHOICES HCBS")</u>
<u>18. Respite</u>	<p><u>Covered with limitations as follows:</u></p> <p><u>Up to thirty (30) days of service per person per calendar year or up to two hundred sixteen (216) hours per person per calendar year, depending on the needs and preferences of the individual as reflected in the PCSP.</u></p> <p><u>The two (2) limits cannot be combined in a calendar year.</u></p>	<u>Yes for hourly Respite only; daily Respite shall not be available through Consumer Direction</u>
<u>19. Specialized Consultation and Training</u>	<p><u>Covered only for adults age 21 or older enrolled in ECF CHOICES Group 5 or 6.</u></p> <p><u>Limited to five thousand dollars (\$5,000) per person per calendar year, except for adults in the Comprehensive Supports for Employment and Community Living benefit group determined to have exceptional medical and/or behavioral support needs pursuant to the Level of Need process described in Rule 1200-13-01-.02.</u></p> <p><u>For adults age 21 and older in ECF CHOICES Group 6 (Comprehensive Supports for Employment and Community Living) determined by TennCare to have exceptional medical and/or behavioral support needs, Specialized Consultation and Training shall be limited to ten thousand dollars (\$10,000) per person per calendar year.</u></p>	<u>No</u>
<u>20. Supportive Home Care (SHC)</u>	<u>Covered only for Members enrolled in ECF CHOICES Group 4.</u>	<u>Yes</u>
<u>21. Supported Employment Individual Employment Support</u>	<u>Covered for persons age 16 or older (or age 14 or older, as specified) in accordance with limitations specified in Rule 1200-13-01-.02, and with the following components:</u>	<u>No</u>

<u>Service</u>	<u>Benefits for ECF CHOICES Members</u>	<u>Benefits for Consumer Direction</u>  <u>("Eligible ECF CHOICES HCBS")</u>
	<p><u>Exploration – Covered for persons age 14 or older in accordance with limitations specified in Rule 1200-13-01-.02.</u></p> <p><u>Limited to once per year (with a minimum 365-day interval between services) and only if the person, at the time of re-authorization, is not already engaged in individualized integrated employment or self-employment, or other services to obtain such employment.</u></p>	<p><u>No</u></p>

<u>Service</u>	<u>Benefits for ECF CHOICES Members</u>	<u>Benefits for Consumer Direction</u>  <u>("Eligible ECF CHOICES HCBS")</u>
	<p><u>Benefits Counseling – Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02.</u></p> <p><u>Limited to people receiving individual employment supports. Persons receiving small group employment supports are not eligible for this benefit.</u></p> <p><u>Initial Benefits Counseling for someone actively considering or seeking individualized integrated employment or self-employment, or career advancement in these types of employment: up to twenty (20) hours. This service may be authorized no more than once every two (2) years (with a minimum of two 365-day intervals between services).</u></p> <p><u>Supplementary Benefits Counseling for someone evaluating an individualized integrated job offer/promotion or self-employment opportunity: up to an additional six (6) hours. This service may be authorized up to three (3) times per year if needed.</u></p> <p><u>PRN problem-solving services for someone to maintain individualized integrated employment or self-employment: up to eight (8) hours per situation requiring PRN assistance. This service may be authorized up to four (4) times per year if necessary for the individual to maintain individualized integrated employment or self-employment.</u></p> <p><u>Service must not be available under Section 110 of the Rehabilitation Act of 1973, or the IDEA (20 U.S.C. §§ 1401, et seq.). ECF may not fund this service if CWIC Benefits Counseling services funded through the Federal Work Incentives Planning and Assistance (WIPA) program are available.</u></p>	<p><u>No</u></p>

Service	Benefits for ECF CHOICES Members	Benefits for Consumer Direction  ("Eligible ECF CHOICES HCBS")
	<p><u>Discovery - Covered for persons age 14 or older in accordance with limitations specified in Rule 1200-13-01-.02.</u></p> <p><u>Limited to no more than ninety (90) calendar days from the date of service initiation.</u></p>	No
	<p><u>Situational Observation and Assessment – Covered for persons age 14 or older in accordance with limitations specified in Rule 1200-13-01-.02.</u></p> <p><u>Limited to once every three years (with a minimum of three 365-day intervals between services), and only if the person, at the time of re-authorization, is not already engaged in individualized integrated employment or self-employment, or other services to obtain such employment, and the person has a goal to obtain individualized integrated employment or self-employment within twelve (12) months.</u></p>	No
	<p><u>Job Development Plan or Self-Employment Plan – Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02.</u></p> <p><u>Limited to once every three years (with a minimum of three 365-day intervals between services), and only if the person, at the time of re-authorization, is not already engaged in individualized integrated employment or self-employment, or other services to obtain such employment, and the person has a goal to obtain individualized integrated employment or self-employment within twelve (12) months.</u></p> <p><u>Medicaid funds may not be used to defray the capital expenses associated with starting a business.</u></p>	No

<u>Service</u>	<u>Benefits for ECF CHOICES Members</u>	<u>Benefits for Consumer Direction</u>  <u>("Eligible ECF CHOICES HCBS")</u>
	<p><u>Job Development Plan or Self-Employment Start Up – Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02.</u></p> <p><u>Limited to once per year (with a minimum 365-day interval between services), and only if the person, at the time of re-authorization, is not already engaged in individualized integrated employment or self-employment, or other services to obtain such employment, and the person has a goal to obtain individualized integrated employment or self-employment within nine (9) months.</u></p>	<p><u>No</u></p>
	<p><u><b>Job Coaching</b> – Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02.</u></p> <p><u>Covered only for members working in individualized integrated employment or self-employment. Limited to 40 hours per week of Job Coaching, Co-Worker Supports, the hours worked without paid supports, Independent Living Skills Training, and Community Integration Support Services combined.</u></p> <p><u>For members working in individualized integrated employment or self-employment at least 30 hours a week: Limited to 50 hours per week of Job Coaching, Co-Worker Supports, the hours worked without paid supports, Independent Living Skills Training, and Community Integration Support Services combined.</u></p>	<p><u>No</u></p>

<u>Service</u>	<u>Benefits for ECF CHOICES Members</u>	<u>Benefits for Consumer Direction</u>  <u>("Eligible ECF CHOICES HCBS")</u>
	<p><u>Co-Worker Supports – Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02.</u></p> <p><u>Covered only for members working in individualized integrated employment or self-employment. Limited to 40 hours per week of Co-Worker Supports, Job Coaching, the hours worked without paid supports, Independent Living Skills Training, and Community Integration Support Services combined.</u></p> <p><u>For members working in individualized integrated employment or self-employment at least 30 hours a week. Limited to 50 hours per week of Co-Worker Supports, Job Coaching, the hours worked without paid supports, Independent Living Skills Training, and Community Integration Support Services combined.</u></p>	<p><u>No</u></p>
	<p><u>Career Advancement – Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02.</u></p> <p><u>This service shall not be authorized retroactive to a promotion or second job being made available to a person.</u></p> <p><u>Supports for Career Advancement may be authorized and paid once every three (3) years (with a minimum of three 365-day intervals between services), if evidence exists that the individual is eligible for promotion or able to present as a strong candidate for employment in a second job (e.g. has strong reference, performance reviews and attendance record from current employer).</u></p>	<p><u>No</u></p>

<u>Service</u>	<u>Benefits for ECF CHOICES Members</u>	<u>Benefits for Consumer Direction</u>  <u>("Eligible ECF CHOICES HCBS")</u>
<u>22. Supported Employment Small Group Supports</u>	<p><u>Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02.</u></p> <p><u>Limited to 30 hours per week of Small Group or Individual Employment Supports, Integrated Employment Path Services, Independent Living Skills Training, and Community Integration Support Services combined.</u></p>	<u>No</u>

(8) Consumer Direction (CD).

(a) CD is a model of service delivery that affords ECF CHOICES Members the opportunity to have more choice and control with respect to Eligible ECF CHOICES HCBS that are needed by the Member, in accordance with this Rule. CD is not a service or set of services.

(b) ECF CHOICES HCBS eligible for CD (Eligible ECF CHOICES HCBS).

1. CD shall be limited to the following HCBS:

(i) Personal Assistance.

(ii) Supportive Home Care.

(iii) Hourly Respite. (Daily Respite shall not be available through CD.)

(iv) Community Transportation.

2. ECF CHOICES Members determined to need Eligible ECF CHOICES HCBS may elect to receive one or more of the Eligible ECF CHOICES HCBS through a Contract Provider, or they may participate in CD.

3. ECF CHOICES Members who do not need Eligible ECF CHOICES HCBS shall not be offered the opportunity to enroll in CD.

4. The model of CD that will be implemented in ECF CHOICES is a modified budget authority model.

5. Each Eligible ECF CHOICES HCBS identified in the Member's PCSP that the Member elects to receive through CD shall have an individual monthly or annual budget, as specified below.

6. The amount of the budget authorized for each Eligible ECF CHOICES HCBS the Member elects to receive through CD shall be based on a comprehensive needs assessment performed by a Support Coordinator that identifies the Member's needs, the availability of family and other unpaid caregivers to meet those needs, and the gaps in care for which paid ECF CHOICES may be authorized.

(i) Each Eligible ECF CHOICES HCBS received through CD shall have a separate budget.

(ii) The budget for each Eligible ECF CHOICES HCBS received through CD shall be based on the number of units of that service the member is assessed to need, subject to applicable benefit limits and the Member's Expenditure Cap.

(iii) Once the budget for each Eligible ECF CHOICES HCBS is determined and authorized, the Member shall have flexibility to determine the rate of reimbursement for that service (subject to any limitations established by TennCare), and to purchase additional units of the service so long as the budget for that service is not exceeded.

(iv) The budget for each Eligible ECF CHOICES HCBS shall be separately maintained. A Member shall not direct money from the budget for one Eligible ECF CHOICES HCBS to purchase a different Eligible ECF CHOICES HCBS, provided however, that a Member's PCSP (and consequently, the budget for any affected Eligible ECF CHOICES HCBS) may be amended based on the Member's needs, as appropriate.

- (v) Any money remaining in a Member's monthly budget for Personal Assistance, Supportive Home Care or Community Transportation at the end of a month shall not be carried over to the next month, and cannot be used to purchase units of service in any other month.
- (vi) Any money remaining in a Member's annual budget for hourly Respite at the end of the calendar year shall not be carried over to the next year, and cannot be used to purchase additional units of service in a subsequent calendar year.

7. The amount of the budget for each Eligible ECF CHOICES HCBS shall be authorized as follows:

(i) Personal Assistance for Members enrolled in ECF CHOICES Group 5 or Group 6 and Supportive Home Care for Members enrolled in ECF CHOICES Group 4 shall have a monthly budget if provided through Consumer Direction.

(I) A Member shall only direct CD Workers to provide Personal Assistance or Supportive Home Care, as applicable, up to the amount of the authorized monthly budget for that service.

(II) A Member shall not ask or allow a CD Worker to provide services in excess of the authorized monthly budget for that service.

(III) If a Member exhausts the authorized monthly budget for a service before the month has ended, additional services shall not be authorized for the remainder of the month.

(IV) If a Member (or his Representative for CD) is not able to manage services within the approved budget for the service, the Member may not be able to remain in CD.

(ii) Community Transportation for Members enrolled in ECF CHOICES shall have a monthly budget if provided through CD.

(I) The monthly budget shall be based on the number of days in the month that the Member is expected to need Community Transportation services.

(II) The Member may receive the first month's budget allotment in advance. The advance monthly budget allotment shall be used to purchase only Community Transportation services as defined in these rules.

(III) A Member may purchase Community Transportation services in the most cost-efficient manner possible, including public transportation (e.g., bus passes), paying a co-worker to share gas expenditures, etc.

(IV) A Member shall not reimburse any person who resides with the Member for Community Transportation.

(V) The Member is obligated to maintain a Community Transportation log and receipts for Community Transportation expenditures as required by TennCare and to submit such information on a monthly basis to his MCO.

(VI) A Member shall only purchase Community Transportation up to the amount of the authorized monthly budget for that service.

(VII) The Member's monthly Community Transportation budget shall be reimbursed only for documented purchases of Community Transportation services submitted to the MCO.

(VIII) A Member shall not be reimbursed for Community Transportation services in excess of the authorized monthly budget for that service.

(IX) If a Member exhausts the authorized monthly budget for Community Transportation services before the month has ended, additional services shall not be authorized for the remainder of the month.

(X) If a Member (or his Representative for CD) is not able to manage services within the approved budget for the service, the Member may not be able to remain in CD.

(iii) Respite services for Members enrolled in ECF CHOICES shall have an annual budget if provided through Consumer Direction.

(I) The annual budget shall operate on a calendar year (January 1 through December 31).

(II) A Member who elects to receive Respite through CD shall receive up to 216 hours per year of Respite services. (Daily Respite shall not be available through CD.)

(III) A Member shall only direct CD Workers to provide Respite services, as applicable, up to the amount of the authorized annual budget for that service.

(IV) A Member shall not ask or allow a CD Worker to provide services in excess of the authorized annual budget for that service.

(V) If a Member exhausts the authorized annual budget for Respite services before the calendar year has ended, additional services shall not be authorized for the remainder of the year.

(VI) If a Member (or his Representative for CD) is not able to manage services within the approved budget for the service, the Member may not be able to remain in CD.

8. HH Services, PDN Services, and ECF CHOICES HCBS other than those specified above shall not be available through CD.

(c) Eligibility for CD. To be eligible for CD, an ECF CHOICES Member must meet all of the following criteria:

1. Be a Member of ECF CHOICES.

2. Be determined by a Support Coordinator, based on a comprehensive needs assessment, to need one or more Eligible ECF CHOICES HCBS.

3. Be willing and able to serve as the Employer of Record for his Consumer-Directed Workers and to fulfill all of the required responsibilities for CD, or he must have a qualified Representative who is willing and able to serve as the Employer of Record and to fulfill all of the required responsibilities for CD. Assistance shall be provided to the Member or his Representative by the FEA.

4. Any additional risks associated with a Member's decision to participate in CD must be identified and addressed in the PCSP, as applicable, and the MCO must determine that the Member's needs can be safely and appropriately met in the community while participating in CD.

5. The Member or his Representative for CD and any Workers he employs must agree to use the services of the Bureau's contracted FEA to perform required Financial Administration and Supports Brokerage functions.

(d) Enrollment in CD.

1. An ECF CHOICES Member assessed to need one or more Eligible ECF CHOICES HCBS may elect to participate in CD at any time.

2. If the Member is unable to make a decision regarding his participation in CD or to communicate his decision, only a legally appointed Representative may make such decision on his behalf. The Member, or a family member or other caregiver, must sign a CD participation form reflecting the decision the Member has made.
3. If the Member is unable to make a decision regarding CD or to communicate his decision and does not have a legally appointed Representative, the Member cannot participate in CD since there is no one with the legal authority to assume and/or delegate the Member's CD responsibilities.
4. Self-Assessment Tool. If a Member elects to participate in CD, he must complete a self-assessment tool developed by the Bureau to determine whether he requires the assistance of a Representative to perform the responsibilities of CD.
5. Representative. If the Member requires assistance in order to participate in CD, he must designate, or have appointed by a legally appointed Representative, a Representative to assume the CD responsibilities on his behalf.
  - (i) A Representative for CD must meet all of the following criteria:
    - (I) Be at least eighteen (18) years of age;
    - (II) Have a personal relationship with the Member and understand his support needs;
    - (III) Know the Member's daily schedule and routine, medical and functional status, medication regimen, likes and dislikes, strengths and weaknesses; and
    - (IV) Be physically present in the Member's residence on a regular basis or at least at a frequency necessary to supervise and evaluate each Consumer-Directed Worker.
  - (ii) If a Member requires a Representative but is unwilling or unable to appoint one, the MCO may submit to the Bureau, for review and approval, a request to deny the Member's participation in CD.
  - (iii) If a Member's Support Coordinator believes that the person selected as the Member's representative for CD does not meet the specified requirements (e.g., the Representative is not physically present in the Member's residence at a frequency necessary to adequately supervise Workers), the Support Coordinator may request that the Member select a different Representative who meets the specified requirements. If the Member does not select another Representative who meets the specified requirements, the MCO may, in order to help ensure the Member's health and safety, submit to the Bureau, for review and approval, a request to deny the Member's participation in CD.
  - (iv) A Member's Representative shall not receive payment for serving in this capacity and shall not serve as the Member's paid Worker for any Consumer-Directed Service.
  - (v) Representative Agreement. A Representative Agreement must be signed by the Member (or person authorized to sign on the Member's behalf) and the Representative in the presence of the Support Coordinator. By completing a Representative agreement, the Representative confirms that he agrees to serve as a Member's representative and that he accepts the responsibilities and will perform the duties associated with being a Representative.
  - (vi) A Member may change his Representative at any time by notifying his Support Coordinator and his Supports Broker that he intends to change Representative. The Support Coordinator shall verify that the new Representative meets the qualifications as described above. A new Representative Agreement must be completed and signed, in the presence of a Support Coordinator, prior to the new Representative assuming his respective responsibilities.

(e) Employer of Record.

1. If a Member elects to participate in CD, either he or his Representative must serve as the Employer of Record.
2. The Employer of Record is responsible for the following:
  - (i) Finding, interviewing, hiring and firing Workers;
  - (ii) Determining Workers' duties and developing job descriptions;
  - (iii) Training Workers to provide personalized support based on the Member's needs and preferences;
  - (iv) Scheduling Workers;
  - (v) Ensuring there are enough workers hired to provide all of the support needed by the Member (including when the worker scheduled is unable to report to work);
  - (vi) Ensuring the worker(s) keep correct time sheets for the services and supports provided;
  - (vii) Reviewing and approving hours reported by Consumer-Directed Workers;
  - (viii) Ensuring Workers provide only as much support as assigned to provide and as needed by the Member;
  - (ix) Ensuring that no Worker provides more than 40 hours of support each week unless the Member or Representative for CD has decided to pay overtime out of the Member's approved budget;
  - (x) Managing the services the Member needs within the Member's approved budget for each service;
  - (xi) Supervising Workers;
  - (xii) Evaluating Worker performance and addressing any identified deficiencies or concerns;
  - (xiii) Setting wages from a range of reimbursement levels established by the Bureau;
  - (xiv) Reviewing and ensuring proper documentation for services provided; and
  - (xv) Developing and implementing as needed a Back-up Plan to address instances when a scheduled Worker is not available or fails to show up as scheduled.

(f) Denial of Enrollment in CD.

1. Enrollment into CD may be denied by the Bureau when:
  - (i) The person is not enrolled in TennCare or in ECF CHOICES.
  - (ii) The Member does not need one or more of the HCBS eligible for CD, as specified in the PCSP.
  - (iii) The Member is not willing or able to serve as the Employer of Record for his Consumer-Directed Workers and to fulfill all of the required responsibilities for CD, and does not have a qualified Representative who is willing and able to serve as the Employer of Record and to fulfill all of the required responsibilities for CD.
  - (iv) The Member is unwilling, with the assistance of his Support Coordinator, to identify and address any additional risks associated with the Member's decision to participate in CD.

or the risks associated with the Member's decision to participate in CD pose too great a threat to the Member's health, safety and welfare.

- (v) The Member does not have an adequate Back-up Plan for CD.
- (vi) The Member's needs cannot be safely and appropriately met in the community while participating in CD.
- (vii) The Member or his Representative for CD, or the Consumer-Directed Workers he wants to employ, are unwilling to use the services of the Bureau's contracted FEA to perform required Financial Administration and Supports Brokerage functions.
- (viii) Other significant concerns regarding the Member's participation in CD which jeopardize the health, safety or welfare of the Member.

2. Denial of enrollment in CD gives rise to notice and due process including the right to a fair hearing, as set forth in this rule.

(g) Fiscal Employer Agent (FEA).

1. The FEA shall perform the following functions on behalf of all Members participating in CD:

- (i) Financial Administration functions in the performance of payroll and related tasks; and
- (ii) Supports Brokerage functions to assist the Member or his Representative with other non-payroll related tasks such as the completion of CD enrollment paperwork and assistance with employer functions as requested.

2. The FEA shall:

- (i) Assign a Supports Broker to each ECF CHOICES Member electing to participate in CD of Eligible ECF CHOICES HCBS.
- (ii) Provide initial and ongoing training to Members and their Representatives (as applicable) on CD and other relevant issues.
- (iii) Verify Worker qualifications, including conducting background checks on Workers, enrolling Workers into TennCare, requesting from TennCare the assignment of Medicaid provider ID numbers, and holding TennCare provider agreements.
- (iv) Provide initial and ongoing training to workers on CD and other relevant issues such as the use of the FEA time keeping system.
- (v) Assist the Member and/or Representative in developing and updating Service Agreements.
- (vi) Withhold, file and pay applicable federal, state and local income taxes; employment and unemployment taxes; and worker's compensation.
- (vii) Pay Workers for authorized services rendered within authorized timeframes.

(h) Back-up Plan for Consumer-Directed Workers.

- 1. Each Member participating in CD or his Representative is responsible for the development and implementation of a Back-up Plan that identifies how the Member or Representative will address situations when a scheduled Worker is not available or fails to show up as scheduled.
- 2. The Member or Representative may not elect, as part of the Back-up Plan, to go without services.

3. The Back-up Plan for CD shall include the names and telephone numbers of contacts (Workers, agency staff, organizations, supports) for alternate care, the order in which each shall be notified and the services to be provided by contacts.
4. Back-up contacts may include paid and unpaid supports; however, it is the responsibility of the Member electing CD and/or his Representative to secure paid (as well as unpaid) back-up contacts who are willing and available to serve in this capacity, and for initiating the back-up plan when needed.
5. The Member's Back-up Plan for Consumer-Directed Workers shall be integrated into the Member's Back-up Plan for services provided by Contract Providers, as applicable, and the Member's PCSP.
6. The Support Coordinator shall review the Back-up Plan developed by the Member and/or his Representative to determine its adequacy to address the Member's needs. If an adequate Back-up Plan cannot be provided to CD, enrollment into CD may be denied, as set forth in this Rule.
7. The Back-up Plan shall be reviewed and updated at least annually, and as frequently as necessary if there are changes in the type, amount, duration, scope of eligible ECF CHOICES HCBS or the schedule at which such services are needed, changes in Workers (when such Workers also serve as a back-up to other Workers) and changes in the availability of paid or unpaid back-up Workers to deliver needed support.
8. A Member may use Contract Providers to serve as back-up to Consumer Directed Workers only upon prior arrangement by the Member (or Representative for CD) with the Contract Provider, inclusion in the Member's back-up plan, verification by the Supports Broker, prior approval by the MCO, and subject to the Member's Expenditure Cap as described in Rule 1200-13-01-.31(4)(d). If the higher cost of services delivered by a Contract Provider would result in a Member's Expenditure Cap being exceeded, a Member shall not be permitted to use Contract Providers to provide back-up workers. A Member's MCO shall not be required to maintain Contract Providers on "stand-by" to provide back-up for services delivered through Consumer Direction.

(i) Consumer-Directed Workers (Workers).

1. Hiring Consumer-Directed Workers.

- (i) Members shall have the flexibility to hire individuals with whom they have a close personal relationship to serve as Workers, such as neighbors or friends.
- (ii) Members may hire family members, excluding spouses, to serve as Workers. However, a family member shall not be reimbursed for a service that he would have otherwise provided without pay. A Member shall not be permitted to employ any person who resides with the Member to deliver Personal Assistance, Supportive Home Care or hourly Respite services. A Member shall not reimburse any person who resides with the Member for Community Transportation.
- (iii) Members may elect to have a Worker provide more than one service, have multiple Workers, or have both a Worker and a Contract Provider for a given service, in which case, there must be a set schedule which clearly defines when Contract Providers will be used.

2. Qualifications of Consumer-Directed Workers. Workers must meet the following requirements prior to providing services:

- (i) Be at least eighteen (18) years of age or older;

- (ii) Complete a background check that includes a criminal background check (including fingerprinting), or, as an alternative, a background check from a licensed private investigation company;
  - (iii) Verification that the person's name does not appear on the State abuse registry;
  - (iv) Verification that the person's name does not appear on the State and national sexual offender registries and licensure verification, as applicable;
  - (v) Verification that the person has not been excluded from participation in Medicare, Medicaid, SCHIP, or any Federal health care programs (as defined in Section 128B(f) of the Social Security Act);
  - (vi) Complete all required training;
  - (vii) Complete all required applications to become a TennCare provider;
  - (viii) Sign an abbreviated Medicaid agreement;
  - (ix) Be assigned a Medicaid provider ID number;
  - (x) Sign a Service Agreement; and
  - (xi) If the Worker will be transporting the Member as specified in the Service Agreement, a valid driver's license and proof of insurance must also be provided.
3. Disqualification from Serving as a Consumer-Directed Worker. A Member cannot waive the completion of a background check for a potential Worker. A background check may reveal a potential Worker's past criminal conduct that may pose an unacceptable risk to the Member. Any of the following findings may place the Member at risk and may disqualify a person from serving as a Worker:
- (i) Conviction of an offense involving physical, sexual or emotional abuse, neglect, financial exploitation or misuse of funds, misappropriation of property, theft from any person, violence against any person, or manufacture, sale, possession or distribution of any drug; and/or
  - (ii) Entering of a plea of nolo contendere or when a jury verdict of guilty is rendered but adjudication of guilt is withheld with respect to a crime reasonably related to the nature of the position sought or held.
4. Individualized Assessment of a Consumer-Directed Worker with a Criminal Background.
- (i) If a potential Worker's background check includes past criminal conduct, the Member (or Representative for CD) must review the past criminal conduct with the help of the FEA. The Member (or Representative for CD), with the assistance of the FEA, will consider the following factors:
    - (I) Whether or not the evidence gathered during the potential Worker's individualized assessment shows the criminal conduct is related to the job in such a way that could place the Member at risk;
    - (II) The nature and gravity of the offense or conduct, such as whether the offense is related to physical or sexual or emotional abuse of another person, if the offense involves violence against another person, or the manufacture, sale, or distribution of drugs; and
    - (III) The time that has passed since the offense or conduct and/or completion of the sentence.

- (ii) After considering the above factors and any other evidence submitted by the potential Worker, the Member (or Representative for CD) must decide whether to hire the potential Worker.
- (iii) If a Member (or Representative for CD) decides to hire the Worker, the FEA shall assist the Member (or Representative for CD) in notifying the Member's MCO of this decision and shall collaborate with the Member's MCO to amend the Member's PCSP to reflect the Member's (or CD Representative's) decision to voluntarily assume the risk associated with hiring an individual with a criminal history and that the Member (or Representative for CD) is solely responsible for any negative consequences stemming from that decision. The FEA shall also collaborate with the Member's MCO on a risk mitigation strategy.

5. Service Agreement.

- (i) A Member shall develop a Service Agreement with each Worker, which includes, at a minimum:
  - (I) The roles and responsibilities of the Worker and the Member;
  - (II) The Worker's typical schedule (as developed by the Member and/or Representative), including hours and days;
  - (III) The scope of each service (i.e., the specific tasks and functions the Worker is to perform);
  - (IV) The service rate; and
  - (V) The requested start date for services.
- (ii) The Service Agreement must be in place for each Worker prior to the Worker providing services.

6. Payments to Consumer-Directed Workers.

- (i) Rates. Members participating in CD have the flexibility to set wages for their Workers from a range of reimbursement levels established by TennCare.
- (ii) Payments to Consumer-Directed Workers. In order to receive payment for services rendered, all Workers must:
  - (I) Deliver services in accordance with the services specified in the Member's PCSP, the monthly or annual budget as approved in the MCO's service authorization, and in accordance with the schedule set by the Member or the Member's Representative for CD and Worker assignments determined by the Member or his Representative.
  - (II) Use the FEA time keeping system to record in and out times for each visit.
  - (III) Provide detailed documentation of service delivery including but not limited to the specific tasks and functions performed for the Member at each visit, which shall be maintained in the Member's home.
  - (IV) Provide no more than forty (40) hours of services within a consecutive seven (7) day period, unless explicitly directed by the Employer of Record who by such direction, agrees to pay the worker over-time pay out of the Member's budget in accordance with the Fair Labor Standards Act. This shall reduce the amount of services that may be purchased for the Member during that month.

(iii) Termination of Consumer-Directed Workers' Employment.

(I) A Member may terminate a Worker's employment at any time.

(II) The MCO may not terminate a Worker's employment, but may request that a Member be involuntarily withdrawn from CD if it is determined that the health, safety and welfare of the Member may be in jeopardy if the Member continues to employ a Worker but the Member and/or Representative does not want to terminate the Worker.

(j) Withdrawal from Participation in Consumer Direction (CD).

1. General.

(i) Voluntary Withdrawal from CD. Members participating in CD may voluntarily withdraw from participation in CD at any time. The Member's request must be in writing. Whenever possible, notice of a Member's decision to withdraw from participation in CD should be provided in advance to permit time to arrange for delivery of services through Contracted Providers.

(ii) Voluntary or involuntary withdrawal of a Member from CD of Eligible ECF CHOICES HCBS shall not affect a Member's eligibility for LTSS or enrollment in ECF CHOICES, provided the Member continues to meet all requirements for enrollment in ECF CHOICES as defined in this Chapter.

(iii) If a Member voluntarily withdraws or is involuntarily withdrawn from CD, any Eligible ECF CHOICES HCBS he receives shall be provided through Contract Providers, subject to the requirements in this Chapter.

2. Involuntary Withdrawal.

(i) A person may be involuntarily withdrawn from participation in CD of HCBS for any of the following reasons:

(I) The person is no longer enrolled in TennCare.

(II) The person is no longer enrolled in ECF CHOICES.

(III) The Member no longer needs any of the Eligible ECF CHOICES HCBS, as specified in the PCSP.

(IV) The Member is no longer willing or able to serve as the Employer of Record for his Consumer-Directed Workers and to fulfill all of the required responsibilities for CD, and does not have a qualified Representative who is willing and able to serve as the Employer of Record and to fulfill all of the required responsibilities for CD.

(V) The Member is unwilling to work with the Support Coordinator to identify and address any additional risks associated with the Member's decision to participate in CD, or the risks associated with the Member's decision to participate in CD pose too great a threat to the Member's health, safety and welfare.

(VI) The health, safety and welfare of the Member may be in jeopardy if the Member or his Representative continues to employ a Worker but the Member or Representative does not want to terminate the Worker.

(VII) The Member does not have an adequate Back-up Plan for CD.

(VIII) The Member's needs cannot be safely and appropriately met in the community while participating in CD.

- (IX) The Member or his Representative for CD, or Consumer-Directed Workers he wants to employ are unwilling to use the services of the Bureau's contracted FEA to perform required Financial Administration and Supports Brokerage functions.
  - (X) The Member or his Representative for CD is unwilling to abide by the requirements of the ECF CHOICES CD program.
  - (XI) If a Member's Representative fails to perform in accordance with the terms of the Representative Agreement and the health, safety and welfare of the Member is at risk, and the Member wants to continue to use the Representative.
  - (XII) If a Member has consistently demonstrated that he is unable to manage, with sufficient supports, including appointment of a Representative, his services and the Support Coordinator or FEA has identified health, safety and/or welfare issues.
  - (XIII) A Support Coordinator has determined that the health, safety and welfare of the Member may be in jeopardy if the Member continues to employ a Worker but the Member or Representative does not want to terminate the Worker.
  - (XIV) Other significant concerns regarding the Member's participation in CD which jeopardize the health, safety or welfare of the Member.
- (ii) The Bureau must review and approve all MCO requests for involuntary withdrawal from CD of eligible HCBS before such action may occur. If the Bureau approves the request, written notice shall be given to the Member at least ten (10) days in advance of the withdrawal. The date of withdrawal may be delayed when necessary to allow adequate time to transition the Member to Contract Provider services as seamlessly as possible.
  - (iii) The Member shall have the right to appeal involuntary withdrawal from CD.
  - (iv) If a person is no longer enrolled in TennCare or in ECF CHOICES, his participation in CD shall be terminated

(9) HCBS Providers in ECF CHOICES.

- (a) HCBS providers delivering services under ECF CHOICES must meet specified license, training and background check requirements and shall meet conditions for reimbursement outlined in their provider agreements with the TennCare MCOs.
- (b) MCOs may contract with non-participating HCBS providers as needed through a single case agreement and will reimburse the provider at no less than eighty percent (80%) of the lowest rate paid to any contracted HCBS provider in the state for that service.

(10) Appeals.

- (a) Appeals related to determinations of eligibility for TennCare Medicaid or TennCare Standard are processed by TennCare, in accordance with Chapters 1200-13-13 and 1200-13-14.
- (b) Appeals related to the denial, reduction, suspension, or termination of a covered service are processed by the Bureau in accordance with Rules 1200-13-13-.11 and 1200-13-14-.11, provided however that notice and continuation of benefits shall not be provided for ECF CHOICES HCBS identified in the Initial SP that are needed by the ECF CHOICES member immediately upon enrollment in ECF CHOICES while the Support Coordinator develops the comprehensive PCSP. A member may request a fair hearing regarding any covered benefit not approved in the PCSP that he believes is needed.
- (c) Appeals related to the PAE process (including decisions pertaining to the PASRR process) are processed by the Bureau's Division of Long-Term Services and Supports in accordance with Rule 1200-13-01-.10(7).

(d) Appeals related to the enrollment or disenrollment of an individual in ECF CHOICES or to denial or involuntary withdrawal from participation in CD are processed by the Division of Long-Term Services and Supports in the Bureau, in accordance with the following procedures:

1. If enrollment into ECF CHOICES or if participation in CD is denied, notice containing an explanation of the reason for such denial shall be provided. The notice shall include the person's right to request a fair hearing within thirty (30) days from receipt of the written notice regarding valid factual disputes pertaining to the enrollment denial decision.
2. If a Member is involuntarily disenrolled from ECF CHOICES, or if participation in CD is involuntarily withdrawn, advance notice of involuntary disenrollment or withdrawal shall be issued. The notice shall include a statement of the Member's right to request a fair hearing within thirty (30) days from receipt of the written notice regarding valid factual disputes pertaining to the decision.
3. Appeals regarding denial of enrollment into ECF CHOICES, involuntary disenrollment from ECF CHOICES, or denial or involuntary withdrawal from participation in CD must be filed in writing with the TennCare Division of Long-Term Services and Supports within thirty-five (35) days of issuance of the written notice if the appeal is filed with the Bureau by fax, and within forty (40) days of issuance of the written notice if the appeal is mailed to the Bureau. This allows five (5) days mail time for receipt of the written notice and when applicable, five (5) days mail time for receipt of the written appeal.
4. In the case of involuntary disenrollment from ECF CHOICES only, if the appeal is received prior to the date of action, continuation of ECF CHOICES benefits shall be provided, pending resolution of the disenrollment appeal.
5. In the case of involuntary withdrawal from participation in CD, if the appeal is received prior to the date of action, continuation of participation in CD shall be provided, unless such continuation would pose a serious risk to the Member's health, safety and welfare, in which case, services specified in the PCSP shall be made available through Contract Providers pending resolution of the appeal.

(e) A member may present all relevant and material evidence pertaining to the adverse action.

(11) Management of the Referral List for ECF CHOICES.

(a) A new referral list shall be established for ECF CHOICES.

(b) The referral list shall be managed by TennCare on a statewide basis.

1. The ECF CHOICES referral list management process generally includes three (3) steps: screening, intake and enrollment. The referral management process shall be used to help manage Potential Applicants and Applicants for ECF CHOICES in accordance with established prioritization and enrollment criteria.
2. Intake and enrollment into ECF CHOICES from the referral list shall proceed in accordance with these Rules and with TennCare policies and protocols.
3. Potential Applicants for ECF CHOICES shall be categorized on the ECF CHOICES referral list as follows:
  - (i) Category 1 - Any age or level of disability, employed and in need of supports to maintain employment that are not otherwise available as vocational rehabilitation services funded under Section 110 of the Rehabilitation Act of 1973, 29 U.S.C. § 730, or as special education or related services as those terms are defined in Section 602 of the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. § 1401.

(l) Includes youth age 18-22 transitioning from school and young adults completing

post-secondary education or training who are employed and in need of supports to maintain employment.

(II) If employment is lost after enrollment into ECF CHOICES occurs, the person shall not be disenrolled if other ECF CHOICES HCBS are needed on an ongoing basis, which may include supports to obtain and maintain new employment.

(ii) Category 2 - 18-22 years old, regardless of the level of disability, transitioning from school and young adults completing post-secondary education or training who are employed or who have the commitment of employment from an employer and are in need of employment supports that are not otherwise available as vocational rehabilitation services funded under Section 110 of the Rehabilitation Act of 1973, 29 U.S.C. § 730.

Includes individuals age 18-22 and young adults completing post-secondary education or training who are participating in paid or unpaid internships with the commitment of employment and individuals with more significant needs who may require employment customization.

(iii) Category 3 - Any age or level of disability, recently unemployed and in need of supports to obtain and/or maintain new employment that are not otherwise available as vocational rehabilitation services funded under Section 110 of the Rehabilitation Act of 1973, 29 U.S.C. § 730

(iv) Category 4 - 18-22 years old, regardless of the level of disability, transitioning from school with expressed desire for employment.

(v) Category 5 - Unemployed, regardless of the level of disability, with desire and commitment to work.

(vi) Category 6 - Youth of transition age, regardless of the level of disability, living at home with family caregivers, who are actively planning for employment as part of the transition process and in need of supports provided in ECF CHOICES, including for individuals with more significant needs, employment customization, in order to achieve and maintain employment that are not otherwise available as vocational rehabilitation services funded under Section 110 of the Rehabilitation Act of 1973, 29 U.S.C. § 730, or as special education or related services as those terms are defined in Section 602 of the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. § 1401.

Category 6 shall be applicable only to enrollment into ECF CHOICES Group 4 (Essential Family Supports).

4. ECF CHOICES referral list categories are listed in the order of prioritization. These categories shall be applicable for all non-reserve capacity slots for Potential Applicants of all ages and levels of disability, and for all ECF CHOICES benefit groups.

5. Potential Applicants on the ECF CHOICES referral list shall have the opportunity to apply for enrollment into ECF CHOICES when the category in which they are placed on the ECF CHOICES referral list is open for enrollment, and when there is an available slot in which the Potential Applicant can be enrolled, if all applicable eligibility and enrollment criteria are met.

6. ECF CHOICES referral list categories shall apply only to prioritization for enrollment into ECF CHOICES.

7. Employment shall not be a condition or requirement for enrollment in ECF CHOICES.

(i) Potential Applicants who are not employed and not interested in employment may be enrolled in ECF CHOICES in accordance with these rules and with TennCare policies and protocols for management of the statewide ECF CHOICES referral list, including prioritization criteria.

- (ii) Criteria applicable to ECF CHOICES referral list categories shall apply only to prioritization for enrollment into ECF CHOICES.
- (iv) Persons prioritized for enrollment in ECF CHOICES on the basis of employment who are enrolled in ECF CHOICES and subsequently lose their job shall not be disenrolled from ECF CHOICES because they are no longer employed, so long as other ECF CHOICES HCBS are needed on an ongoing basis, which may include supports to obtain and maintain new employment.

8. A person who does not meet the conditions for any of the Categories specified above shall be placed on the ECF CHOICES referral list in an "Other Active" category if ECF CHOICES HCBS are requested at time of referral or in a "Deferred" category if ECF CHOICES HCBS are not requested at time of referral.

9. Reserve Capacity Slots.

In addition to the categories identified above, a specified number of slots shall be held in reserve capacity for individuals who meet one or more of the following criteria:

(i) One or more emergent circumstances as follows:

(I) The person's primary caregiver is recently deceased and there is no other caregiver available to provide needed long-term supports.

(II) The person's primary caregiver is permanently incapacitated and there is no other caregiver available to provide needed long-term supports.

(III) There is clear evidence of serious abuse, neglect, or exploitation in the current living arrangement. The person must move from the living arrangement to prevent further abuse, neglect or exploitation, and there is no alternative living arrangement available.

(IV) Enrollment into ECF CHOICES is necessary in order to facilitate transition out of a long-term care institution, i.e., a NF or a private or public ICF/IID into a more integrated community-based setting.

(V) The person is an adult age 21 or older enrolled in ECF CHOICES Group 4 (Essential Family Supports) or ECF CHOICES Group 5 (Essential Support for Employment and Independent Living) and has recently experienced a significant change in needs or circumstances. TennCare has determined via a Safety Determination that the person can no longer be safely served within the array of benefits available in ECF CHOICES Group 4 (Essential Family Supports) or 5 (Essential Supports for Employment and Independent Living), as applicable, the person meets NF level of care, and must be transitioned to ECF CHOICES Group 6 in order to sustain community living in the most integrated setting.

(VI) The health, safety or welfare of the person or others is in immediate and ongoing risk of serious harm or danger. Other interventions including Behavioral Health Crisis Prevention, Intervention and Stabilization services, where applicable, have been tried but were not successful in minimizing the risk of serious harm to the person or others without additional services available in ECF CHOICES, and the situation cannot be resolved absent the provision of such services available in ECF CHOICES.

(ii) The Potential Applicant has multiple complex chronic or acquired health conditions that prevent the person from being able to work, and the Potential Applicant is in urgent need of supports in order to maintain the current living arrangement and delay or prevent the need for more expensive services (applicable only to individuals of working age).

- (iii) A Potential Applicant may apply for enrollment into a reserve capacity slot for persons in emergent circumstances or who have multiple complex health conditions only if determined through an Interagency Committee review process, including both TennCare and DIDD, that enrollment into ECF CHOICES is the most appropriate way to provide needed supports. Such review shall include consideration of other options, including the relative costs of such options.
  - (iv) Discharge from another service system (DCS, DMHSAS, etc.) shall not be deemed an emergent situation unless specified emergent criteria are met and unless diligent and timely efforts to plan and prepare for discharge and to facilitate transition to community living without long-term services and supports available in ECF CHOICES have been made, and it is determined through the Interagency Committee review process that enrollment in ECF CHOICES is the most appropriate way to provide needed supports.
10. The waiting list maintained by DIDD for the 1915(c) HCBS Waivers shall be one source of referrals for ECF CHOICES. Persons on the DIDD waiting list for the 1915(c) HCBS Waivers as of June 30, 2016:
- (i) Shall be automatically referred for the ECF CHOICES program and placed on the ECF CHOICES referral list.
  - (ii) May submit documentation regarding employment that shall be reviewed in determining their category on the ECF CHOICES referral list, or if they may meet criteria for a reserve capacity slot based on emergent circumstances or multiple complex health conditions.
  - (iii) Who do not submit information regarding employment or indicating that they may meet criteria for enrollment in a reserve capacity slot based on emergent circumstances or multiple complex health conditions shall be placed on the ECF CHOICES referral list in the "Other Active" category, unless they are currently on the HCBS Waiver waiting list in a "Deferred" category, in which case they shall be automatically placed on the ECF CHOICES referral list in the "Deferred" category.
11. A Potential Applicant may request an administrative review of his or her category on the ECF CHOICES referral list at any time. This request should be submitted to TennCare in writing.
12. A Potential Applicant may submit additional information at any time that may affect his or her category on the ECF CHOICES referral list. The additional information should be submitted to the Potential Applicant's MCO (if the Potential Applicant is assigned to an MCO participating in ECF CHOICES), or to DIDD (if the Potential Applicant is assigned to an MCO not participating in ECF CHOICES or is not currently enrolled in TennCare).
13. A Potential Applicant shall not be granted a fair hearing regarding the category in which he has been placed on the ECF CHOICES referral list.
14. A Potential Applicant shall be entitled to a determination regarding his or her eligibility to enroll in the ECF CHOICES program and, if the application is denied, to due process, including notice and the right to request a fair hearing only when the Potential Applicant is determined to meet criteria for an available reserve capacity slot or meets prioritization criteria for an available program slot for which enrollment is currently open and will be enrolled into the program if all applicable eligibility and enrollment criteria are met.

(12) Safety Determination Requests. (See Rule 1200-13-01-.05(6))

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 09/28/2016 (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: 07/15/16

Rulemaking Hearing(s) Conducted on: (add more dates). 09/12/16

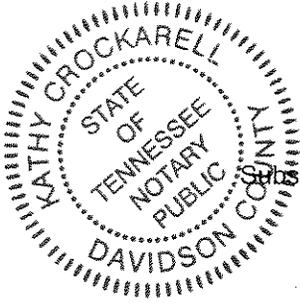
Date: 9/28/16

Signature: Patti Killingsworth

Name of Officer: Patti Killingsworth

Assistant Commissioner and Chief of Long-Term Services and Supports, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration



Subscribed and sworn to before me on: 9/28/16

Notary Public Signature: Kathy Crockarell

My commission expires on: 1/8/2019

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.

Herbert H. Stutz III  
Herbert H. Stutz III  
Attorney General and Reporter  
9/29/2016  
Date

**Department of State Use Only**

Filed with the Department of State on: 9/30/16

Effective on: 12/29/16

Tre Hargett  
Tre Hargett  
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: TennCare Long-Term Care Programs

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-5-202, 71-5-105, and 71-5-109

EFFECTIVE DATES: December 29, 2016 through June 30, 2017

FISCAL IMPACT: The promulgation of these rules is anticipated to decrease state government expenditures by \$755,000, as reported in the Health Care Finance and Administration Fiscal Year Budget Reduction Plan and incorporated into the Appropriations Act.

STAFF RULE ABSTRACT: These rulemaking hearing rules are being promulgated to replace emergency rules which clarified requirements for providers of services and the payment methodology for enhanced respiratory care services provided under TennCare Long-Term Care Programs.

## 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.

HCFA received comments from six individuals or entities concerning these rules. The comments and HCFA's responses to the comments are summarized below.

Several commenters expressed concern about the requirement in the rule for a new PreAdmission Evaluation (PAE) every 30 days for tracheal suctioning patients. These commenters suggested that the requirement is unduly onerous, or would not allow for timely authorization for current ERC patients. In response, HCFA modified the rule in order to allow longer timeframes on a case-by-case basis for patients with certain conditions.

Several commenters expressed concern that a significant number of hospital referrals would be denied admission to certain facilities due to inability to meet patients' needs with the new reimbursement structure. HCFA clarified that it does not anticipate that the changes implemented by the rule will increase denials of referral for hospital admission, except where appropriate. HCFA noted that one of the most serious concerns observed in onsite reviews was the lack of clear admission criteria that would ensure patients were stable enough for transfer from the hospital to the facility prior to admission. The rule includes admission criteria requirements, and also includes hospital readmissions and unanticipated deaths as quality outcomes measures in part to help address these concerns.

Several commenters expressed concern that quality rankings which partially depend on weaning rates was unfair to facilities which provide services for unweanable patients, such as individuals with neuromuscular disease. HCFA noted that liberation from a ventilator—the primary objective of the ERC program since its inception—is a critical quality outcome measure with tremendous potential to impact the quality of life of individuals with chronic respiratory needs.

Several commenter expressed concern that the quality data were not verified by a third party. HCFA noted the extensive training, technical assistance, measurement, review, and notification activities that contributed to the establishment of initial ERC program benchmarks and setting the initial quality-adjusted reimbursement rates. One commenter indicated that the fiscal impact of these rules would be detrimental to facilities providing ERC services and recommended that the rule not be adopted. HCFA noted the need to managed spending growth in the area of ERC services, and the need to implement the budget reduction required by the FY 2016-2017 budget. HCFA also noted, however, that the primary focus of the rule is to improve the quality of care and quality of life experienced by individuals with ERC needs. HCFA reiterated the extensive planning and public notice activities that contributed to the development of the rule. Several other commenters suggested that the calculated savings associated with these rules were "short-sighted" and did not account for cost savings in other settings, such as HCBS, long-term acute care, and hospitals. HCFA noted the need to manage spending growth in enhanced respiratory care settings at a sustainable level over time.

One commenter suggested that the requirements for carbon dioxide monitoring for ventilator and tracheostomy patients in the rule exceed the monitoring that occurs in intensive care units and questioned the appropriateness of the requirements. HCFA disagreed that it is appropriate to compare skilled nursing facilities to intensive care settings, which typically have a one-to-one caregiver-to-patient ratio and more advanced monitoring resources. HCFA maintains that the requirements in the rule are appropriate and necessary to ensure patient safety.

Several commenters requested information about the basis for the requirement in the rule for a minimum of 12 hours of non-invasive ventilator support to qualify for ventilator reimbursement. In response, HCFA noted that this requirement is not a standard of care, but rather a requirement for receiving higher ERC reimbursement.

One commenter asked that the requirement in the rule for suctioning every three hours to qualify for Secretion Management reimbursement was excessive. Another commenter noted that pneumonias are possible in patients with minimal secretions. In response, HCFA noted that nursing facilities have long provided for the routine suctioning needs of their patients, and that the higher level of reimbursement for Secretion Management is intended for those patients who have excessive volumes of secretions, or who would have such volumes absent

the use of appropriate airway clearance devices. HCFA modified the rule to provide additional clarity about what constitutes a copious volume of secretions and the frequency of suctioning or airway clearance.

One commenter suggested that the three-times-a-day requirement for mechanical airway clearance in the rule is excessive. In response, HCFA noted that not every patient who requires some level of suctioning or airway clearance will need such assistance three times a day, and the higher level of reimbursement for Secretion Management is intended for those patients who have excessive volumes of secretions, or who would have such volumes absent the use of appropriate airway clearance devices.

One commenter suggested that other modalities for airway management, such as saline-triggered cough in neuro-impaired patients and the management of excessive oral secretions in neuromuscular patients, should be included in HCFA airway clearance policies. HCFA referred the commenter to AARP Guidelines for Endotracheal Suctioning of Mechanically Ventilated Patients with Artificial Airways, and noted that these alternative modalities for airway management should not be routinely performed prior to performing endotracheal suctioning.

One commenter questioned the basis for certain changes to the definitions of particular services. In response, HCFA noted that these definitions have been in place since 2010 and are not changed by this rule, except to distinguish between the different types of Tracheal Suctioning Reimbursement – Sub-Acute and Secretion Management – and to include (based on clinical best practices) the ability to approve Ventilator Care reimbursement under certain circumstances for individuals who are ventilated using noninvasive positive pressure ventilation by mask or mouthpiece for at least 12 hours each day in order to avoid or delay tracheostomy.

One commenter suggested that the provision of the rule that specifies that TennCare MCOs will not contract with any nursing facility for ERC services unless such NF was contracted by the MCO for ERC as of July 1, 2016, was contrary to state law. In response, HCFA modified the rule to clarify that the provision in question addresses reimbursement of nursing facilities for ERC services, not contracts with nursing facilities.

One commenter expressed concern about the provision in the rule concerning the responsibility of nursing facilities for arranging Medicaid reimbursement for ERC services from other states, as appropriate, when individuals from other states are placed in Tennessee facilities. This commenter suggested that the rule be modified to only apply when another state requests placements in Tennessee facilities for one of their citizens. HCFA noted that federal regulation establishes the responsibilities of nursing facilities relating to placements in out-of-state institutions.

One commenter objected to the rule on the basis that TennCare should not “take over the management role in respiratory units.” In response, HCFA noted that the rule does not purport to assume management of any healthcare provider, and emphasized the intent of the rule to use public resources responsibly and to support the delivery of high-quality care by establishing reasonable expectations regarding standards of care and outcomes facilities should demonstrate in order to receive enhanced reimbursement.

One commenter suggested that facilities’ quality rankings should not be based in part on the availability of certain types of equipment, on the basis that not all facilities can afford certain equipment. In response, HCFA noted that the higher rates of reimbursement paid for ERC services carry a reasonable expectation of investment in the technologies and staff needed to provide quality care and achieve quality outcomes. This commenter specifically suggested that beepers/pagers are not necessary when facility staff remain in the patient area. HCFA noted that beepers/pagers are not required by the rule, but that the rule is intended to recognize facilities that upgrade to more advanced warning/safety technology.

One commenter suggested that the end-tidal carbon dioxide (ETCO<sub>2</sub>) monitoring requirements in the rule are “unwarranted.” In response, HCFA noted that the requirements are based on clinical guidance, and that the efficacy of such guidelines has been documented in multiple studies. Another commenter objected to the rule on the basis that the requirements in the rule do not reflect evidence-based medical requirements. In response, HCFA noted the extensive involvement of nationally recognized experts in the development of the rule.

One commenter suggested that the PreAdmission Evaluation (PAE) process is slow and time-consuming. In response, HCFA noted that the PAE process is not affected by this rule. HCFA continues to process PAEs within no more than eight business days, and typically much faster.

One commenter suggested that the 10LPM concentrator requirement for all ventilator patients is “unwarranted.” In response, HCFA noted that this is not a requirement of this rule. Rather, it is a requirement by Health Care Facilities, the licensing and certification entity, when there is no piped gas in the facility, and outside the scope of this rulemaking.

### **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

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.

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

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules are being promulgated to replace emergency rules which clarified the requirements which must be met by providers of services as well as the payment methodology for reimbursement for Enhanced Respiratory Care services provided through the TennCare Long-Term ~~Services and Supports~~ <sup>Care</sup> program.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The Rules are lawfully adopted by the Bureau of TennCare in accordance with §§ 4-5-202, 71-5-105 and 71-5-109.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The persons and entities most directly affected by these Rules are the TennCare enrollees, providers, and managed care contractors. The governmental entity most directly affected by these Rules is the Bureau of TennCare, Tennessee Department of Finance and Administration.

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

The Rules were approved by the Tennessee Attorney General. No additional opinion was given or requested.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The promulgation of these rules is anticipated to decrease state government expenditures by \$755,500, as reported in the Health Care Finance and Administration Fiscal Year Budget Reduction Plan and incorporated in the Appropriations Act.

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

Donna K. Tidwell  
Deputy General Counsel

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

Donna K. Tidwell  
Deputy General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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

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Email: [publications.information@tn.gov](mailto:publications.information@tn.gov)**For Department of State Use Only**Sequence Number: 09-38-16Rule ID(s): 6323File Date: 9/30/16Effective Date: 12/29/16

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).**Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	Tennessee Department of Finance and Administration
<b>Division:</b>	Bureau of TennCare
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**Revision Type (check all that apply):**

- Amendments  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1200-13-01	TennCare Long-Term Care Programs
Rule Number	Rule Title
1200-13-01-.02	Definitions
1200-13-01-.03	Nursing Facility (NF) Provider Reimbursement
1200-13-01-.05	TennCare CHOICES Program
1200-13-01-.10	Medical (Level of Care) Eligibility Criteria for TennCare Reimbursement of Care in Nursing Facilities, CHOICES HCBS and PACE

Rules  
of  
Tennessee Department of Finance  
and Administration  
Bureau of TennCare  
  
Chapter 1200-13-01  
TennCare Long-Term Care Programs

1200-13-01-.02 Definitions.

- # Enhanced Respiratory Care (ERC). Specialized types of assistance provided to individuals with certain significant respiratory care needs as part of the medically necessary services delivered in an appropriately licensed and dual certified NF/SNF, consisting of Ventilator Weaning, Chronic Ventilator Care, or Tracheal Suctioning including Sub-Acute and Secretion Management, and for which a NF may, pursuant to these rules, be eligible to receive Enhanced Respiratory Care Reimbursement.
- (45) Enhanced Respiratory Care Reimbursement. Specified levels of reimbursement (i.e., Ventilator Weaning, Chronic Ventilator Care, and Tracheal Suctioning, and Ventilator Weaning including Sub-Acute and Secretion Management) provided for NF ERC services delivered by a dual certified NF/SNF that meets the requirements set forth in Rule 1200-13-01-.03(5) to persons determined by the Bureau or an MCO to meet specified medical eligibility or medical necessity criteria for such level of reimbursement.
- (145) Tracheal Suctioning Reimbursement. The rate of reimbursement provided for NF services, including enhanced respiratory care assistance, delivered by a dual certified NF/SNF that meets the requirements set forth in Rule 1200-13-01-.03(5), to residents determined by the Bureau to meet the medical eligibility criteria set forth in Rule 1200-13-01-.10(5)(e) or determined by an their TennCare MCO to require short-term intensive respiratory intervention during the post-weaning period, which shall include documented progress in weaning from the tracheostomy. Tracheal Suctioning Reimbursement shall include two (2) distinct levels of reimbursement as follows:
- (a) Secretion Management Tracheal Suctioning Reimbursement for services delivered by a dual certified NF/SNF to persons who meet the medical eligibility criteria set forth in Rule 1200-13-01-.10(5)(e) and have an approved PAE for such level of reimbursement; and
- (b) Sub-Acute Tracheal Suctioning Reimbursement for short-term intensive respiratory intervention delivered by a dual certified NF/SNF and determined by the person's TennCare MCO to be medically necessary during the post-weaning period, which shall include documented progress in weaning from the tracheostomy. Because Sub-Acute Tracheal Suctioning Reimbursement provides for intensive respiratory intervention during the period immediately following a person's liberation from the ventilator, Sub-Acute Tracheal Suctioning Reimbursement shall be provided only in a bed specifically licensed for ventilator care.

1200-13-01-.03 Nursing Facility (NF) Provider Reimbursement.

- (2) Level 1, Level 2, and Enhanced Respiratory Care NF Reimbursement.
- (a) Reimbursement for NF services provided to a Medicaid Eligible member enrolled in the TennCare Program shall be categorized according to the needs of the individual and the level of skilled and/or rehabilitative services required as specified in Rule 1200-13-01-.10.
- (b) Level 2 or Enhanced Respiratory Care NF Reimbursement shall be provided only for beds that are certified for by both Medicaid and Medicare for the provision of NF/SNF (Level 2) care.
- (c) Effective July 1, 2016, each level of Enhanced Respiratory Care Reimbursement shall be an add-on payment to the NF's established Level 2 per diem rate or the NF's blended per diem rate, when established. The amount of the NF's add-on payment for each of the specified levels of reimbursement shall be based on the facility's performance on quality outcome and technology measures pursuant to a methodology established by TennCare. Quality outcome and technology

measures, performance benchmarks, and the methodology to apply such measures and benchmarks to each of the specified levels of Enhanced Respiratory Care Reimbursement may be adjusted during FY 2016-2017 to ensure compliance with the Appropriations Act, Public Chapter 758, and no more frequently than annually thereafter in order to continuously improve the quality of care and quality of life outcomes experienced by individuals receiving Enhanced Respiratory Care in a NF.

- (d) Enhanced Respiratory Care Reimbursement shall be provided only for services authorized and delivered in a facility operating in compliance with conditions of reimbursement for Enhanced Respiratory Care specified in this rule, and in a bed specifically licensed for such purpose, as applicable. A NF shall not be eligible for Enhanced Respiratory Care Reimbursement if it does not meet the conditions for reimbursement, or for any Enhanced Respiratory Care services provided in excess of the facility's licensed capacity to provide such services, regardless of payer source. Because Sub-Acute Tracheal Suctioning Reimbursement provides for intensive respiratory intervention during the period immediately following a person's liberation from the ventilator, Sub-Acute Tracheal Suctioning Reimbursement shall be provided only in a bed specifically licensed for ventilator care.
- (e) A NF shall be eligible for Enhanced Respiratory Care Reimbursement only if the facility has submitted complete, accurate and timely quality measurement data as required by TennCare in order to determine the NF's quality performance.
  - 1. Quality measurement data shall be submitted by the NF on a monthly basis.
  - 2. A NF's add-on per diem payment for each specified level of Enhanced Respiratory Care Reimbursement provided for NF services shall be adjusted based on the NF's quality performance no more frequently than semi-annually.
  - 3. A NF shall not be entitled to Enhanced Respiratory Care Reimbursement for any NF services provided if the facility has not complied with quality performance reporting requirements, or if any such data is determined (including upon post-payment audit or review) to be inaccurate or incomplete.
  - 4. Any facility submitting false (including inaccurate or incomplete) quality performance data for purposes of Medicaid payment shall be subject to all applicable federal and state laws pertaining to the submission of false claims.
- (5) Conditions for Reimbursement of Enhanced Respiratory Care Reimbursement.
  - (a) The Level 2 NF must enter into a provider agreement with one or more TennCare MCOs for the provision and reimbursement of ventilator weaning, chronic ventilator services and/or tracheal suctioning in a level-2-certified and licensed NF-ERC in a dual certified and licensed NF/SNF.
    - 1. A TennCare MCO shall, pursuant to T.C.A. § 71-5-1412, as amended, contract with any nursing facility for the provision of Medicaid NF services, but shall not be obligated to reimburse any NF for Enhanced Respiratory Care.
    - 2. Unless an exception is granted, a TennCare MCO shall not reimburse any NF for Enhanced Respiratory Care unless such NF was contracted by the MCO for Enhanced Respiratory Care Reimbursement as of July 1, 2016. An MCO may request an exception from TennCare to the moratorium on reimbursement for Enhanced Respiratory Care upon the MCO's demonstration of the need for additional capacity or improved quality in the geographic area in which the NF is located, and the NF's compliance with all applicable conditions of Enhanced Respiratory Care Reimbursement specified in this paragraph.
  - (b) NFs providing (Medicare SNFs and TennCare NFs providing enhanced respiratory care services in a Level-2-NF) must be certified by Medicare, showing they have met the federal certification standards. Enhanced Respiratory Care services must be dual certified for the provision of Medicare SNF and Medicaid NF services, showing they have met the federal certification standards. Any of these NFs participating in the TennCare Program shall be terminated by all TennCare MCOs as a TennCare provider if certification or licensure is canceled by CMS or the State.

- (c) NFs providing Ventilator Weaning or Chronic Ventilator Care services and NFs receiving short-term reimbursement at the Sub-Acute Tracheal Suctioning Rate for a person who has just been weaned from the ventilator, but who still requires short-term intensive respiratory intervention, shall also meet or exceed the following minimum standards:

1. The NF shall ensure that medical direction of all Ventilator Weaning, Chronic Ventilator Care, and Sub-Acute Tracheal Suctioning services is provided by a physician licensed to practice in the State of Tennessee and board certified in pulmonary disease or critical care medicine as recognized by either the American Board of Medical Specialties or American Osteopathic Association, as applicable.

42. A licensed respiratory care practitioner as defined by T.C.A. § 63-27-102(7), shall be on site in the ventilator care unit twenty four (24) hours per day, seven (7) days per week to provide:

- (i) Ventilator care;
- (ii) Administration of medical gases;
- (iii) Administration of aerosol medications; and
- (iv) Diagnostic testing and monitoring of life support systems.

23. The NF shall ensure that an appropriate individualized POC is prepared for each resident requiring ventilator services receiving Ventilator Weaning, Chronic Ventilator Care, or Sub-Acute Tracheal Suctioning. The POC shall be developed with input and participation from the medical director of the NF's Enhanced Respiratory Care program as described in Part 1 a pulmonologist or a physician with experience in ventilator care.

34. The NF shall establish admissions criteria to ensure the medical stability of ventilator-dependent residents prior to transfer from an acute care setting. The NF shall maintain documentation regarding the clinical evaluation of each resident who will receive Enhanced Respiratory Care for appropriateness of placement in the facility prior to admission.

45. End tidal carbon dioxide (etCO<sub>2</sub>) or transcutaneous monitoring of carbon dioxide and oxygen (tcCO<sub>2</sub>) and continuous pulse oximetry measurements shall be available for all residents receiving Chronic Ventilator Care and provided based on the needs of each resident. For residents receiving Ventilator Weaning or Sub-Acute Tracheal Suctioning, continuous pulse oximetry shall be provided, and end tidal Carbon Dioxide (etCO<sub>2</sub>) measurements shall be provided no less than every four (4) hours, and within one (1) hour following all vent parameter changes, or for residents receiving Sub-Acute Tracheal Suctioning, after all tracheostomy tube changes, tracheostomy capping trials, or the use of speaking devices.

~~Arterial Blood Gas (ABG) shall be readily available in order to document the resident's acid base status and/or End Tidal Carbon Dioxide (etCO<sub>2</sub>) and continuous pulse oximetry measurements should be performed in lieu of ABG studies.~~

56. An audible, redundant external alarm system shall be connected to emergency power and/or battery back-up and located outside of each the room of each resident who is ventilator-dependent resident's room for the purpose of alerting caregivers of resident disconnection staff of resident ventilator circuit disconnection or ventilator failure.

67. Ventilator equipment (and ideally physiologic monitoring equipment) shall be connected to electrical outlets connected to back-up generator power via clearly marked wall outlets.

78. Ventilators shall be equipped with adequate back-up systems provisions, including:-

- (i) Internal and/or external battery back-up systems to provide a minimum of eight (8) hours of power;

- (ii) Sufficient emergency oxygen delivery devices (i.e., compressed gas or battery operated concentrators);
- (iii) At least one (1) battery operated suction device available per every eight (8) residents on mechanical ventilator or with a tracheostomy; and
- (iv) A minimum of one (1) patient-ready back-up ventilator which shall be available in the facility at all times.

89. The NF shall be equipped to employ the use of current ventilator technology consistent with meeting residents' needs for mobility and comfort with current ventilator technology to encourage and enable maximum mobility and comfort, ideally weighing less than fifteen (15) pounds with various mounting options for portability (e.g., wheelchair, bedside table, or backpack).

910. The facility shall have an emergency preparedness plan specific to residents receiving Enhanced Respiratory Care (i.e., Ventilator Weaning, Chronic Ventilator Care, or Sub-Acute Tracheal Suctioning) which shall specifically address total power failures (loss of power and generator), as well as other emergency circumstances. A (one) back-up ventilator shall be available at all times in the facility.

11. The facility shall have a written training program, including an annual demonstration of competencies, for all staff caring for residents receiving Enhanced Respiratory Care (i.e., Ventilator Weaning, Chronic Ventilator Care, or Sub-Acute Tracheal Suctioning), which shall include alarm response, positioning and transfers, care within licensure scope, and rescue breathing.

(d) A NF contracted with one or more TennCare MCOs to receive Ventilator Weaning, Chronic Ventilator Care, or Sub-Acute Tracheal Suctioning Reimbursement must be operating in compliance with Department of Health rule 1200-08-06-.06(12) in order to be eligible for Ventilator Weaning, Chronic Ventilator Care, or Sub-Acute Tracheal Suctioning Reimbursement. In addition, the NF shall provide attestation of its compliance with each of the requirements specified in Subparagraph (c) or shall submit a plan of correction regarding how it will achieve compliance with any condition not currently specified in 1200-08-06-.06(12) no later than January 1, 2017, and shall maintain compliance on a continuous basis thereafter. As of January 1, 2017, a NF must be operating in compliance with all of the conditions specified in Subparagraph (c) in order to be eligible for Ventilator Weaning, Chronic Ventilator Care, or Sub-Acute Tracheal Suctioning Reimbursement.

~~Except as provided in (c) above, the standards set forth in (c) are not applicable for Tracheal Suctioning Reimbursement; however, the NF must ensure the availability of necessary equipment, supplies, and appropriately trained and licensed nurses or licensed respiratory therapists to perform the specified tasks.~~

(e) The standards set forth in Subparagraph (c) are not applicable for Secretion Management Tracheal Suctioning Reimbursement; however, the NF must meet standards specified in Subparagraph (f) below for Secretion Management Tracheal Suctioning Reimbursement.

~~If the resident has available resources to apply toward payment, including Patient Liability as determined by DHS, or TPL, which may include LTC insurance benefits, the payment made by the Bureau is the per diem rate established by the Bureau minus the resident's available resources.~~

(f) A NF contracted with one or more TennCare MCOs to receive only Secretion Management Tracheal Suctioning Reimbursement shall meet or exceed the following minimum standards:

1. A licensed respiratory care practitioner as defined by T.C.A. § 63-27-102, shall be on site a minimum of weekly to provide:

- (i) Clinical Assessment of each resident receiving Secretion Management Tracheal Suctioning (including Pulse Oximetry measurements);

- (ii) Evaluation of appropriate humidification;
  - (iii) Tracheostomy site and neck skin assessment;
  - (iv) Care plan updates; and
  - (v) Ongoing education and training on patient assessment, equipment and treatment.
2. The NF shall ensure that an appropriate individualized POC is prepared for each resident receiving Secretion Management Tracheal Suctioning. The POC shall be developed with input and participation from a licensed respiratory care practitioner as defined by T.C.A. § 63-27-102. Medical direction, including POC development and oversight for persons receiving Sub-Acute Tracheal Suctioning shall be conducted in accordance with Subparagraph (c).
  3. The NF shall establish admissions criteria which meet the standard of care to ensure the medical stability of residents who will receive Secretion Management Tracheal Suctioning prior to transfer from an acute care setting. The NF shall maintain pre-admission documentation regarding the clinical evaluation of each resident who will receive Secretion Management Tracheal Suctioning for appropriateness of placement in the facility.
  4. Pulse oximetry measurements shall be provided at least daily with continuous monitoring available, based on the needs of each resident. For any resident being weaned from the tracheostomy, the following shall be provided:
    - (i) Continuous pulse oximetry monitoring; and
    - (ii) End tidal Carbon Dioxide (etCO<sub>2</sub>) measurements at least every four (4) hours and within one (1) hour following tracheostomy tube changes, tracheostomy capping trials, or the use of speaking devices. Transcutaneous (tcCO<sub>2</sub>) shall not be appropriate for intermittent monitoring.
  5. Mechanical airway clearance devices and/or heated high flow molecular humidification via the tracheostomy shall also be available for secretion management, as appropriate for the needs of each resident.
  6. Oxygen equipment shall be connected to back-up generator power via clearly marked wall outlets.
  7. Adequate back-up provisions shall be in place including:
    - (i) Sufficient emergency oxygen delivery devices (i.e. compressed gas or battery operated concentrators); and
    - (ii) At least one (1) battery operated suction device available per every eight (8) residents on mechanical ventilation or with a tracheostomy.
  8. The facility shall have an emergency preparedness plan specific to residents receiving Secretion Management Tracheal Suctioning which shall specifically address total power failures (loss of power and generator), as well as other emergency circumstances.
  9. The facility shall have a written training program, including an annual demonstration of competencies, for all staff caring for residents receiving Secretion Management Tracheal Suctioning which shall include alarm response, positioning and transfers, care within licensure scope, and rescue breathing.
- (g) When a NF establishes a "Tracheostomy Unit" by accepting Tracheal Suctioning Reimbursement, including Sub-Acute and Secretion Management, for more than three (3) residents on the same day the licensed respiratory care practitioner described in Part (f)1 shall be on site a minimum of daily for assessment, care management, and care planning of residents receiving Tracheal Suctioning.
  - (h) A NF contracted with one or more TennCare MCOs to receive Secretion Management Tracheal

Suctioning Reimbursement shall provide attestation of its compliance with each of the requirements specified in Subparagraph (f) above, or shall submit a plan of correction regarding how it will achieve compliance no later than January 1, 2017, and shall maintain compliance on a continuous basis thereafter. As of January 1, 2017, a NF must be operating in compliance with all of the conditions specified in Subparagraph (f) in order to be eligible for Secretion Management Tracheal Suctioning Reimbursement.

- (i) Eligibility for and access to ERC services by individuals from out of state is governed by 42 C.F.R. § 435.403. A NF shall not recruit individuals from other states to receive Enhanced Respiratory Care in Tennessee. A NF shall not be eligible to receive TennCare reimbursement for Enhanced Respiratory Care services for a resident placed by another state or any agency acting on behalf of another state in making the placement because such services are not available in the individual's current state of residence, including residents admitted to the NF/SNF under the Medicare Skilled Nursing Facility care benefit when such benefit has been exhausted. The NF shall be responsible for arranging, prior to the resident's admission to the facility, Medicaid reimbursement for Enhanced Respiratory Care services from the Medicaid Agency of the state which placed the resident and which will commence when other payment sources (e.g., Medicare, private pay, but not TennCare) have been exhausted.
- (8) Enhanced Respiratory Care Reimbursement in a dual certified and licensed NF/SNF shall be made only by TennCare MCOs in accordance with this Chapter and rates established by the Bureau. Effective July 1, 2016, each level of Enhanced Respiratory Care Reimbursement shall be an add-on payment to the NF's established Level 2 per diem rate or the NF's blended per diem rate, when established. The amount of the NF's add-on payment for each of the specified levels of reimbursement shall be based on the facility's performance on quality outcome and technology measures pursuant to a methodology established by TennCare. Quality outcome and technology measures, performance benchmarks, and the methodology to apply such measures and benchmarks to each of the specified levels of Enhanced Respiratory Care Reimbursement may be adjusted during FY 2016-2017 to ensure compliance with the Appropriations Act, Public Chapter 758, and no more frequently than annually thereafter in order to continuously improve the quality of care and quality of life outcomes experienced by individuals receiving Enhanced Respiratory Care in a NF.

~~Reimbursement for enhanced respiratory care services in a Medicare-certified and licensed Level 2 SNF shall be made only by TennCare MCOs in accordance with this Chapter and rates established by the Bureau.~~

1200-13-01-.05 TennCare CHOICES Program.

- (4) Enrollment in TennCare CHOICES. Enrollment into CHOICES shall be processed by the Bureau as follows:

- (c) Individual Cost Neutrality Cap.

3. Calculating a Group 2 Member's Individual Cost Neutrality Cap.

- (i) Each Group 2 Member will have an Individual Cost Neutrality Cap that is based on the average cost of the level of NF reimbursement that would be paid if the Member were institutionalized in a NF as set forth in Items (I) through (III) below. CHOICES Group 2 does not offer an alternative to hospital level of care.

(III) A Member determined by TennCare to meet the medical eligibility criteria in Rule 1200-13-01-.10(5)(c) who would qualify for Chronic Ventilator Care or a Member determined by the Bureau to meet the medical eligibility criteria in Rule 1200-13-01-.10(5)(d) who would qualify for Secretion Management Tracheal Suctioning will have a Cost Neutrality Cap that reflects the higher payment that would be made to a NF for such care. For at least FY 2016-2017, the Cost Neutrality Cap for such CHOICES Group 2 member shall be based on the annualized cost of the applicable Enhanced Respiratory Care rate in effect as of June 30, 2016. Beginning July 1, 2017, the Cost Neutrality Cap for such CHOICES Group 2 member may be established based on the average annualized cost of the applicable level of Enhanced Respiratory Care Reimbursement using payments for

such level of reimbursement during the FY 2016-2017 year. The Cost Neutrality Cap for such CHOICES Group 2 member shall be adjusted no more frequently than annually thereafter. There is no Cost Neutrality Cap based on the cost of Ventilator Weaning Reimbursement or Sub-Acute Tracheal Suctioning Reimbursement, as such services are available only on a short-term basis in a SNF or acute care setting.

~~A Member who would qualify for the Enhanced Respiratory Care Reimbursement for persons who are chronically ventilator dependent, or for persons who have a functioning tracheostomy that requires frequent suctioning through the tracheostomy will have a Cost Neutrality Cap that reflects the higher payment that would be made to the NF for such care. There is no Cost Neutrality Cap for Ventilator Weaning Reimbursement, as such service is available only on a short-term basis in a SNF or acute care setting.~~

1200-13-01-.10 Medical (Level of Care) Eligibility Criteria for TennCare Reimbursement of Care in Nursing Facilities, CHOICES HCBS and PACE.

(5) Criteria for Medicaid Level 2 and Enhanced Respiratory Care Reimbursement of Care in a NF.

(b) An Applicant must meet both of the following criteria in order to be approved for Medicaid Level 2 reimbursement of care in a NF:

2. Need for Inpatient Skilled Nursing or Rehabilitative Services on a Daily Basis: The Applicant must have a physical or mental condition, disability, or impairment that requires skilled nursing or rehabilitative services on a daily basis or skilled rehabilitative services at least five days per week when skilled rehabilitative services constitute the primary basis for the approval of the PAE. The Applicant must require such services at a greater frequency, duration, or intensity than, for practical purposes, would be provided through a daily home health visit. In addition, the Applicant must be mentally or physically unable to perform the needed skilled services or the Applicant must require skilled services which, in accordance with accepted medical practice, are not usually and customarily self-performed. For interpretation of this rule, the following shall apply:

(iii) A skilled rehabilitative service must be expected to improve the Applicant's condition. Restorative and maintenance nursing procedures (e.g., routine range of motion exercises; stand-by assistance during ambulation; applications of splints/braces by nurses and nurses' aides) shall not be considered sufficient to fulfill the requirement of (5)(b)2. Factors to be considered in the decision as to whether a rehabilitative service meets, or continues to meet, the requirement of (5)(b)2. shall include, but not be limited to, an assessment of the type of therapy and its frequency, the remoteness of the injury or impairment, and the reasonable potential for improvement in the Applicant's functional capabilities or medical condition.

(c) In order to be approved for TennCare-reimbursed care in a NF at the Chronic Ventilator rate of reimbursement, an Applicant must be ventilator dependent for at least 12 hours each day with an invasive patient end of the circuit (i.e., tracheostomy cannula). On a case-by-case basis, TennCare may, subject to additional medical review, authorize Chronic Ventilator Reimbursement for an Applicant who is ventilator dependent with a progressive neuromuscular disorder, spinal cord injury, or chronic respiratory failure and is ventilated using noninvasive positive pressure ventilation (NIPPV) by mask or mouthpiece for at least 12 hours each day in order to avoid or delay tracheostomy.

(d) In order to be approved by the Bureau for TennCare-reimbursed care in a NF at the Secretion Management Tracheal Suctioning rate of reimbursement:

1. An Applicant must have a functioning tracheostomy and a copious volume of secretions, and require either:

(i) Invasive tracheal suctioning, at a minimum, once every three (3) hours with documented

assessment pre- and post-suctioning; or

(ii) The use of mechanical airway clearance devices and/or heated high flow molecular humidification via the tracheostomy, at a minimum, three (3) times per day with documented assessment pre-and post.

(I) A copious volume of secretions shall be defined as 25 to 30 ml per day occurring over the course of the day, and not necessarily at every suctioning.

(II) The requirement for invasive tracheal suctioning, at a minimum, once every three (3) hours shall be applied as a marker of the severity of the Applicant's respiratory care needs. Secretion Management Tracheal Suctioning is not a scheduled intervention and shall not be performed as a medication would be delivered, i.e., at scheduled intervals (except as prescribed by an appropriately licensed health care professional practicing within the scope of his or her license). Rather, tracheal suctioning should be provided as clinically indicated, based on the needs of each person requiring such care; evidence of the need should be clearly and accurately documented. This could mean a shorter or longer interval at any point, but with a clinical need for invasive tracheal suctioning an average of every three (3) hours or more often in order to qualify for Secretion Management Tracheal Suctioning Reimbursement, except when mechanical airway clearance devices and/or heated high flow molecular humidification via the tracheostomy are used to manage secretions.

(III) When mechanical airway clearance devices and/or heated high flow molecular humidification via the tracheostomy are used to manage secretions, there must be documented evidence of the Applicant's copious secretions, but they are managed non-invasively using a cough assist device periodically or high flow molecular humidity continuously or at least three (3) times per day as ongoing treatment. The device is expected to provide ongoing relief of the copious volume of secretions, which shall not negate the need for intervention (and eligibility for Secretion Management Tracheal Suctioning Reimbursement), if absent the high flow device, the copious volume of secretions would require more invasive management.

2. The suctioning (or airway clearance, as applicable) must be required to remove excess secretions and/or aspirate from the trachea, which cannot be removed by the Applicant's spontaneous effort. Suctioning of the nasal or oral cavity does not qualify for this higher level of reimbursement. An MCO may authorize, based on medical necessity, short-term payment at the Sub-Acute Tracheal Suctioning Enhanced Respiratory Care rate for a person who has just been weaned from the ventilator, but who still requires short-term intensive respiratory intervention during the post-weaning period which shall include documented progress in weaning from the tracheostomy.

3. A PAE for Secretion Management Tracheal Suctioning Reimbursement shall be approved for no more than a period of thirty (30) days. Clinical review and approval of a new PAE shall be required for ongoing coverage, which shall include evaluation of clinical progress and the NF's efforts to improve secretion management through alternative methods. TennCare may, on a case-by-case basis, approve a PAE for Secretion Management Tracheal Suctioning Management Reimbursement for a period of more than thirty (30) days, e.g., if a person has ALS (amyotrophic lateral sclerosis) or another progressive neuromuscular disorder, spinal cord injury, or chronic respiratory failure, or is in a persistent vegetative state, and evidence clearly supports that ongoing secretion management tracheal suctioning is expected to continue.

4. A NF who has an approved PAE for Tracheal Suctioning Reimbursement for any resident as of July 1, 2016 shall be entitled to continue to receive such level of reimbursement no later than July 31, 2016 (or any earlier date that may be specified in the approved PAE). The NF shall submit a new PAE for such resident no later than July 19, 2016 in order to determine whether Secretion Management Tracheal Suctioning Reimbursement will be continued, or whether a different level of NF reimbursement is appropriate.

~~In order to be approved by the Bureau for TennCare-reimbursed care in a NF at the Tracheal Suctioning rate of reimbursement, an Applicant must have a functioning tracheostomy and require suctioning through the tracheostomy, at a minimum, multiple times per eight (8) hour shift. The suctioning must be required to remove excess secretions and/or aspirate from the trachea, which cannot be removed by the Applicant's spontaneous effort. Suctioning of the nasal or oral cavity does not qualify for this higher level of reimbursement. An MCO may authorize, based on medical necessity, short term payment at the Tracheal Suctioning-Enhanced Respiratory Care rate for a person who has just been weaned from the ventilator, but who still requires short-term intensive respiratory intervention during the post-weaning period.~~

- (e) ~~Determination of medical necessity and authorization for TennCare-Reimbursement of Ventilator Weaning services Reimbursement, or short-term payment at the Sub-Acute Tracheal Suctioning-Enhanced Respiratory Care rate for a person who has just been weaned from the ventilator, but who still requires short-term intensive respiratory intervention shall be managed by the Enrollee's MCO.~~

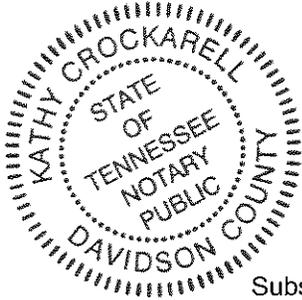
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I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance and Administration (board/commission/ other authority) on 09/22/2016 (mm/dd/yyyy), and is in compliance 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: 07/15/16

Rulemaking Hearing(s) Conducted on: (add more dates). 09/12/16



Date: 9/22/16

Signature: Wendy Long MD

Name of Officer: Wendy Long, M.D., M.P.H.

Director, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration

Subscribed and sworn to before me on: 9/22/16

Notary Public Signature: Kathy Crockarell

My commission expires on: 1/8/2019

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.

Herbert H. Slatery III  
Herbert H. Slatery III  
Attorney General and Reporter

9/29/2016  
Date

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Secretary of State

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