## G.O.C. STAFF RULE ABSTRACT

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| DEPARTMENT: | State of Tennessee Deferred Compensation Program |
| SUBJECT: | Guidelines to Accept Qualified Domestic Relations Orders |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Sections 8-25-114 and 26-2-105; 26 U.S.C. § 414(p) |
| EFFECTIVE DATES: | October 13, 2016 through June 30, 2017 |
| FISCAL IMPACT: | There is not estimated to be an increase or decrease in state and local government revenues and expenditures resulting from the promulgation of this rule. The deferred compensation program will process such orders utilizing existing staff and third party administrators; payments to alternate payees through the orders will occur in the same manner as payments are already processed. Any administrative expenses will be assessed to the participating employee as required by T.C.A. §§ 8-25-104(c) and 8-25-309 so that the deferred compensation plans operate without cost to or contribution from the state. |
| STAFF RULE ABSTRACT: | The proposed rules establish the guidelines for the State of Tennessee's deferred compensation program to accept qualified domestic relations orders pursuant to T.C.A. § 8-25-114, which provides that the deferred compensation program shall honor claims under qualified domestic relations orders at a time designated by the state treasurer. The Tennessee Consolidated Retirement System has separately promulgated rules for qualified domestic relations orders in Chapter 1700-03-03. |

**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.

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 rule does not have a 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 proposed rules establish the guidelines for the State of Tennessee's deferred compensation program to accept qualified domestic relations orders pursuant to T.C.A. § 8-25-114, which provides that the deferred compensation program shall honor claims under qualified domestic relations orders at a time designated by the state treasurer. The Tennessee Consolidated Retirement System has separately promulgated rules for qualified domestic relations orders in Chapter 1700-03-03.

**(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. § 8-25-114 provides that any deferred compensation program established on behalf of state employees under this part or under Title 8, Chapter 25, Part 3 shall honor claims under a qualified domestic relations order at a time designated by the state treasurer. 26 U.S.C. § 414(p) contains requirements for a domestic relations order to be considered qualified under the Internal Revenue Code in regard to qualified retirement plans. T.C.A. § 26-2-105 provides that effective July 1, 2016, public retirement plans are no longer exempt from claims under qualified domestic relations orders.

**(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;

Persons who are participants in the State's deferred compensation program; the deferred compensation program has received numerous requests to promulgate rules to begin accepting Qualified Domestic Relations Orders.

**(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 is not estimated to be an increase or decrease in state and local government revenues and expenditures resulting from the promulgation of this rule. The deferred compensation program will process such orders utilizing existing staff and third party administrators; payments to alternate payees through the orders will occur in the same manner as payments are already processed. Any administrative expenses will be assessed to the participating employee as required by T.C.A. §§ 8-25-104(c) and 8-25-309 so that the deferred compensation plans operate without cost to or contribution from the state.

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

Kaci Lantz, Director, Deferred Compensation Program, Department of Treasury, and Courtney Hess, Assistant General Counsel, Department of Treasury.

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

Kaci Lantz, Director, Deferred Compensation Program, Department of Treasury, and Courtney Hess, Assistant

General Counsel, Department of Treasury.

**(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

Kaci Lantz, Director, Deferred Compensation Program, Department of Treasury, 502 Deaderick Street, 13th Floor, Andrew Jackson Building; (615) 532-2347; Kaci.Lantz@tn.gov, and Courtney Hess, Assistant General Counsel, Department of Treasury, 502 Deaderick Street, 13th Floor, Andrew Jackson Building; 615-532-3067; Courtney.Hess@tn.gov

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

None.

(12)

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**Division of Publications**
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Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 07-19-16
Rule ID(s): 6248
File Date: 7/15/16
Effective Date: 10/13/16

# 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).*

| | |
|---|---|
| **Agency/Board/Commission:** | State Treasurer David H. Lillard, Jr., as Chair of the Tennessee Consolidated Retirement System Board of Trustees, on behalf of the State of Tennessee Deferred Compensation Program |
| **Division:** | Deferred Compensation |
| **Contact Person:** | Kaci Lantz |
| **Address:** | 502 Deaderick Street, 13th Floor Andrew Jackson Building, Nashville, Tennessee |
| **Zip:** | 37243 |
| **Phone:** | (615) 532-2347 |
| **Email:** | Kaci.Lantz@tn.gov |

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

___ Amendment
X 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** |
|---|---|
| 1700-09-01 | Qualified Domestic Relations Orders |
| **Rule Number** | **Rule Title** |
| 1700-09-01-.01 | Purpose |
| 1700-09-01-.02 | Definitions |
| 1700-09-01-.03 | Submission of Orders |
| 1700-09-01-.04 | Administrative Expenses |
| 1700-09-01-.05 | Delegation to Third Party Administrator |
| 1700-09-01-.06 | Requirements for a Valid QDRO |
| 1700-09-01-.07 | Review of Orders |
| 1700-09-01-.08 | Payment to Alternate Payee |
| 1700-09-01-.09 | Alternate Payee's Information |

New

Chapter 1700-09-01
Qualified Domestic Relations Orders

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1700-09-01-.07 Review of Orders
1700-09-01-.08 Payment to Alternate Payee
1700-09-01-.09 Alternate Payee's Information

Rule 1700-09-01-.01 Purpose.

The rules in this chapter implement T.C.A. § 8-25-114.

Authority: T.C.A. §§ 8-25-104 and 8-25-114.

Rule 1700-09-01-.02 Definitions.

In addition to the definitions contained in T.C.A. Title 8, Chapter 25, the following definitions are applicable to this chapter:

(1) Alternate payee means a former spouse of a deferred compensation program participant who is recognized by a qualified domestic relations order as having a right to receive all or a portion of the amount payable to a deferred compensation program participant.

(2) Deferred compensation program means the program through which the state of Tennessee administers deferred compensation plans authorized under T.C.A. Title 8, Chapter 25, Parts 1 and 3.

(3) Participant means any employee who has elected to participate in a deferred compensation plan administered by the state of Tennessee that is authorized under T.C.A. Title 8, Chapter 25, Parts 1 and 3; any former employee who has an account balance in a deferred compensation plan administered by the state of Tennessee that is authorized under T.C.A. Title 8, Chapter 25, Parts 1 and 3; and any member of the Tennessee Consolidated Retirement System who participates in the hybrid plan authorized under T.C.A. Title 8, Chapter 36, Part 9, through which the member's defined contribution component consists of a deferred compensation plan administered by the state of Tennessee that is authorized under T.C.A. Title 8, Chapter 25, Part 3.

(4) Plan(s) mean the deferred compensation plan(s) in which an employee participates through the deferred compensation program.

(5) Qualified domestic relations order ("QDRO") has the same meaning as provided in § 414(p) of the Internal Revenue Code of 1986, codified in 26 U.S.C. §414(p); provided, that such order may only relate to the provision of marital property rights for the benefit of the former spouse of the deferred compensation program participant.

Authority: T.C.A. §§ 8-25-103(a); 8-25-104; 8-25-114; 8-25-301; 8-25-304; 8-36-903; 8-36-916.

Rule 1700-09-01-.03 Submission of Orders.

A person who wishes to have the deferred compensation program review a domestic relations order to determine whether it is a QDRO for the purpose of receiving a portion of a participant's account shall submit a copy of the

signed domestic relations order to the deferred compensation program. Such order may be, but is not required to be, on the form provided by the deferred compensation program. However, such order must contain all requirements prescribed by these rules. The copy shall show the seal by the clerk of the court that entered the order. If validity cannot be determined, the deferred compensation program may request a certified copy of an order. The deferred compensation program shall not make a final determination for orders not yet entered by the court.

Authority: T.C.A. §§ 8-25-104 and 8-25-114.

Rule 1700-09-01-.04 Administrative Expenses.

The deferred compensation program may assess the administrative expenses of processing a QDRO in order that the deferred compensation plans shall operate without cost to or contribution from the state. Any such administrative expenses shall be assessed to the participant's account unless the QDRO states that all or a portion of the administrative expenses should be deducted from amounts paid to the alternate payee.

Authority: T.C.A. §§ 8-25-104; 8-25-113; 8-25-114; and 8-25-309.

Rule 1700-09-01-.05 Delegation to Third Party Administrator.

The deferred compensation program may, at its discretion, delegate the review and implementation of QDROs, including the collection of administrative expenses as authorized by T.C.A. §§ 8-25-104(c) and 8-25-113, to a third party administrator with which it has a contract for administrative services.

Authority: T.C.A. §§ 8-25-104; 8-25-113; 8-25-114; and 8-25-309.

Rule 1700-09-01-.06 Requirements for a Valid QDRO.

The deferred compensation program will accept a court order as a valid QDRO that meets all of the following requirements:

(1) The order must create or recognize the right of an alternate payee to all or a portion of a participant's account.

(2) The order must contain the name, current mailing address, date of birth, and social security number of the participant.

(3) The order must contain the name, current mailing address, date of birth, and social security number of the alternate payee.

(4) The order must contain the amount or percentage of the participant's account, distribution, or payments to be paid by the plan to the alternate payee, or a description of how to calculate the amount or percentage.

(5) The order must contain the number of payments or the period of time to which the order applies if the participant is receiving periodic or annuity payments.

(6) If the participant receives lump sum payments in addition to periodic payments, the order must specify a separate proportion or fixed amount to be applied to the lump sum payments. Otherwise the lump sum payments will not be divided.

(7) The order must include a specified distribution or payment that is of a type or form permitted under the plan.

(8) The order must not include a specified amount or duration of the payment to the alternate payee that is greater than that available to the participant under the plan.

(9) The order must not grant the alternate payee payment of any benefits that have already been awarded to

another alternate payee under another order previously determined to be a QDRO.

(10) The order may specify an alternative method for the parties to verify their social security numbers to the deferred compensation program, if the court finds that omission of the numbers in the order is necessary to reduce the risk of identity theft. The order is not a QDRO if the deferred compensation program finds that the method of verification is insufficient for the purpose of payment of benefits or reporting of income for tax purposes.

Authority: T.C.A. §§ 8-25-104 and 8-25-114.

Rule 1700-09-01-.07 Review of Orders.

The deferred compensation program will notify the participant and alternate payee when it receives a domestic relations order showing the official stamp of the court. If validity cannot be determined the deferred compensation program may request a certified copy of an order. The notice will explain the procedures for determining if the domestic relations order is qualified. Upon completion of review of the domestic relations order, the deferred compensation program shall notify the participant and alternate payee in writing of the determination.

Authority: T.C.A. §§ 8-25-104 and 8-25-114.

Rule 1700-09-01-.08 Payment to Alternate Payee.

(1) If approved as a QDRO, the alternate payee may receive his or her payment only as a direct payment, rollover, or transfer.

(2) Payment to an alternate payee as directed by a QDRO shall be made without regard to whether the participant is eligible for a distribution of benefits under the plan.

Authority: T.C.A. §§ 8-25-104 and 8-25-114.

Rule 1700-09-01-.09 Alternate Payee's Information.

An alternate payee is responsible to report to the deferred compensation program in writing each change in his or her name and residence address.

Authority: T.C.A. §§ 8-25-104 and 8-25-114.

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

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| | | | | | |

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Treasurer, with approval of the Trustees, on behalf of the Deferred Compensation Program, on 05/24/2016, 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: July 5, 2016

Signature: David H. Lillard

Name of Officer: David H. Lillard, Jr.

Title of Officer: Treasurer and Chair of the Board of Trustees of the Tennessee Consolidated Retirement System

HEATHER SCZEPCZENSKI
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF DAVIDSON
MY COMM. EXP. MARCH 10, 2019

Subscribed and sworn to before me on: July 5, 2016

Notary Public Signature: Heather Sczepczenski

My commission expires on: March 10, 2019

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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

7/8/2016
Date

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Filed with the Department of State on: 7/15/16

Effective on: 10/13/16

Tre Hargett

Tre Hargett
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

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|---|---|
| DEPARTMENT: | Environment and Conservation |
| DIVISION: | Natural Areas |
| SUBJECT: | Rare Plant Protection and Conservation |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Section 70-8-301 et seq |
| EFFECTIVE DATES: | October 18, 2016 through June 30, 2017 |
| FISCAL IMPACT: | None |
| STAFF RULE ABSTRACT: | This rulemaking hearing rule includes modifications to Chapter 0400-06-02, Rare Plant Protection and Conservation Regulations, that remove some plants from the list, add some plants to the list, and correct scientific names for some plants on the list. |

**Public Hearing Comments**

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

There were no comments received during the comment period.

**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, or directly benefit from the proposed rule.

There are no changes to the costs or benefits to small businesses in the proposed 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 are no changes to reporting or recordkeeping in the proposed rule changes.

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

No effect on businesses or consumers is expected.

(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.

Any measures less burdensome would not achieve the purpose of the rule.

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

The Endangered Species Act of 1973 (16 USC. 1531-1544) and the federal regulations promulgated thereunder provide special protection for species of plants that have been found to be endangered nationally. The Rare Plant Protection Act of 1985 (Tenn. Code Ann. § 70-8-301, et seq.) and the rules promulgated thereunder provide protection for plants found in Tennessee that are protected under the federal law and also protects additional species that have been found in Tennessee and are endangered but that may or may not be protected under federal law.

(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.

There are no additional requirements in the rule changes.

**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 Department does not anticipate that these amended rules will 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 rulemaking includes modifications to Chapter 0400-06-02, Rare Plant Protection and Conservation Regulations, that remove some plants from the list, add some plants to the list and correct scientific names for some plants on the list.

**(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 Rare Plant Protection Act of 1985 (T.C.A. § 70-8-301 et seq.) sets forth guidelines for establishing a rare plant list and maintaining a program to monitor the trade in endangered plant species.

**(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;

Rare plant dealers would be the only entities that could potentially be affected. However, the Division of Natural Areas has no knowledge that any of the newly listed plants have been traded to date. Public notice was provided, but no comments were received from dealers or other stakeholders.

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

The Department is not aware of any.

**(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 does not expect any increase or decrease in revenues or expenditures because there are no fees associated with this rule.

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

Todd Crabtree
Division of Natural Areas
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-1378
Todd.Crabtree@tn.gov

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

Lucian Geise
Senior Counsel for Legislative Affairs
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

| |
|---|
| Office of General Counsel<br>Tennessee Department of Environment and Conservation<br>William R. Snodgrass Tennessee Tower<br>312 Rosa L. Parks Avenue, 2nd Floor<br>Nashville, Tennessee 37243<br>(615) 532-0131<br>Lucian.Geise@tn.gov |

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

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| The Department is not aware of any. |

(14)

**Department of State**
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Sequence Number: 07-29-16
Rule ID(s): 6266
File Date: 7/20/16
Effective Date: 10/18/16

# 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).*

| | |
|---|---|
| **Agency/Board/Commission:** | Environment and Conservation |
| **Division:** | Division of Natural Areas |
| **Contact Person:** | Todd Crabtree |
| **Address:** | William R. Snodgrass Tennessee Tower<br>312 Rosa L. Parks Avenue, 2nd Floor<br>Nashville, Tennessee |
| **Zip:** | 37243 |
| **Phone:** | 615) 532-1378 |
| **Email:** | Todd.Crabtree@tn.gov |

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

X 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** |
|---|---|
| 0400-06-02 | Rare Plant Protection and Conservation Regulations |
| **Rule Number** | **Rule Title** |
| 0400-06-02-.04 | List of Endangered Species |

(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://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Chapter 0400-06-02
Rare Plant Protection and Conservation Regulations

Amendment

Rule 0400-06-02-.04 List of Endangered Species is amended by deleting it in its entirety and replacing it with the following new Rule 0400-06-02-.04 List of Endangered Species to read as follows:

0400-06-02-.04 List of Endangered Species.

The endangered plant list of Tennessee includes the following:

| Latin Name | Common Name |
|---|---|
| *Aconitum reclinatum* A. Gray | trailing white monkshood |
| *Agalinis auriculata* (Michx.) Blake | ear-leaved false-foxglove |
| *Agalinis decemloba* (Greene) Pennel | ten lobe false foxglove |
| *Agalinis heterophylla* (Nutt.) Small ex Britton | prairie false foxglove |
| *Agalinis oligophylla* Pennell | ridge-stem false foxglove |
| *Agalinis plukenetii* (Ell.) Raf | purple gerardia |
| *Allium stellatum* Fraser | glade onion |
| *Anemone caroliniana* Walt. | Carolina anemone |
| *Apios priceana* Robbins | Price's potato-bean |
| *Arenaria lanuginosa* (Michx.) Rohrback | wooly sandwort |
| *Aristida ramosissima* Engelm. ex Gray | branched three-awn grass |
| *Asplenium scolopendrium* L. var. *americanum* (Fern.) Kartesz & Gandhi | Hart's-tongue fern |
| *Astragalus bibullatus* Barneby and Bridges | Pyne's ground-plum |
| *Betula papyrifera* Marsh var. *cordifolia* (Regel) Fern. | heart-leaved paper birch |
| *Boechera patens* (Sull.) Al-Shehbaz | spreading rockcress |
| *Boechera perstellata* (E. L. Braun) Al-Shehbaz | Braun's rockcress |
| *Brachydontium trichodes* (Web.) Milde | peak moss |
| *Botrychium simplex* E. Hitchc. | least moonwort |
| *Bulbostylis ciliatifolia* (Ell.) Fern. var. *coarctata* (Ell.) Kral | capillary hairsedge |
| *Calamagrostis cainii* Hitchcock | Cain's reedgrass |
| *Calamagrostis porteri* A. Gray | Porter's reedgrass |
| *Caltha palustris* L. | marsh marigold |
| *Carex barrattii* Schweinitz and Torr. | Barratt's sedge |
| *Carex buxbaumii* Wahlenb. | Buxbaum's sedge |
| *Carex canescens* L. ssp. *disjuncta* Fern. | hoary sedge |
| Carex fumosimontana Estes | Smoky Mountain sedge |
| *Carex interior* L. H. Bailey | inland sedge |
| *Carex lonchocarpa* Willd. ex Spreng. | southern long sedge |
| *Carex manhartii* Bryson | Manhart's sedge |
| *Carex muskingumensis* Schweinitz | Muskingum sedge |
| *Carex pellita* Willd. | woolly sedge |
| Carex tetanica Schkuhr | rigid sedge |
| *Cephaloziella messalongi* (Spruce) K. Muell. | a liverwort |
| *Cerastium velutinum* Raf. | velvety cerastium |
| *Clematis fremontii* S. Wats. | Fremont's Leather Flower |
| *Clematis ~~glaucophylla Small~~ vinacea* Floden | ~~white-leaved~~ wine colored leatherflower |
| *Clematis morefieldii* Kral | Huntsville vasevine |
| *Clethra alnifolia* L. | coastal pepperbush |
| *Coeloglossum viride* (L.) Hartman var. *virescens* (Muhl. ex Willd.) Luer | long-bracted green orchis |

| | |
|---|---|
| *Collinsia verna* Nutt. | blue-eyed Mary |
| *Comptonia peregrina* (L.) Coulter | sweet-fern |
| *Coreopsis latifolia* Michx. | broad-leaved tickseed |
| ~~*Coreopsis delphiniifolia* Lam.~~ | ~~larkspur-leaved coreopsis~~ |
| ~~*Corydalis sempervirens* (L.) Pers.~~ | ~~pale corydalis~~ |
| *Crataegus harbisonii* Beadle | Harbison's hawthorn |
| *Cypripedium kentuckiense* Reed | southern lady's-slipper |
| *Cypripedium reginae* Walt. | showy lady's-slipper |
| *Dalea foliosa* (A. Gray) Barneby | leafy prairie-clover |
| *Dalea purpurea* Vent. | purple prairie-clover |
| *Delphinium exaltatum* Ait. | tall larkspur |
| *Desmodium ochroleucum* M.A. Curtis ex Canby | creamflower tick-trefoil |
| *Diamorpha smallii* Britt. | Small's stonecrop |
| *Dichanthelium acuminatum* ssp. *spretum* (Schult.) Freckmann & Lelong | Eaton's witchgrass |
| *Dichanthelium ensifolium* ssp. *curtifolium* (Nash) Freckmann & Lelong | short-leaved panic grass |
| *Echinacea pallida* (Nutt.) Nutt. | pale purple coneflower |
| *Eleocharis elliptica* Kunth | elliptic spike rush |
| *Eleocharis equisetoides* (Ell.) Torr. | horse-tail spike-rush |
| *Eleocharis intermedia* J.A. Schultes | matted spike rush |
| *Eleocharis wolfii* A. Gray | Wolf's spike rush |
| *Eriocaulon decangulare* L. | ten-angle pipewort |
| *Eriogonum* ~~*longifolium* Nutt. var. harperi (Goodm.) Reveal~~ *harperi* Goodman | Harper's umbrella-plant |
| *Eriophorum virginicum* L. | tawny cotton grass |
| *Erysimum capitatum* (Dougl.) Greene | western wallflower |
| *Eupatorium leucolepis* (DC.) Torr. and A. Gray | white-bracted thoroughwort |
| *Eurybia saxicastelli* (J. J. N. Campbell & Medley) G. L. Nesom | Rockcastle aster |
| *Euthamia gymnospermoides* Green | Great Plains goldentop |
| *Fimbristylis perpusilla* Harper | Harper's fimbristylis |
| ~~*Frullania appalachiana* R. M. Schust.~~ | ~~a liverwort~~ |
| *Gentiana puberulenta* J.S. Pringle | prairie gentian |
| *Geum aleppicum* Jacq. | yellow avens |
| *Geum geniculatum* Michx. | bent avens |
| *Geum radiatum* Michx. | spreading avens |
| *Glyceria laxa* (Scribn.) Scribn. | limp manna grass |
| *Gratiola floridana* Nutt. | Florida hedge-hyssop |
| *Hedyotis purpurea* (L.) Torr. & A.Gray var. *montana* (Small) Fosberg | Roan Mountain bluet |
| *Helenium brevifolium* (Nutt.) Wood | shortleaf sneezeweed |
| *Helianthemum propinquum* E.P. Bicknell | low frostweed |
| *Helianthus verticillatus* Small | whorled sunflower |
| *Homaliadelphus sharpii* (Williams) Sharp | Sharp's homaliadelphus moss |
| *Hydrocotyle americana* L. | American water-pennywort |
| *Hypericum adpressum* Barton | creeping St. John's-wort |
| *Hypericum ellipticum* Hook. | pale St. John's-wort |
| *Hypericum graveolens* Bickl. | mountain St. John's-wort |
| *Iris brevicaulis* Raf. | Lamance iris |
| *Isoetes appalachiana* D.F.Brunton & D.M.Britton | Appalachian quillwort |
| *Isoetes melanopoda* Gay and Durieu | blackfoot quillwort |
| *Isoetes tennesseensis* N.T. Luebke & J.M. Budke | Hiwassee quillwort |
| *Isotria medeoloides* (Pursh) Raf. | small whorled pogonia |
| *Lachnanthes caroliana* (Lam.) | Carolina redroot |
| *Lechea pulchella* Raf. | Leggett's pinweed |
| *Lejeunea sharpii* (Schust.) Schust. | Sharp's lejeunia |
| *Leptodontium viticulosoides* var. *sulphureum* (Müller Hal.) R. H. Zander | Grandfather Mountain leptodontium |

| | |
|---|---|
| *Leptohymenium sharpii* (Crum & Anders.) Buck & Crum | Mount Le Conte moss |
| *Leptoscyphus cuneifolius* (Hook.) Mitt. | a liverwort |
| *Lilium grayi* S. Wats. | Gray's lily |
| *Lilium philadelphicum* L. | wood lily |
| *Listera australis* Lindl. | southern twayblade |
| *Lithospermum parviflorum* Weakley, Witsell & D. Estes | softhair marbleseed |
| *Lithospermum subsetosum* (Mack. & Bush) Weakley, Witsell, & D. Estes | smooth false gromwell |
| *Lonicera prolifera* (Kirchner) Rehder | grape honeysuckle |
| *Lysimachia fraseri* Duby | Fraser's loosestrife |
| *Lysimachia quadriflora* Sims | fourflower yellow loosestrife |
| *Lysimachia terrestris* (L.) BSP. | swamp loosestrife |
| *Maianthemum stellatum* (L.) Link | starflower false solomom's-seal |
| *Marshallia grandiflora* Beadle and Boynton | large-flowered Barbara's-buttons |
| *Marshallia obovata* (Walt.) Beadle & F.E. Boynton | spoonshape Barbara's buttons |
| *Marsupella funckii* (Web. & Mohr) Dumort. | a liverwort |
| *Melanthium latifolium* Desr. | broadleaf bunchflower |
| *Melanthium virginicum* L. | Virginia bunchflower |
| *Melanthium woodii* (J.W. Robbins ex Wood) Bodkin | Ozark bunchflower |
| *Minuartia cumberlandensis* (Wofford & Kral) McNeill | Cumberland sandwort |
| *Minuartia godfreyi* (Shinners) McNeill | Godfrey's stitchwort |
| *Minuartia groenlandica* (Retzius) Ostenfeld | mountain sandwort |
| *Muhlenbergia cuspidata* (Torr.) Rydb. | plains muhly |
| *Muhlenbergia torreyana* (Shult.) Hitchcock | Torrey's dropseed |
| *Myriophyllum pinnatum* (Walt.) B.S.P. | cutleaf Watermilfoil |
| *Nabalis asper* (Michx.) Torr. & A. Gray | rough rattlesnake root |
| *Nestronia umbellula* Raf. | conjurer's nut |
| ~~*Onosmodium hispidissimum* Mack.~~ | ~~shaggy false gromwell~~ |
| ~~*Onosmodium molle* Michx. ssp. *subsetosum* (Mack & Bush) Cochrane~~ | ~~smooth false gromwell~~ |
| *Packera crawfordii* (Britt.) A.M. Mahoney & R.R. Lowal | Crawford's ragwort |
| *Patis racemoss* (Sm.) Romasch., P.M. Peterson & R. J. Soreng | mountain ricegrass |
| *Paxistima canbyi* A. Gray | Canby's mountain-lover |
| *Paysonia perforata* (Rollins) O'Kane & Al-Shehbaz | Spring Creek bladderpod |
| *Paysonia stonensis* (Rollins) O'Kane & Al-Shehbaz | Stones River bladderpod |
| *Penstemon kralii* D. Estes | Kral's beardtongue |
| *Perideridia americana* (Nutt. ex DC.) Reichenb. | thicket parsley |
| *Phegopteris connectilis* (Michx.) Watt | long beech fern |
| *Physaria globosa* (Desv.) O'Kane | globe bladderpod |
| *Pityopsis ruthii* (Small) Small | Ruth's golden-aster |
| *Plantago cordata* Lam. | heart-leaved plantain |
| *Platanthera grandiflora* (Bigelow) Lindl. | large purple fringed orchid |
| *Platanthera integra* (Nutt.) A. Gray ex Beck | yellow fringeless orchid |
| *Platanthera integrilabia* (Correll) Luer | white fringeless orchid |
| *Platanthera nivea* (Nutt.) Luer | snowy orchid |
| *Poa palustris* L. | owl bluegrass |
| *Pogonia ophioglossoides* (L.)Ker-Gawl. | rose pogonia |
| *Polygala nana* (Michx.) DC. | dwarf milkwort |
| *Polygala nuttallii* Torr. and A. Gray | Nuttall's milkwort |
| *Polygonella americana* (Fisch. and Mey) | small southern jointweed |
| *Ponthieva racemosa* (Walt.) Mohr | shadow-witch |
| *Porella gracillima* | hot porella |
| ~~*Prenanthes aspera* Michx.~~ | ~~rough rattlesnake-root~~ |
| *Prunus pumila* L. | sand cherry |
| *Pycnanthemum beadlei* (Small) Fern. | Beadle's mountain mint |
| *Pycnanthemum torrei* Benth. | Torrey's mountain mint |
| *Pycnanthemum verticillatum* (Michx.) Pers. | whorled mountain-mint |
| *Pyrola americana* Sweet | American wintergreen |

| | |
|---|---|
| *Ranunculus aquatilis* var. *diffusus* Withering | eastern white water crowfoot |
| *Rhamnus alnifolia* L'Hér. | alderleaf buckthorn |
| *Rhynchospora capillacea* Torr. | horned beak-rush |
| *Rhynchospora debilis* Gale | savannah beak-rush |
| *Rhynchospora rariflora* (Michx.) Ell. | few-flowered beak-rush |
| ~~*Rudbeckia triloba* L. var. *pinnatiloba* Torrey & A. Gray~~ | ~~browneyed susan~~ |
| *Rudbeckia triloba var. beadlei* (Small) Fernald | browneyed susan |
| *Rugelia nudicaulis* Shuttlw. ex Chapman | Rugel's ragwort |
| *Sabatia capitata* (Raf.) Blake | rose gentian |
| *Sagittaria rigida* Pursh | sessile-fruited arrowhead |
| *Sanguisorba canadensis* L. | canada burnet |
| *Saxifraga caroliniana* A. Gray | Carolina saxifrage |
| *Saxifraga pensylvanica* L. | swamp saxifrage |
| *Scutellaria arguta* Buckl. | hairy scullcap |
| *Sedum nevii* A. Gray | Nevius' stonecrop |
| *Silene ovata* Pursh | ovate catchfly |
| *Silphium brachiatum* Gattinger | Cumberland rosinweed |
| *Solidago gattingeri* Chapm. | Gattinger's goldenrod |
| *Solidago lancifolia* Torr. and A. Gray | broadleaf goldenrod |
| *Solidago porteri* Small | Porter's goldenrod |
| *Solidago ptarmicoides* (Nees) Bovin | prairie goldenrod |
| *Solidago rupestris* Raf. | rock goldenrod |
| *Solidago spithamaea* M.A. Curtis | Blue Ridge goldenrod |
| *Sparganium androcladum* (Engelm.) Morong | branching bur-reed |
| *Sphenolobopsis pearsoni* (Spruce) Shust. & Kitag. | a liverwort |
| *Spiraea alba* DuRoi | narrow-leaved meadow-sweet |
| *Spiraea virginiana* Britt. | Virginia spiraea |
| *Spiranthes magnicamporum* Sheviak | Great Plains ladies'-tresses |
| *Spiranthes ochroleuca* (Rydb.) Rydb. | yellow nodding ladies'-tresses |
| *Spiranthes odorata* (Nutt.) Lindl. | sweetscent ladies'-tresses |
| *Sporobolus junceus* (P.Beauv.) Kunth | Piney-woods dropseed |
| *Stellaria alsine* Grimm | trailing stitchwort |
| *Stellaria longifolia* Muhl. | longleaf stitchwort |
| *Stenanthium diffusum* Wofford | Cumberland featherbells |
| *Sullivantia sullivantii* (Torr. & Gray) Britt. | Sullivan's coolwort |
| *Symphyotrichum ericoides* (L.) G.L. Nesom var. *ericoides* | bushy aster |
| *Symphyotrichum praealtum* (Poiret) G. L. Nesom | willow aster |
| *Symphyotrichum pratense* (Rafinesque) Nesom | barrens silky aster |
| *Symplocarpus foetidus* (L.) Nutt. | skunk-cabbage |
| *Taxus canadensis* Marsh. | American yew |
| *Thaspium pinnatifidum* (Buckley) A. Gray | cutleaf meadow parsnip |
| *Tortula ammonsiana* Crum & Anders. | Ammon's tortula |
| *Tortula fragilis* Tayl. | fragile tortula |
| *Triantha glutinosa* (Walter) Small | sticky false asphodel |
| *Triantha racemosa* (Walter) Small | coastal false-asphodel |
| *Tridens flavus* (L.) Hitchc. var. *chapmanii* (Small) Shinners | purpletop tridens |
| *Trichophorum cespitosum* (L.) Hartman | tufted club-rush |
| *Trifolium calcaricum* J.L. Collins & Wieboldt | running glade clover |
| *Trifolium reflexum* L. | buffalo clover |
| *Trillium decumbens* Harbison | trailing trillium |
| *Trillium lancifolium* Raf. | narrow-leaved trillium |
| *Trillium pusillum* Michx. | least trillium |
| *Trillium rugelii* Rendle | southern nodding trillium |
| *Trillium tennesseense* E.E. Schill. & Floden | Tennessee trillium |
| *Utricularia cornuta* Michx. | horned bladderwort |
| *Vaccinium elliottii* Chapm. | mayberry |

| | |
|---|---|
| *Veronica catenata* Pennell | sessile water-speedwell |
| *Veronica scutellata* L. | marsh-speedwell |
| ~~*Viburnum bracteatum* Rehd.~~ | ~~limerock arrow-wood~~ |
| *Viburnum molle* Michx. | softleaf arrow-wood |
| *Vitis rupestris* Scheele | rock grape |
| *Xyris ambigua* Beyr. ex. Kunth. | coastal-plain yellow-eyed-grass |
| *Xyris fimbriata* Ell. | fringed yellow-eyed-grass |
| *Xyris tennesseensis* R. Kral | Tennessee yellow-eyed-grass |
| *Zigadenus glaucus* Nutt. | white camas |

Authority: T.C.A. §§ 70-8-301 et seq., and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 03/21/2016, 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: 01/13/16

Rulemaking Hearing(s) Conducted on: (add more dates). 03/18/16

Date: 3-21-16

Signature: Robert J. Martineau Jr.

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

KATI HICKS STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 3-21-16

Notary Public Signature: Kati Hicks

My commission expires on: 11-5-18

---

Pursuant to T.C.A. §§ 70-8-305 and 70-8-313, I have reviewed and concur with the additions and deletions to the list of endangered species.

Julius T. Johnson, Commissioner
Department of Agriculture

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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

7/18/2016
Date

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Filed with the Department of State on: 7/20/16

Effective on: 10/18/16

Tre Hargett by Mary Pat Jarvis POA
Tre Hargett
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Safety |
| DIVISION: | Tennessee Highway Patrol |
| SUBJECT: | School Bus Inspection Procedures |
| STATUTORY AUTHORITY: | Tennessee Code Annotated Section 49-6-2109 requires annual inspections of school buses that transport school children, in order to determine safe operation, and authorizes the Commissioner of Safety to promulgate rules for the purpose of enforcing these inspection requirements. |
| EFFECTIVE DATES: | October 25, 2016 through June 30, 2017 |
| FISCAL IMPACT: | There is no expected increase or decrease in state and local government revenues and expenditures. |
| STAFF RULE ABSTRACT: | This proposed rule amendment to current Rule 1340-03-03-.02 Definitions adds the definition of "annual inspection." Currently, the term "annual inspection" is not defined in the rule section or in Tennessee Code Annotated. |

**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.

The rule does not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

(2) Clarity, conciseness, and lack of ambiguity in the rule.

The rule is intended to clarify the annual bus inspection requirements.

(3) The establishment of flexible compliance and reporting requirements for small businesses.

The rule does not pertain to compliance and reporting requirements for small businesses.

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

The rule does not pertain to schedules or deadlines for compliance and reporting requirements for small businesses.

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

The rule does not pertain to 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 rule does not establish performance, design, or operational standards for small businesses.

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

The rule does not create entry barriers, 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 is not expected to impact 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 amendment to current Rule 1340-03-03-.02 Definitions adds the definition of "annual inspection." Currently, the term "annual inspection" is not defined in the rule section or Tennessee Code Annotated. |

**(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;

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|---|
| Tenn. Code Ann. § 49-6-2109 requires annual inspections of school buses that transport school children, in order to determine safe operation and authorizes the Commissioner of Safety to promulgate rules for the purposes of enforcing these inspection requirements. |

**(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 Tennessee Department of Safety and Homeland Security, city and county school systems, and bus companies who contract with these school systems to provide and maintain buses for the transportation of school children are directly affected by this rule. |

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

| |
|---|
| N/A |

**(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 is no expected 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;

| |
|---|
| Tennessee Department of Safety and Homeland Security<br>Tennessee Highway Patrol<br>Lieutenant Colonel Dereck Stewart<br>Ray Robinson, Director of Commercial Vehicle Enforcement/Pupil |

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

| |
|---|
| Tennessee Department of Safety and Homeland Security<br>Tennessee Highway Patrol<br>Lieutenant Colonel Dereck Stewart<br>Lieutenant Ray Robinson, Director of Commercial Vehicle Enforcement/Pupil<br>Deputy General Counsel Lizabeth Hale<br>Jenny Taylor, Staff Attorney |

**(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 Department of Safety and Homeland Security
Tennessee Highway Patrol
Lieutenant Colonel Dereck Stewart
Lieutenant Ray Robinson, Director of Commercial Vehicle Enforcement/Pupil
1228 Foster Avenue
Nashville, TN 37243
(615) 743-4974
Ray.Robinson@tn.gov

Deputy General Counsel Lizabeth Hale
Lizabeth.Hale@tn.gov
Jenny Taylor, Staff Attorney
Jenny.C.Taylor@tn.gov
(615) 687-2410
Tennessee Department of Safety and Homeland Security
312 Rosa L Parks Blvd, 25th Floor, Nashville, TN 37243

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

(17)

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Sequence Number: 07-37-16
Rule ID(s): 6269
File Date: 7/27/16
Effective Date: 10/25/16

# 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).*

| | |
|---|---|
| **Agency/Board/Commission:** | Department of Safety & Homeland Security |
| **Division:** | Tennessee Highway Patrol |
| **Contact Person:** | Jenny Taylor |
| **Address:** | 312 Rosa L. Parks Avenue, 25th Floor, Nashville TN |
| **Zip:** | 37214 |
| **Phone:** | (615) 687-2410 |
| **Email:** | Jenny.C.Taylor@tn.gov |

**Revision Type (check all that apply):**
X 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** |
|---|---|
| 1340-03-03 | Rules and Regulations for School Bus Inspection Procedures |
| **Rule Number** | **Rule Title** |
| 1340-03-03-.02 | Definitions |
| | |
| | |
| | |

1340-03-03-.02 Definitions is amended by adding the following as new paragraph (4):

(1) FMVSS. The Federal Motor Vehicle Safety Standards as defined by Title 49, part 571 of the Code of Federal Regulations.

(2) OEM. Original Equipment Manufacturer.

(3) School Bus Inspection Report (SF-0722)/Electronic Inspection Report. The inspection report form that is to be completed by the Department of Safety's Inspector/Trooper.

(4) Annual Inspection. An inspection performed within the period of twelve (12) months that begins with the first day of the month following the month in which the last inspection was performed.

Authority: T.C.A. §§ 49-6-2102, 49-6-2109, and 4-4-102; Executive Order 45 (Feb. 11, 1983).

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

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| | | | | | |

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Department of Safety and Homeland Security on 02/04/2016, 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: 5-2-16

Signature:

Name of Officer: Dereck Stewart

Title of Officer: Lieutenant Colonel, Tennessee Highway Patrol

SUSAN COLEMAN
STATE OF TENNESSEE
NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: May 2, 2016

Notary Public Signature: Susan Coleman

My commission expires on: May 6. 2019

---

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

7/19/2016
Date

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Filed with the Department of State on: 7/27/16

Effective on: 10/25/16

Tre Hargett
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Human Services |
| DIVISION: | Adult and Family Services |
| SUBJECT: | Child Care |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Title 4, Chapter 3, Part 12; § 4-37-201; Title 71, Chapter 3, Part 5 |
| EFFECTIVE DATES: | July 1, 2016 through December 28, 2016 |
| 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).

These emergency 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 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.

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 preservice 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); and

• 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).

(1)

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**For Department of State Use Only**

Sequence Number: 07-02-16
Rule ID(s): 6212-6215
File Date (effective date): 7/1/16
End Effective Date: 12/28/16

# Emergency Rule Filing Form

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

| | |
|---|---|
| **Agency/Board/Commission:** | Tennessee Department of Human Services |
| **Division:** | Adult and Family Services |
| **Contact Person:** | Nicole Armstrong |
| **Address:** | Office of General Counsel<br>Citizens Plaza Building, 15th Floor<br>400 Deaderick Street<br>Nashville, Tennessee |
| **Zip:** | 37243-1403 |
| **Phone:** | 615-313-4731 |
| **Email:** | Nicole.Armstrong@tn.gov |

**Rule Type:**
✓ Emergency Rule

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

**Statement of Necessity:**

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)
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- 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).

**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)

| **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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| **Chapter Number** | **Chapter Title** |
|---|---|
| 1240-04-03 | Licensure Rules for Child Care Centers |
| **Rule Number** | **Rule Title** |
| 1240-04-03-.05 | Ownership, Organization, and Administration |
| 1240-04-03-.07 | Staff |
| | |
| | |
| | |

| **Chapter Number** | **Chapter Title** |
|---|---|
| 1240-04-04 | Standards for Family Child Care Homes |
| **Rule Number** | **Rule Title** |

| | |
|---|---|
| 1240-04-04-.02 | Ownership and Administration |
| 1240-04-04-.03 | Staff |
| 1240-04-04-.06 | Health and Safety |
| | |
| | |

**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;

**(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 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 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.

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- Handling and storage of hazardous materials and the appropriate disposal of bio contaminants
- Precautions in transporting children (if applicable)
- First aid and cardiopulmonary resuscitation

**(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;

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

# REDLINE VERSION
# CHAPTER 1240-04-01
# JULY 1, 2016

# RULES
# OF
# TENNESSEE DEPARTMENT OF HUMAN SERVICES
# ADULT AND FAMILY SERVICES DIVISION

## CHAPTER 1240-04-01
## STANDARDS FOR GROUP CHILD CARE HOMES

### TABLE OF CONTENTS


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### 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 prelicensure 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 prelicensure 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;

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

(Rule 1240-04-01-.03, continued)

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 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 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;~~

(Rule 1240-04-01-.03, continued)

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 access to children as described in subpart (vii), the child care agency shall immediately exclude such person from access to children. Failure to

(Rule 1240-04-01-.03, continued)

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.

(I) 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

(Rule 1240-04-01-.03, continued)

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, nolled 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

(Rule 1240-04-01-.03, continued)

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, nolled 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

(Rule 1240-04-01-.03, continued)

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 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 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.

(Rule 1240-04-01-.03, continued)

(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;

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

(Rule 1240-04-01-.03, continued)

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.

(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

(Rule 1240-04-01-.03, continued)

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);

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);

(Rule 1240-04-01-.03, continued)

Q. Criminal attempt, under T.C.A. § 39-12-101, to commit any criminaloffense 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);

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);

(Rule 1240-04-01-.03, continued)

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

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

(Rule 1240-04-01-.03, continued)

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.

(viii) 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.

(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 form 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.

(Rule 1240-04-01-.03, continued)

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:

(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.

(Rule 1240-04-01-.03, continued)

(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 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 (I) 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.

(Rule 1240-04-01-.03, continued)

| Caregivers Required[1] | Maximum Number of Children and Ages[2] |
|---|---|
| 1 | Maximum of 15 present and no child present is under three (3) years of age.[3] |
| 2 | Maximum of 15 present and at least one (1) child up 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.[3] |
| 3 | Maximum of 15 if ten (10) or more are under three (3) years of age.[3] |

[1] 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.

[2] Before 8 or more children are enrolled, the facility shall be approved by a fire safety inspector and by an environmentalist.

[3] If over 12 children are enrolled, the additional children shall be of school age and a school age program shall be provided.

***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.

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

(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.

(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.

(Rule 1240-04-01-.05, continued)

(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 - 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.

(Rule 1240-04-01-.05, continued)

(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.

(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.*

(Rule 1240-04-01-.05, continued)
*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.

(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.

(Rule 1240-04-01-.06, continued)

(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 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.

(Rule 1240-04-01-.06, continued)

(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.

(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.

(Rule 1240-04-01-.07, continued)

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 1240-04-01-.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.

(Rule 1240-04-01-.07, continued)

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 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;

(Rule 1240-04-01-.07, continued)

(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.

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

(Rule 1240-04-01-.07, continued)

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.

(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

(Rule 1240-04-01-.07, continued)

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 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

(Rule 1240-04-01-.07, continued)

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.

(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.

(Rule 1240-04-01-.07, continued)

(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.

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.

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:

(Rule 1240-04-01-.07, continued)

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 1240-04-01-.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;

(Rule 1240-04-01-.07, continued)

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 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.

(Rule 1240-04-01-.07, continued)

(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; 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.*

(Rule 1240-04-01-.08, continued)
**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 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.

(Rule 1240-04-01-.08, continued)

(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 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.

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 than 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[1]

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[2] 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.

[1]Tuberculosis screening is not recommended for programs providing care for less than two weeks.
[2]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[3] 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.

[3]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:

- ☐ First aid cards*
- ☐ Adhesive strip bandages (1/2", 3/4", 1" strips)
- ☐ Gauze bandages (4"x4", nonstick, sterile)
- ☐ Rolled flexible or stretch gauze
- ☐ Bandage tape
- ☐ Nonstick, sterile pads (different sizes)
- ☐ Triangular bandages
- ☐ Small splints
- ☐ Eye dressing or pad
- ☐ Scissors
- ☐ Tweezers
- ☐ Safety pins
- ☐ Thermometer
- ☐ Flashlight with fresh batteries
- ☐ Disposable latex gloves
- ☐ Three-ounce rubber bulb syringe (to rinse out eyes, wounds, etc.)
- ☐ Commercial cold pack or plastic bag for ice cubes
- ☐ Clean cloth
- ☐ Soap
- ☐ Small plastic cup
- ☐ Sealed packages of cleansing wipes
- ☐ Syrup of ipecac (1-ounce bottle)
- ☐ Special items for children with specific health problems (such as bee sting kit or an inhaler for a child with asthma)
- ☐ Emergency Telephone Guide
- ☐ Emergency contact information (phone numbers of the children's parents)
- ☐ Change for pay phone
- ☐ Pen or pencil and note pad

*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[1] |
|---|---|---|---|
| *Milk*<br>milk, fluid | ½ cup[2] | 3/4 cup | 1 cup |
| *Vegetables and Fruits*<br>Vegetable(s) and/or fruit(s)<br>or full-strength vegetable or fruit juice<br>or an equivalent quantity or any combination<br>of vegetable(s), fruit(s) and juice | ¼ cup<br>¼ cup | 1/2 cup<br>1/2 cup | 1/2 cup<br>1/2 cup |
| *Bread and Bread Alternates*[3]<br>bread<br>or cornbread, biscuits, rolls, muffins, etc<br>or cold dry cereal[4]<br><br>or cooked cereal<br>or cooked pasta or noodle products<br>or an equivalent quantity of any combination of bread/bread alternate | ½ slice<br>½ serving<br>¼ cup or<br>1/3 oz.<br>¼ cup<br>¼ cup | 1/2 slice<br>1/2 serving<br>1/3 cup or<br>1/2 oz.<br>1/4 cup<br>1/4 cup | 1 slice<br>1 serving<br>3/4 cup or<br>1 oz.<br>1/2 cup<br>1/2 cup |

[1] 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.

[2] A cup means a standard 8 ounce measuring cup.

[3] 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.

[4] 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 |
|---|---|---|---|
| *Milk*<br>milk, fluid | ½ cup | ½ cup | 1 cup |
| *Vegetables and Fruits*<br>Vegetable(s) and/or fruit(s)[1] | ¼ cup<br>total | ½ cup<br>total | ¾ cup<br>total |
| *Bread and Bread Alternates*<br>bread<br>or cornbread, biscuits, rolls, muffins, etc.<br>or cooked pasta or noodle products<br>or cooked cereal grains<br>or an equivalent quantity of any combination<br>of bread/bread alternate | ½ slice<br>½ serving<br>¼ cup<br>¼ cup | ½ slice<br>½ serving<br>¼ cup<br>¼ cup | 1 slice<br>1 serving<br>½ cup<br>½ cup |
| *Meat and Meat Alternates*<br>lean meat or poultry or fish[2]<br>or cheese<br>or eggs<br>or cooked dry beans or peas<br>or peanut butter, or other nut or seed butters<br>or peanuts or soy nuts[3]<br>or an equivalent quantity of any combination<br>of meat/meat alternate | 1 oz.<br>1 oz.<br>1 egg<br>¼ cup<br>2 Tbsp.<br>½ oz. = 50% | 1 ½ oz.<br>1 ½ oz.<br>1 egg<br>3/8 cup<br>3 Tbsp.<br>¾ oz. = 50% | 2 oz.<br>2 oz.<br>1 egg<br>½ cup<br>4 Tbsp.<br>1 oz. = 50% |

(See footnotes from breakfast pattern.)

[1] 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.

[2] Edible portion as served.

[3] 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[1] |
|---|---|---|---|
| *Milk*<br>milk, fluid | ½ cup | ½ cup | 1 cup |
| *Vegetables and Fruits*<br>Vegetable(s) and/or fruit(s)<br>or full-strength vegetable or fruit juice<br>or an equivalent quantity or any combination<br>of vegetable(s), fruit(s) and juice | ½ cup<br>½ cup | ½ cup<br>½ cup | ¾ cup<br>¾ cup |
| *Bread and Bread Alternates*<br>bread<br>or cornbread, biscuits, rolls, muffins, etc.<br>or cold dry cereal<br><br>or cooked cereal<br>or cooked pasta or noodle products<br>or an equivalent quantity of any combination<br>of bread/bread alternate | ½ slice<br>½ serving<br>¼ cup or<br>1/3 oz.<br>¼ cup<br>¼ cup | ½ slice<br>½ serving<br>1/3 cup or<br>½ oz.<br>¼ cup<br>¼ cup | 1 slice<br>1 serving<br>¾ cup or<br>1 oz.<br>½ cup<br>½ cup |
| *Meat and Meat Alternates*<br>lean meat or poultry or fish<br>or cheese<br>or eggs<br>or cooked dry beans or peas<br>or peanut butter, or other nut or seed butters<br>or peanuts or soy nuts<br>or yogurt, plain, or sweetened and flavored[1]<br>or an equivalent quantity of any combination<br>of meat/meat alternate | ½ oz.<br>½ oz<br>½ egg<br>1/8 cup<br>1 Tbsp.<br>½ oz.<br>2 oz. or ¼ cup | ½ oz.<br>½ oz.<br>½ egg<br>1/8 cup<br>1 Tbsp.<br>½ oz.<br>2 oz. or ¼ cup | 1 oz.<br>1 oz.<br>½ egg<br>¼ cup<br>1 Tbsp.<br>1 oz.<br>4 oz. or ½ cup |

(See footnotes from Breakfast and Lunch patterns.)

[1] 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.

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.

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.

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 openable 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.

(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 | | | |

| | | | |
|---|---|---|---|
| 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 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 LSC10-7.2.10; EXISTING 11-7.2.10 | | | |
| 14. Unless classroom doors open directly to the outside, are corridors one 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 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 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 |

# REDLINE VERSION
# CHAPTER 1240-04-02
# JULY 1, 2016

# 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:~~

~~(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.

4. Immunization Record Requirements. The agency shall have a Tennessee Department of Heal

(i) Exceptions to immunization record requirements may be made only if:

(I) A signed and dated statement from the child's physician or the Health department stating the child should not be given a specified immunization; or

(II) A signed written statement from child's parent/guardian that 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 shall not exceed thirty days.]

(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.

(Rule 1240-04-02-.04, continued)

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.~~

[(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, 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.

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.

[(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.

(Rule 1240-04-02-.04, continued)

(h) 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.]

(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.

(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;

(Rule 1240-04-02-.04, continued)

(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. Procedures shall be developed to allow for a planned transition of a child to another program if expulsion must occur; and

6. 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 March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005. Amendment filed November14, 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.~~

(Rule 1240-04-02-.05, continued)

(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 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.

(Rule 1240-04-02-.05, continued)

~~(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.

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.

(Rule 1240-04-02-.05, continued)

(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.

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.

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);

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);

(Rule 1240-04-02-.05, continued)

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);

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;

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 form 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.]

(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:

(Rule 1240-04-02-.05, continued)

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 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.

(Rule 1240-04-02-.05, continued)

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.

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 subsititute, and who were not otherwise subject to a pre-status applicant background check and to the exclusionary provisions provided in this subchaper, shall be governed by the provisions of this subchapter and T.C.A. § 71-3-507.

(Rule 1240-04-02-.05, continued)

(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.

(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.

(Rule 1240-04-02-.05, continued)

(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.

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;

(Rule 1240-04-02-.05, continued)

(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 (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);

(Rule 1240-04-02-.05, 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 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 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.

(Rule 1240-04-02-.05, continued)

(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;

(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.

(Rule 1240-04-02-.06, continued)

(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.

(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.

(Rule 1240-04-02-.06, continued)

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.

(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.

(Rule 1240-04-02-.07, continued)

(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.

(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.

(Rule 1240-04-02-.07, continued)

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.

(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.

(Rule 1240-04-02-.08, continued)

(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:

(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.

(Rule 1240-04-02-.08, continued)

(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.

(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.

(Rule 1240-04-02-.08, continued)

(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 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-

(Rule 1240-04-02-.08, continued)

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.

(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

(Rule 1240-04-02-.08, continued)

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.

(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.

(Rule 1240-04-02-.08, continued)

(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.

(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;

(Rule 1240-04-02-.08, continued)

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 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

(Rule 1240-04-02-.08, continued)

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 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.

(Rule 1240-04-02-.08, 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 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.

(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.

(Rule 1240-04-02-.09, continued)

(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.

(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.

(Rule 1240-04-02-.10, continued)

***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.*

# REDLINE VERSION
# CHAPTER 1240-04-03
# JULY 1, 2016

# 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 Chapters1240-4-5 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 adminstrative 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 (3rd) 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 conspicious location.

(b) During the hours of operation, the agency Report Card shall be posted near the main entrance in a conspicious 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 ($2^{nd}$) adult is not required by the adult:child ratio rules contained in this Chapter, a second ($2^{nd}$) 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 ($2^{nd}$) 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:

| Maximum Grouping Size and Adult:Child Ratios | | | | |
|---|---|---|---|---|
| | 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,

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 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 equivelent), 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 (1st) 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 (1st) Year of Employment.

1. New caregivers shall complete, within the first (1st) 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 (1st) 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 (1st) 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 (1st) 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.~~

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:

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:

(I) The fingerprint sample is rejected and the fingerprint sample must be resubmitted;

(Rule 1240-04-03-.07, continued)

(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);

(VIII) Aggravated rape of a child (T.C.A. § 39-13-531);

(Rule 1240-04-03-.07, continued)

(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);

(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);

(Rule 1240-04-03-.07, continued)

(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:

(I) Vehicular homicide;

(II) Accidents involving death or personal injury;

(III) Accidents involving damage to a vehicle;

(Rule 1240-04-03-.07, continued)

(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 form 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 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.

(Rule 1240-04-03-.07, continued)

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 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.

(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

(Rule 1240-04-03-.07, continued)

(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 subsititute, and who were not otherwise subject to a pre-status applicant background check and to the exclusionary provisions provided in this subchaper, 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.

(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.

(Rule 1240-04-03-.08, continued)

(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.

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.

(Rule 1240-04-03-.08, continued)

(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.

***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*

(Rule 1240-04-03-.08, continued)
*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.

(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.

(Rule 1240-04-03-.09, continued)

(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:

(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.

(Rule 1240-04-03-.09, continued)

(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.

(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.

(Rule 1240-04-03-.09, continued)

(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.

(I) Written documentation, in a form and manner approved by the Department, verifying that annual personal safety instruction as 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

(Rule 1240-04-03-.09, continued)

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.

(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.

(Rule 1240-04-03-.10, continued)

(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.

(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.

(Rule 1240-04-03-.10, continued)

(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;
8. Haemophilus influenza type B;
9. Menigococcal meningitis; and
10. Any other illness identified by the state or local Department of Health.

(Rule 1240-04-03-.10, continued)

(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

3. Name of staff person administering medication to child.

(e) The parent shall sign documentation verifying that:

(Rule 1240-04-03-.10, continued)

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.

2. Alcoholic beverages shall not be located in the designated child care space when children are present.

(Rule 1240-04-03-.10, continued)

(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.

3. School-age children may be diapered on the floor on a nonporous, washable diapering surface that adequately protects the floor from contamination.

(Rule 1240-04-03-.10, continued)

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.

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

(Rule 1240-04-03-.10, continued)

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 requirements to the persons or entities specifically listed in subparagraph (a) above.

(Rule 1240-04-03-.10, continued)

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.

3. The agency shall allow appropriate investigators to interview children and staff.

(Rule 1240-04-03-.10, continued)

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.

(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.

(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.

(Rule 1240-04-03-.11, continued)

(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.

(i) Microwaves, Bottle Warmers, and Crock Pots. In order to prevent scald and splash burns:

(Rule 1240-04-03-.11, continued)

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.

(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

(Rule 1240-04-03-.11, continued)

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

4. Existing facilities with renovations, new construction, additions to, and/or changes in occupancy.

(Rule 1240-04-03-.12, continued)

(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.

(c) Each naproom must contain a minimum of thirty (30) square feet of floor space per child.

(Rule 1240-04-03-.12, continued)

(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.

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.

(Rule 1240-04-03-.12, continued)

(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.

6. Broken glass, trash and debris shall be kept removed from the building and grounds.

(Rule 1240-04-03-.12, continued)

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";

3. Describing any contracts, agreements or arrangements with any third (3rd) parties for the provision of transportation services, with copies of such contracts or agreements or arrangements available upon the Department's request;

(Rule 1240-04-03.13, continued)

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;

(iii) Each child's activities to be observed; and

(iv) The monitor to respond immediately should there be an emergency.

(Rule 1240-04-03.13, continued)

(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.

2. Monitor Responsibilities. If a monitor was also on the vehicle the monitor shall:

(i) Physically walk through the vehicle;

(Rule 1240-04-03.13, continued)

(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.

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.

(Rule 1240-04-03.13, continued)

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 posses 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.

(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.

(Rule 1240-04-03.13, continued)

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.

(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:

(Rule 1240-04-03.13, continued)

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

5. Seat-belt cutter or similar device manufactured and designed to immediately release the vehicle's child restraint system(s) in an emergency.

(Rule 1240-04-03.13, continued)

(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.

(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, 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.

(Rule 1240-04-03.13, continued)

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, 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.

(Rule 1240-04-03.13, continued)

(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 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:

(Rule 1240-04-03.13, continued)

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 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*

(Rule 1240-04-03.13, continued)
*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.**

(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.

(Rule 1240-04-03-.15, continued)

(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;

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.

(Rule 1240-04-03-.15, continued)

(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 ($2^{nd}$) trained staff member is available on the premises to assist.

1. The second ($2^{nd}$) trained staff member shall be called immediately upon the determination being made that physical restraint will be necessary.

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.

(Rule 1240-04-03-.15, continued)

(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;

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;

3. Exhibiting confusion;

4. Unequal pupils;

5. Dehydration;

(Rule 1240-04-03-.16, continued)

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;

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;

(Rule 1240-04-03-.16, continued)

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;

4. Recognition and documentation of illness signs and symptoms;

5. Proper temperature monitoring methods;

6. Nutrition for ill children;

(Rule 1240-04-03-.16, continued)

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 |

(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:

(Rule 1240-04-03-.16, continued)

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.

(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.

(Rule 1240-04-03-.16, continued)

(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.

(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.

(Rule 1240-04-03-.16, continued)

(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.*

# REDLINE VERSION
# CHAPTER 1240-04-04
# JULY 1, 2016

# 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 prelicensure 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 prelicensure 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, I ndividuals 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, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22,*

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*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 time during the existence of the plan or during the pendency of the

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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

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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.

(I) 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

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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, nolled 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

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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, nolled 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

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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

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~~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;

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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;

(F) A search of the DCS registry of indicated perpetrators of abuse or neglect of children; and

(G) A search of any state or federal registries required by the Child Care and Development Block Grant Act.

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(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

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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. § 39-15-402);

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

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.

(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.

(v) 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.

(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 form 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 (d) 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 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,*

(Rule 1240-04-04-.04, 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 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.

(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

(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.

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[1]

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[2] 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[3] 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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[1] Tuberculosis screening is not recommended for programs providing care for less than two weeks.
[2] The preferred method is the Mantoux technique using 5 TU PPD.
[3] 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:

- ☐ First aid cards*
- ☐ Adhesive strip bandages (1/2", 3/4", 1" strips)
- ☐ Gauze bandages (4"x4", nonstick, sterile)
- ☐ Rolled flexible or stretch gauze
- ☐ Bandage tape
- ☐ Nonstick, sterile pads (different sizes)
- ☐ Triangular bandages
- ☐ Small splints
- ☐ Eye dressing or pad
- ☐ Scissors
- ☐ Tweezers
- ☐ Safety pins
- ☐ Thermometer
- ☐ Flashlight with fresh batteries
- ☐ Disposable latex gloves
- ☐ Three-ounce rubber bulb syringe (to rinse out eyes, wounds, etc.)
- ☐ Commercial cold pack or plastic bag for ice cubes
- ☐ Clean cloth
- ☐ Soap
- ☐ Small plastic cup
- ☐ Sealed packages of cleansing wipes
- ☐ Syrup of ipecac (1-ounce bottle)
- ☐ Special items for children with specific health problems (such as bee sting kit or an inhaler for a child with asthma)
- ☐ Emergency Telephone Guide
- ☐ Emergency contact information (phone numbers of the children's parents)
- ☐ Change for pay phone
- ☐ Pen or pencil and note pad

* 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[1] |
|---|---|---|---|
| *Milk*<br>milk, fluid | 1/2 cup[2] | 3/4 cup | 1 cup |
| *Vegetables and Fruits*<br>Vegetable(s) and/or fruit(s)<br>or full-strength vegetable or fruit juice<br>or an equivalent quantity or any combination of vegetable(s), fruit(s) and juice | 1/4 cup<br>1/4 cup | 1/2 cup<br>1/2 cup | 1/2 cup<br>1/2 cup |
| *Bread and Bread Alternates*[3]<br>bread<br>or cornbread, biscuits, rolls, muffins, etc.<br>or cold dry cereal[4]<br><br>or cooked cereal<br>or cooked pasta or noodle products<br>or an equivalent quantity of any combination of bread/bread alternate | 1/2 slice<br>1/2 serving<br>1/4 cup or 1/3 oz.<br>1/4 cup<br>1/4 cup | 1/2 slice<br>1/2 serving<br>1/3 cup or 1/2 oz.<br>1/4 cup<br>1/4 cup | 1 slice<br>1 serving<br>3/4 cup or 1 oz.<br>1/2 cup<br>1/2 cup |

[1] 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.

[2] A cup means a standard 8 ounce measuring cup.

[3] 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.

[4] 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 |
|---|---|---|---|
| *Milk*<br>milk, fluid | 1/2 cup | 3/4 cup | 1 cup |
| *Vegetables and Fruits*<br>Vegetable(s) and/or fruit(s)[1] | 1/4 cup<br>total | 1/2 cup<br>total | 3/4 cup<br>total |
| *Bread and Bread Alternates*<br>bread<br>or cornbread, biscuits, rolls, muffins, etc.<br>or cooked pasta or noodle products<br>or cooked cereal grains<br>or an equivalent quantity of any combination of bread/bread alternate | 1/2 slice<br>1/2 serving<br>1/4 cup<br>1/4 cup | 1/2 slice<br>1/2 serving<br>1/4 cup<br>1/4 cup | 1 slice<br>1 serving<br>1/2 cup<br>1/2 cup |
| *Meat and Meat Alternates*<br>lean meat or poultry or fish[2]<br>or cheese<br>or eggs<br>or cooked dry beans or peas<br>or peanut butter, or other nut or seed butters<br>or peanuts or soy nuts[3]<br>or an equivalent quantity of any combination of meat/meat alternate | 1 oz.<br>1 oz.<br>1 egg<br>1/4 cup<br>2 Tbsp.<br>½ oz. = 50% | 1-1/2 oz.<br>1-1/2 oz.<br>1 egg<br>3/8 cup<br>3 Tbsp.<br>3/4 oz. = 50% | 2 oz.<br>2 oz.<br>1 egg<br>1/2 cup<br>4 Tbsp.<br>1 oz = 50% |

(See footnotes from breakfast pattern.)

[1] 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.

[2] Edible portion as served.

[3] 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[1] |
|---|---|---|---|
| *Milk*<br>milk, fluid | 1/2 cup | 1/2 cup | 1 cup |
| *Vegetables and Fruits*<br>Vegetable(s) and/or fruit(s)<br>or full strength vegetable or fruit juice<br>or an equivalent quantity or any combination of vegetable(s), fruit(s) and juice | 1/2 cup<br>1/2 cup | 1/2 cup<br>1/2 cup | 3/4 cup<br>3/4 cup |
| *Bread and Bread Alternates*<br>bread<br>or cornbread, biscuits, rolls, muffins, etc.<br>or cold dry cereal<br>or cooked cereal<br>or cooked pasta or noodle products<br>or an equivalent quantity of any combination of bread/bread alternate | 1/2 slice<br>1/2 serving<br>1/4 cup or<br>1/3 oz.<br>1/4 cup<br>1/4 cup | 1/2 slice<br>1/2 serving<br>1/3 cup or<br>1/2 oz.<br>1/4 cup<br>1/4 cup | 1 slice<br>1 serving<br>3/4 cup or<br>1 oz.<br>1/2 cup<br>1/2 cup |
| *Meat and Meat Alternates*<br>lean meat or poultry or fish<br>or cheese<br>or eggs<br>or cooked dry beans or peas<br>or peanut butter, or other nut or seed butters<br>or peanuts or soy nuts<br>or yogurt, plain, or sweetened and flavored[1]<br>or an equivalent quantity of any combination of meat/meat alternate | 1/2 oz.<br>1/2 oz.<br>1/2 egg<br>1/8 cup<br>1 Tbsp.<br>1/2 oz.<br>2 oz. or 1/4 cup | 1/2 oz.<br>1/2 oz.<br>1/2 egg<br>1/8 cup<br>1 Tbsp.<br>1/2 oz.<br>2 oz. or 1/4 cup | 1 oz.<br>1 oz.<br>1/2 egg<br>1/4 cup<br>1 Tbsp.<br>1 oz.<br>4 oz. or 1/2 cup |

(See footnotes from breakfast and lunch patterns.)

[1] 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 O°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 an emergency rule(s), lawfully promulgated and adopted.

Date: 6-21-16

Signature: Nicole Armstrong

Name of Officer: Nicole Armstrong

Title of Officer: Assistant General Counsel

DEBRA E. BATTS STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY My Commission Expires MAY 8, 2018

Subscribed and sworn to before me on: June 21, 2016

Notary Public Signature: Debra E. Batts

My commission expires on: May 8, 2018

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

6/29/2016

Date

**Department of State Use Only**

Filed with the Department of State on: 7/1/16

Effective for: 180 *days

Effective through: 12/28/16

** 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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PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Human Services |
| DIVISION: | Family Assistance |
| SUBJECT: | EBT Transactions in Tobacco Stores by Persons Receiving Cash Assistance |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Section 71-3-126 |
| EFFECTIVE DATES: | July 1, 2016 through December 28, 2016 |
| 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 the 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 $1,000.00 for the first offense to $5,000.00 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 the 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:<br><br>SECTION 1. Tennessee Code Annotated, Section 71-3-126(b)(1), is amended by adding the following language as a new subdivision:<br><br>( ) 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 emergency 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.

**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 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;

This Rule 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;

There are no legal opinions or judicial rulings that directly relate to 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;

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.Malong@tn.gov

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

N/A

(2)

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Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 07-05-16
Rule ID(s): 6216 - 6217
File Date (effective date): 7/1/16
End Effective Date: 12/28/16

# Emergency Rule Filing Form

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

| | |
|---|---|
| **Agency/Board/Commission:** | Tennessee Department of Human Services |
| **Division:** | Family Assistance Division |
| **Contact Person:** | Catrina Hewlett |
| **Address:** | Office of General Counsel<br>Citizens Plaza Building, 15th Floor<br>400 Deaderick Street<br>Nashville, Tennessee |
| **Zip:** | 37243-1403 |
| **Phone:** | 615-313-4731 |
| **Email:** | 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 EBT rules to comply with Public Chapter No. 392, HB 1339, which amends Tenn. Code Ann. § 71-3-126 relative to electronic benefit card transactions involving persons receiving cash assistance. This law is set to go into effect on July 1, 2016. The statute's 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 electronic benefit card transactions, 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.

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

| **Chapter Number** | **Chapter Title** |
|---|---|
| 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 |

# REDLINE VERSION
# CHAPTER 1240-01-47
# JULY 1, 2016

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

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

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| 1240-01-47-.05 | Reporting Addresses | 1240-01-47-.18 | Relationship Requirements |
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**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, l981 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) week s 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.*

# REDLINE VERSION
# CHAPTER 1240-01-58
# JULY 1, 2016

# 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.

(5) "Department" means the Department of Human Services.

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

(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. ["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. ["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.]

(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.

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

(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; or

(e) adult cabaret.

[(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.**

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

~~(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.

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:

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

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 an emergency rule(s), lawfully promulgated and adopted.

Date: 6/21/16

Signature: CHewlett

Name of Officer: Catrina Hewlett

Title of Officer: Assistant General Counsel
Tennessee Department of Human Services

DEBRA E. BATTS
STATE OF TENNESSEE
NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires MAY 8, 2018

Subscribed and sworn to before me on: June 21, 2016

Notary Public Signature: Debra E Batts

My commission expires on: May 8, 2018

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
Attorney General and Reporter

6/29/2016
Date

**Department of State Use Only**

Filed with the Department of State on: 7/1/16

Effective for: 180 *days

Effective through: 12/28/16

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

Tre Hargett
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Tennessee Student Assistance Corporation |
| DIVISION: | Higher Education |
| SUBJECT: | Community College Reconnect Grant |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Section 49-4-204 and Public Chapter 363 of 2015. |
| EFFECTIVE DATES: | July 27, 2016 through January 23, 2017 |
| FISCAL IMPACT: | There shall be no increase or decrease in state and local government revenues and expenditures resulting from the promulgation of these rules. The Reconnect Grant will be funded with net lottery proceeds for a total of $1.5M to be expended during the life of the grant. |
| STAFF RULE ABSTRACT: | Public Chapter 363 of 2015, as amended by HB2117, enacts the Community College Reconnect (Reconnect) Grant and revises certain provisions of the Tennessee Lottery Scholarship Program. The Reconnect Grant will provide a last-dollar scholarship to offset tuition and mandatory fees for adults who want to return to community college and complete their associate's degree. Returning adults must have previously completed a minimum of 30 credit hours and have not attended a postsecondary school for at least twelve months prior to enrollment. TSAC will distribute a one-time appropriation of $1.5 million from net lottery proceeds for the Reconnect Grant to public two-year postsecondary institutions based on each institution's percentage of the total nontraditional students enrolled at all public two-year postsecondary institutions. The institutions will then award the grants to eligible students enrolled in each respective institution on a first-come, first-served basis according to rules promulgated by TSAC beginning with the 2016-2017 academic year. As these emergency rules are proposed as new rules there are no changes in previous regulations effectuated by such rule. |

**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 for the Community College Reconnect Grant Chapter 1640-01-27, as proposed, will have 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;

Public Chapter 363 of 2015, as amended by HB2117, enacts the Community College Reconnect (Reconnect) Grant and revises certain provisions of the Tennessee Lottery Scholarship Program.

The Reconnect Grant will provide a last-dollar scholarship to offset tuition and mandatory fees for adults who want to return to community college and complete their associate's degree. Returning adults must have previously completed a minimum of 30 credit hours and have not attended a postsecondary school for at least twelve months prior to enrollment.

TSAC will distribute a one-time appropriation of $1.5 million from net lottery proceeds for the Reconnect Grant to public two-year postsecondary institutions based on each institution's percentage of the total nontraditional students enrolled at all public two-year postsecondary institutions. The institutions will then award the grants to eligible students enrolled in each respective institution on a first-come, first-served basis according to rules promulgated by TSAC beginning with the 2016-2017 academic year.

As these rules are proposed as new rules there are no changes in previous regulations effectuated by such 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;

These rules implement the Community College Reconnect Grant authorized in T.C.A. §49-4-927, as amended by HB2117 of 2016. The Reconnect Grant provides financial assistance to adults with some college but no degree to attend a community college in pursuit of an associate's degree.

T.C.A. § 49-4-204 and PC 363 authorize the Tennessee Student Assistance Corporation (TSAC) to promulgate rules to effectuate the purposes of the statute.

**(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;

TSAC, the Tennessee Higher Education Commission, Tennessee Board of Regents, and adult learners are most directly affected by these proposed rules.

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

There are no opinions of the attorney general and reporter or any judicial ruling that directly relates to these proposed rules.

**(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 shall be no increase or decrease in state and local government revenues and expenditures resulting from the promulgation of these rules. The Reconnect Grant will be funded with net lottery proceeds for a total of $1.5M to be expended during the life of the grant. |

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

| |
|---|
| Peter Abernathy, TSAC Senior Associate Executive Director and Staff Attorney, and Tim Phelps, TSAC Associate Executive Director for Grants and Scholarships. |

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

| |
|---|
| Peter Abernathy, TSAC Senior Associate Executive Director and Staff Attorney, and Tim Phelps, TSAC Associate Executive Director for Grants and Scholarships. |

**(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

| |
|---|
| Peter Abernathy<br>Senior Associate Executive Director and Staff Attorney<br>Tennessee Student Assistance Corporation<br>Suite 1510, Parkway Towers<br>404 James Robertson Parkway<br>Nashville, TN 37243<br>615.532.6065<br>Peter.Abernathy@tn.gov<br><br>Tim Phelps<br>Associate Executive Director for Grants and Scholarships<br>Tennessee Student Assistance Corporation<br>Suite 1510, Parkway Towers<br>404 James Robertson Parkway<br>Nashville, TN 37243<br>615.253.7441<br>Tim.Phelps@tn.gov |

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

| |
|---|
| There have been no requests for additional information received to-date. |

(18)

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Phone: 615-741-2650
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Sequence Number: 07-38-16
Rule ID(s): 6270
File Date (effective date): 7/27/16
End Effective Date: 1/23/17

# Emergency Rule Filing Form

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

| | |
|---|---|
| **Agency/Board/Commission:** | Tennessee Student Assistance Corporation |
| **Division:** | Higher Education |
| **Contact Person:** | Peter Abernathy |
| **Address:** | Suite 1510, Parkway Towers, 404 James Robertson Parkway, Nashville, TN |
| **Zip:** | 37243 |
| **Phone:** | 615.532.6065 |
| **Email:** | Peter.Abernathy@tn.gov |

**Rule Type:**
X Emergency Rule

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

**Statement of Necessity:**

Pursuant to T.C.A. 4-5-208(a)(5) the Tennessee Student Assistance Corporation (TSAC) seeks approval of emergency rules for the Community College Reconnect Grant. Public Chapter 363 of 2015, as amended by HB2117, enacts the Community College Reconnect (Reconnect) Grant and revises certain provisions of the Tennessee Lottery Scholarship Program.

The Reconnect Grant will provide a last-dollar scholarship to offset tuition and mandatory fees for adults who want to return to community college and complete their associate's degree. Returning adults must have previously completed a minimum of 30 credit hours and have not attended a postsecondary school for at least twelve months prior to enrollment.

TSAC will distribute a one-time appropriation of $1.5 million from net lottery proceeds for the Reconnect Grant to public two-year postsecondary institutions based on each institution's percentage of the total nontraditional students enrolled at all public two-year postsecondary institutions. The institutions will then award the grants to eligible students enrolled in each respective institution on a first-come, first-served basis according to rules promulgated by TSAC beginning with the 2016-2017 academic year.

These emergency rules will provide guidance to the community college personnel and other key stakeholders working with adults who are returning to college to complete their degree.

| Chapter Number | Chapter Title |
|---|---|
| 1640-01-27 | Community College Reconnect Grant |
| **Rule Number** | **Rule Title** |
| 1640-01-27-.01 | Definitions |
| 1640-01-27-.02 | Scholarship Award Amounts |
| 1640-01-27-.03 | Distribution of Funds |
| 1640-01-27-.04 | Application Process |
| 1640-01-27-.05 | Eligibility |
| 1640-01-27-.06 | Terminating Events |
| 1640-01-27-.07 | Personal or Medical Leave of Absence |
| 1640-01-27-.08 | Reporting Requirements |
| 1640-01-27-.09 | Award Made In Error |
| 1640-01-27-.10 | Refund Policy |
| 1640-01-27-.11 | Transfer Students |
| 1640-01-27-.12 | Appeal and Exception Process |

New Rules

Chapter 1640-01-27
Community College Reconnect Grant

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1640-01-27-.01 Definitions
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1640-01-27-.08 Reporting Requirements
1640-01-27-.09 Award Made In Error
1640-01-27-.10 Refund Policy
1640-01-27-.11 Transfer Students
1640-01-27-.12 Appeal and Exception Process


1640-01-27-.01 Definitions.

(1) Board of Regents: The board of regents of the state university and community college system of Tennessee as created under T.C.A. § 49-8-101.

(2) Continuous Enrollment: The term is defined in T.C.A. § 49-4-902.

(3) Cumulative Grade Point Average: The grade point average as calculated by the eligible postsecondary institution.

(4) Degree: A two-year associate degree conferred on students by an eligible postsecondary institution.

(5) Eligible Postsecondary Institution: An eligible public two-year postsecondary institution operated by the board of regents of the state university and community college system.

(6) FAFSA: The term is defined in T.C.A. § 49-4-902.

(7) Gift Aid: The term is defined in T.C.A. § 49-4-708.

(8) Independent Student: A student who is classified as independent as determined by the FAFSA.

(9) Satisfactory Academic Progress: Progress in a course of study in accordance with the standards and practices used for Title IV programs by the eligible postsecondary institution at which the student is currently enrolled.

(10) Semester: The term is defined in T.C.A. § 49-4-902.

(11) Semester Hour: The term is defined in TCA 49-4-902.

(12) Tennessee Resident: A resident of Tennessee as defined by regulations promulgated by the Tennessee Board of Regents.

(13) Terminating Event: The occurrence of an event described in T.C.A. § 49-4-927(f).

(14) Title IV: The term is defined in T.C.A. § 49-4-902.

(15) TSAC: Tennessee Student Assistance Corporation.

(16) Tuition and Mandatory Fees: Tuition and mandatory fees required for the enrollment or attendance of students at eligible postsecondary institutions that are charged to all students, and shall not include fees charged for the Regents Online Degree Program, online courses, specific programs of study, books, or supplies even if such fees are considered necessary for enrollment.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-708, 49-4-902, and 49-4-927.

1640-01-27-.02 Scholarship Award Amounts.

(1) The Community College Reconnect Grant is intended to provide financial assistance to offset tuition and mandatory fees associated with pursuing an associate degree at an eligible postsecondary institution after all other gift aid has been credited to tuition and mandatory fees.

(2) Award amounts for the program shall be determined in accordance with T.C.A. § 49-4-927 and shall be set in the General Appropriations Act.

(3) All tuition discounts and waivers for which a student qualifies shall first be deducted from the student's tuition and mandatory fees before gift aid is credited.

(4) All gift aid from sources other than the Community College Reconnect Grant shall be credited first to tuition and mandatory fees to reduce the student's Community College Reconnect Grant award. In any given semester, if all other gift aid exceeds tuition and mandatory fees then the student shall not be eligible for the Community College Reconnect Grant in that semester.

(5) The receipt of a Community College Reconnect Grant is contingent upon admission to and enrollment in an eligible postsecondary institution. Qualifying for the Community College Reconnect Grant does not guarantee admission to an eligible postsecondary institution.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-927.

1640-01-27-.03 Distribution of Funds.

(1) Funds shall be distributed to each eligible postsecondary institution in the form of a block grant. The amount received by the institution will be determined by TSAC and will be calculated using the institution's number of enrolled independent students as a percentage of the total independent student population for all eligible postsecondary institutions.

(2) Each eligible postsecondary institution shall make awards to eligible applicants on a first-come, first-served basis, determined by the institution. For purposes of the Community College Reconnect Grant, an applicant is eligible for an award if all eligibility requirements of T.C.A. § 49-4-927 have been met and, if selected, completed the verification process.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-927.

1640-01-27-.04 Application Process.

(1) Students participating in the Community College Reconnect Grant shall file a FAFSA, or renewal FAFSA, in each year of program participation. The FAFSA must be submitted by mail or electronically as directed in the FAFSA instructions. Students shall file the FAFSA or renewal FAFSA according to the following deadlines:

(a) No later than September 1 for fall enrollment, or

(b) No later than February 1 for spring and summer enrollment.

(2) The FAFSA shall serve as the only application for the Community College Reconnect Grant program. No additional application shall be required.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-927.

1640-01-27-.05 Eligibility.

(1) To be eligible to receive a Community College Reconnect Grant a student shall meet the requirements of T.C.A. § 49-4-927(b).

(a) A minimum of thirty (30) hours earned prior to enrollment as a Reconnect student shall be applicable to the associate degree the student is pursuing.

(2) To continue to be eligible to receive a Community College Reconnect Grant a student shall meet the requirements of T.C.A. § 49-4-927(d).

(a) A Reconnect student enrolled in the minimum number of hours required by the Community College Reconnect Grant in any semester shall also maintain attendance in the hours enrolled.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-927.

1640-01-27-.06 Terminating Events.

(1) A student shall receive the Community College Reconnect Grant until reaching a terminating event as described in T.C.A. § 49-4-927(f).

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-927.

1640-01-27-.07 Personal or Medical Leave of Absence.

(1) A student may be granted a medical or personal leave of absence from continuous enrollment at an eligible postsecondary institution as long as all other applicable eligibility criteria are met. Allowable medical or personal reasons may include illness of the student; illness or death of an immediate family member; extreme financial hardship of the student or student's immediate family; fulfillment of a religious commitment encouraged of members of that faith; fulfillment of required military service; or other extraordinary circumstances beyond the student's control where attendance by the student creates a substantial hardship. In the event an institution denies a student's request for a medical or personal leave of absence, the student may appeal the decision in accordance with these rules.

(2) A student granted a medical or personal leave of absence who resumes attendance at an eligible postsecondary institution may retain the Community College Reconnect Grant if funding remains available. The institution will make a final decision of eligibility and funding availability.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-927.

1640-01-27-.08 Reporting Requirements.

(1) The eligible postsecondary institution shall report the following data elements for each recipient to TSAC at the end of each semester:

(a) First name,

(b) Last name,

(c) Social Security Number,

(d) Amount of Community College Reconnect Grant received,

(e) Enrollment Status (full-time or part-time),

(f) Number of hours enrolled at census date,

(g) Number of hours at completion of semester,

(h) Grade point average,

(i) Satisfactory academic progress – Yes / No,

(j) Ineligible reason (if student loses award).

(2) The eligible postsecondary institution shall report other data elements as requested by TSAC for evaluation and analysis of the program.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, and 49-4-927.

1640-01-27-.09 Award Made in Error.

(1) Repayment from the student shall not be required if TSAC determines that the error was through no fault of the student.

(2) Repayment from the student shall be required if TSAC determines that fraud was committed or the error was due to the fault of the student. When repayment is required, the student may not receive additional student aid from TSAC until repayment is made.

(3) Repayment from the eligible postsecondary institution will be required if TSAC determines that the error was due to the fault of the institution.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-927.

1640-01-27-.10 Refund Policy.

(1) If a recipient of the Community College Reconnect Grant fails to complete a semester for any reason, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to the student. The eligible postsecondary institution shall notify TSAC of the refund. The eligible postsecondary institution shall also be responsible for obtaining repayment from the student. The student shall be ineligible for student aid from TSAC until the refund is paid. Funds returned through the refund policy shall be used to make additional awards to students through the Community College Reconnect Grant.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-924, and 49-4-927.

1640-01-27-.11 Transfer Students.

(1) A student who meets all academic and non-academic requirements of the Community College Reconnect Grant may transfer from one eligible postsecondary institution to another eligible postsecondary institution and maintain the scholarship, provided:

(a) The student is able to complete the diploma or associate degree in the amount of time remaining before reaching a terminating event as outlined in T.C.A § 49-4-927(f), and

(b) The eligible postsecondary institution receiving the transfer student has sufficient program funding available to fund the remaining hours necessary for the student to complete the diploma or associate degree.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-927.

1640-01-27-.12 Appeal and Exception Process.

(1) Each eligible postsecondary institution shall use their existing Institutional Review Panel (IRP) for purposes of reviewing and rendering decisions regarding appeals for the Community College Reconnect Grant. The IRP shall use the same procedures and timelines as those that currently exist for the review of Tennessee Education Lottery Scholarship (TELS) appeals as outlined in Tenn. Comp. R. & Reg. 1640-01-19.

(2) TSAC shall use the existing TELS Appeals Panel to consider appeals and render decisions for those students who appeal a decision made by the IRP and for appeals made directly to TSAC. The same guidelines shall exist for appeals of the Community College Reconnect Grant as those that are currently in place for TELS as outlined in Tenn. Comp. R & Reg.1640-01-19.

Authority: T.C.A. §§ 49-4-201, 49-4-204, 49-4-924, and 49-4-927.

The vote by the Agency on these rules was as follows:

| Board Member | Aye | No | Abstain | Absent |
|---|---|---|---|---|
| Governor Haslam, by Mr. Will Cromer | X | | | |
| Dr. Russ Deaton | X | | | |
| Dr. Claude Pressnell | X | | | |
| Mr. David H. Lillard, Jr. | X | | | |
| Comptroller Justin P. Wilson by Ms. Shiri Anderson | X | | | |
| Commissioner Larry Martin, by Mr. Greg Turner | X | | | |
| Commissioner Candice McQueen, by Dr. Danielle Mazera | | | | X |
| Chancellor David Gregory, by Mr. Dale Sims | X | | | |
| Dr. Joe Dipietro, by Dr. India Lane | | | X | |
| Mr. Randy Lowry, by Dr. John Smarrelli | X | | | |
| Dr. J. Gary Adcox | | | | X |
| Mr. Richard Smelser | X | | | |
| Ms. Keri McInnis | | | | X |
| Dr. L. LaSimba Gray, Jr. | X | | | |
| Mr. Tom Hughes | X | | | |
| Ms. Courtney Williams | | | | X |

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

Date: 5/25/16

Signature:

Name of Officer: Dr. Russ Deaton

Title of Officer: Interim Executive Director
Tennessee Student Assistance Corp.

CORSINA DICKSON-WILEY
NOTARY PUBLIC
STATE OF TENNESSEE
DAVIDSON COUNTY
Comm. Exp. 08-23-2016

Subscribed and sworn to before me on: 05-25-2016

Notary Public Signature:

My commission expires on: 08-23-16

---

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

Herbert H. Slatery III
Attorney General and Reporter

7/18/2016
Date

**Department of State Use Only**

Filed with the Department of State on: 7/27/16

Effective for: 180 *days

Effective through: 1/23/17

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

Tre Hargett
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Health Services and Development Agency |
| DIVISION: | N/A |
| SUBJECT: | Certificate of Need Fee Increase |
| STATUTORY AUTHORITY: | Tennessee Public Acts Chapter 1043; Tennessee Code Annotated Sections 68-11-1605, 68-11-1607, and 68-11-1610. |
| EFFECTIVE DATES: | July 1, 2016, through December 28, 2016 |
| FISCAL IMPACT: | Tennessee Public Acts Chapter 1043 eliminates approximately half (1/2) of the agency's revenue, while requiring the agency to adjust fees to become self-sufficient. This requires the agency to look at budget cuts and adjust fees to cover the rest of its $1.2 million ($1,200,000) budget. |
| STAFF RULE ABSTRACT: | The emergency rule raises the filing fee for a certificate of need application from two dollars and twenty-five cents ($2.25) per one thousand dollars ($1,000) of the estimated capital expenditure involved to five dollars and seventy-five cents ($5.75) per one thousand dollars ($1,000) of the estimated capital expenditure involved; the minimum filing fee from three thousand dollars ($3,000) to fifteen thousand dollars ($15,000); and the maximum filing fee from forty-five thousand dollars ($45,000) to ninety-five thousand dollars ($95,000). It also clarifies that the agency may recoup certain costs in contested cases that are voluntarily dismissed. |

**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 should not have a projected impact upon 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 rule raises the filing fee for a certificate of need application from $2.25 per $1,000 of the estimated capital expenditure involved to $5.75 per $1,000 of the estimated capital expenditure involved, the minimum filing fee from $3,000 to $15,000, and the maximum filing fee from $45,000 to $95,000. It also clarifies that the agency may recoup certain costs in contested cases that are voluntarily dismissed.

**(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;

Tenn. Pub. Acts Ch. 1043; T.C.A. §§ 68—11—1605; 68—11—1607, 68—11—1610

**(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;

CON applicants and litigants

**(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;

N/A

**(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;

Tenn. Pub. Acts Ch. 1043 eliminates approximately half of the agency's revenue, while requiring the agency to adjust fees to become self-sufficient. This requires the agency to look at budget cuts and adjust fees to cover the rest of its $1.2 million budget.

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

Melanie Hill, Executive Director, and Jim Christoffersen, General Counsel

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

Melanie Hill, Executive Director, and Jim Christoffersen, 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

Andrew Jackson Bldg., 9th Fl., 502 Deaderick St., Nashville, TN 37243
(615) 741-2364
Melanie.hill@tn.gov
jim.christoffersen@tn.gov

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

(3)

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Sequence Number: 07-06-16
Rule ID(s): 6218-6219
File Date (effective date): 7/1/16
End Effective Date: 12/28/16

# Emergency Rule Filing Form

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

| | |
|---|---|
| **Agency/Board/Commission:** | Health Services and Development Agency |
| **Division:** | N/A |
| **Contact Person:** | Jim Christoffersen, General Counsel |
| **Address:** | Andrew Jackson Bldg., 9th Fl., 502 Deaderick St., Nashville, TN |
| **Zip:** | 37243 |
| **Phone:** | (615) 741-2364 |
| **Email:** | jim.christoffersen@tn.gov |

**Rule Type:**
x Emergency Rule

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

**Statement of Necessity:**

Pursuant to T.C.A. § 4-5-208, the Health Services and Development Agency (Agency) is authorized to promulgate emergency rules in the event that the rules are required by an enactment of the general assembly within a prescribed period of time that precludes utilization of the rulemaking procedures described elsewhere in T.C.A. Title 4, Chapter 5, for the promulgation of rules.

Chapter 1043 of the Public Acts of 2016 ("Act") amended the Tennessee Health Services and Planning Act of 2002, T.C.A. § 68-11-1601, *et seq.* (CON statute), which amendments included the elimination of certain activities from the state's certificate of need (CON) requirement and the significant portion of fee revenue generated by those applications annually. The Act requires the agency to develop quality standards and enforce annual reporting requirements on such standards for applications approved after July 1, 2016, while providing no funding for such activities. The Act requires the agency to be fiscally self-sufficient, which means no longer receiving monies from the General Fund above fees generated by CON applications. The Act requires the agency to prescribe fees in an amount that provides for the cost of administering the implementation and enforcement of the CON statute by the agency, and adjust fees as necessary to provide that the account is fiscally self-sufficient. The agency will revisit the fees in the future, and lower them if more revenue is generated than is necessary to provide that the account is fiscally self-sufficient.

David Thurman and other representatives from the Department of Finance and Administration have confirmed that the agency must look at cost-cutting measures and raise fees to provide for the cost of administering the implementation and enforcement of the CON program by the agency, and this must be done expeditiously to generate sufficient revenue to fund the agency's FY 16/17 budget in compliance with the Act. Cost-cutting measures are being undertaken, and should save approximately $160,000 per FY. However, this leaves approximately $1.14 million to be raised from an anticipated 36 or less applications per FY, approximately half of which are anticipated to be "minimum fee" applications. Basic math dictates that fees must escalate significantly to comply with the requirements of the Act.

The Act shall take effect on July 1, 2016, which does not provide adequate time for the rulemaking procedures

described elsewhere in T.C.A. Title 4, Chapter 5, for the promulgation of rules. Due to the length of time necessary to complete the rulemaking process to promulgate rules adjusting the agency's fees, these emergency rules are required in order for the agency to comply with the enactment of the legislature and to ensure that the agency has the necessary resources to implement the Act and the rest of the Tennessee Health Services and Planning Act of 2002. The agency will promptly conduct a rulemaking hearing to consider comments on the adoption of these as permanent rules.

**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)

| **Chapter Number** | **Chapter Title** |
|---|---|
| 0720-10 | Certificate of Need Program – Scope and Procedures |
| **Rule Number** | **Rule Title** |
| 0720—10—.03 | Standard Procedures for Certificate of Need |
| | |
| | |
| | |
| | |

| **Chapter Number** | **Chapter Title** |
|---|---|
| 0720-13 | Rules of Procedure for Hearing Contested Cases |
| **Rule Number** | **Rule Title** |
| 0720—13—.02 | Contested Cases Before Administrative Judges Sitting Alone |
| | |
| | |
| | |
| | |

**RULES**
**OF**
**TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY**

**CHAPTER 0720-10**
**CERTIFICATE OF NEED PROGRAM – SCOPE AND PROCEDURES**

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0720—10—.02 Activities Requiring Notification — Miscellaneous Provisions
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0720—10—.06 Expiration, Revocation, and Modification of Issued Certificates


**0720—10—.03 STANDARD PROCEDURES FOR CERTIFICATE OF NEED.**

(5) Examination Filing Fee.

(a) The amount of the initial fee shall be equal to $5.75 ~~2.25~~ per $1,000 of the estimated capital expenditure involved, but in no case shall this fee be less than $15,000 ~~3,000~~ nor more than $95,000 ~~45,000~~.

(b) Any unpaid balance of litigation costs previously assessed against the applicant or any related entity of the applicant by the Tennessee Health Facilities Commission or the Tennessee Health Services and Development Agency may be offset against any filing fees paid. An application will not be deemed complete until the full filing fee, as well as such off set amounts, are paid in full.

(c) A final fee will be determined upon The Agency's receipt of the final project report. The amount of the final fee shall be the difference between the initial fee and the total fee based on actual final project costs, as such fee is calculated based on $5.75 ~~2.25~~ per $1,000 of project costs, but in no case shall the total fee be less than $15,000 ~~3,000~~ nor more than $95,000 ~~45,000~~.

**RULES**
**OF**
**TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY**

**CHAPTER 0720-13**
**RULES OF PROCEDURE FOR HEARING CONTESTED CASES**

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**0720—13—.02 CONTESTED CASES BEFORE ADMINISTRATIVE JUDGES SITTING ALONE.**

(2) In all cases, whether heard by an Administrative Judge sitting alone, or by the full Agency, the petitioner and other parties with the exception of The Agency shall bear the cost for all court reporters and transcriptions, and charges billed to the Agency for the Administrative Judge's work/time; in a contested case where the petition is dismissed, whether voluntarily or

involuntarily, the petitioning party or parties shall be considered a "losing party" under TCA 68-11-1610.. The original transcript and one copy of the transcript for each member of The Agency shall be provided to The Agency by the other parties, if the case is to be reviewed by the full Agency. ~~Other costs of the proceeding, including the Administrative Judge's costs shall be assessed by The Agency in accordance with T.C.A §§ 68--11--l609 and 68--11--l610.~~

* 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) |
|---|---|---|---|---|---|
| D. Lynn Johnson | x | | | | |
| James L. Wright | x | | | | |
| Robert S. Doolittle | | | | x | |
| Corey Ridgway | x | | | | |
| Joe Grandy | x | | | | |
| Thom Mills | x | | | | |
| Charlotte C. Burns | x | | | | |
| Martin D. Fleming | x | | | | |
| Keith Gaither | x | | | | |
| Lisa Jordan | x | | | | |
| Jaclyn Harding | | | | x | |

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

SUE B. HUNT
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF DAVIDSON

Date: 6/29/16

Signature: Melanie M. Hill

Name of Officer: Melanie M. Hill

Title of Officer: Executive Director

Subscribed and sworn to before me on: June 29, 2016

Notary Public Signature: Sue B. Hunt

My commission expires on: My Commission Expires May 8, 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

July 1 2016
Date

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PUBLICATIONS

**Department of State Use Only**

Filed with the Department of State on: 7/1/16

Effective for: 180 *days

Effective through: 12/28/16

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

Tre Hargett
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Board of Licensing Health Care Facilities |
| SUBJECT: | Influenza Vaccinations |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Section 68-11-202 |
| EFFECTIVE DATES: | October 16, 2016 through June 30, 2017 |
| FISCAL IMPACT: | Minimal |
| STAFF RULE ABSTRACT: | The amendments either revise old language or add new language pertaining to the endorsement of influenza vaccinations for all health care workers and staff for the various rule chapters falling under Health Care Facilities. These rules amended the existing language in 1200-08-01[Standards for Hospitals] and make this uniform throughout the various rule chapters. |

**Public Hearing Comments**

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

There were no comments, either written or oral.

**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 rule amendments 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 amendments establish clarity, conciseness, and lack of ambiguity by providing uniformity in regard to flu vaccination policies in facilities and organizations that have direct patient access.

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

Other than an internal evaluation requirement, these rule amendments do not create any new compliance or reporting requirements.

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

Other than an internal evaluation requirement, these rule amendments do not create any new compliance or reporting requirements.

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

These rule amendments 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 rule amendments 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 rule amendments 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:** Board for Licensing Health Care Facilities

**Rulemaking hearing date:** 01/14/2016

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 would directly affect all healthcare providers working in the various health care facilities that provide direct patient care. Currently, there are eight hundred and twenty one (821) such health care facilities in Tennessee.

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 require reporting and recordkeeping to document and maintain forms from facility licensees, but administrative costs should remain the same, or only slightly, increase as a new position should not be required to maintain such inoculation records.

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

   Both small businesses and consumers should be positively impacted by these rules. Implementation of the rules should lead to a reduction in the rate and spread of influenza within health care facilities.

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:**

   These rules allow an individual to decline an influenza vaccination; thus, there are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose or objectives of these rules.

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

   Federal: The CDC and the Advisory Committee on Immunization Practices (ACIP), recommend that all U.S. health care personnel get vaccinated annually against influenza (i.e. Interim Guidance for Influenza Outbreak Management in Long-Term Care Facilities).

   State: The CDC has documented the growing trend in requiring health care facilities to encourage workers to get vaccinated. Currently, three states ensure that workers are vaccinated and ten states offer vaccinations to workers.

   For example, in Alabama, the Department of Public Health, the Medical Association of the State of Alabama and the Alabama Hospital Association have issued a joint statement emphasizing the importance of health care personnel receiving influenza vaccinations.

   In the District of Columbia, hospital workers and all other persons who routinely come in contact with patients or patient areas are required to be vaccinated against influenza.

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 for exemptions regarding 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;

The amendments either revise old language or add new language pertaining to the endorsement of influenza vaccinations for all health care workers and staff for the various rule chapters falling under Health Care Facilities. These rules slightly amended the existing language in 1200-08-01[Standards for Hospitals] and make this uniform throughout the various rule chapters.

**(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;

These rules would directly affect all healthcare providers working in the various health care facilities that provide direct patient care. Currently, there are eight hundred and twenty one (821) such health care facilities in Tennessee.

**(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;

Kyonzté Hughes-Toombs, Office of 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;

Kyonzté Hughes-Toombs, Office of 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

Office of General Counsel, Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Kyonzte.Hughes-Toombs@tn.gov.

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

None.

(13)

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**For Department of State Use Only**

Sequence Number: 07-24-16
Rule ID(s): 6249-6265
File Date: 7/18/16
Effective Date: 10/16/16

# 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:** | Board for Licensing Health Care Facilities |
| **Division:** | |
| **Contact Person:** | Kyonzté Hughes-Toombs |
| **Address:** | 665 Mainstream Drive, Nashville, Tennessee |
| **Zip:** | 37243 |
| **Phone:** | (615) 741-1611 |
| **Email:** | Kyonzte.Hughes-Toombs@tn.gov |

**Revision Type (check all that apply):**
X 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** |
|---|---|
| 1200-08-01 | Standards for Hospitals |
| **Rule Number** | **Rule Title** |
| 1200-08-01-.06 | Basic Hospital Functions |

| **Chapter Number** | **Chapter Title** |
|---|---|
| 1200-08-02 | Standards for Prescribed Child Care Centers |
| **Rule Number** | **Rule Title** |
| 1200-08-02-.06 | Basic Services |

| **Chapter Number** | **Chapter Title** |
|---|---|
| 1200-08-06 | Standards for Nursing Homes |
| **Rule Number** | **Rule Title** |
| 1200-08-06-.06 | Basic Services |

| **Chapter Number** | **Chapter Title** |
|---|---|
| 1200-08-10 | Standards for Ambulatory Surgical Treatment Centers |
| **Rule Number** | **Rule Title** |
| 1200-08-10-.06 | Basic Services |

| Chapter Number | Chapter Title |
|---|---|
| 1200-08-11 | Standards for Homes for the Aged |
| **Rule Number** | **Rule Title** |
| 1200-08-11-.04 | Administration |

| Chapter Number | Chapter Title |
|---|---|
| 1200-08-15 | Standards for Residential Hospices |
| **Rule Number** | **Rule Title** |
| 1200-08-15-.06 | Basic Hospice Functions |

| Chapter Number | Chapter Title |
|---|---|
| 1200-08-24 | Standards for Birthing Centers |
| **Rule Number** | **Rule Title** |
| 1200-08-24-.06 | Basic Birthing Center Functions |

| Chapter Number | Chapter Title |
|---|---|
| 1200-08-25 | Standards for Assisted-Care Living Facilities |
| **Rule Number** | **Rule Title** |
| 1200-08-25-.06 | Administration |

| Chapter Number | Chapter Title |
|---|---|
| 1200-08-26 | Standards for Home Care Organizations Providing Home Health Services |
| **Rule Number** | **Rule Title** |
| 1200-08-26-.06 | Basic Agency Functions |

| Chapter Number | Chapter Title |
|---|---|
| 1200-08-27 | Standards for Home Care Organizations Providing Hospice Services |
| **Rule Number** | **Rule Title** |
| 1200-08-27-.06 | Basic Agency Functions |

| Chapter Number | Chapter Title |
|---|---|
| 1200-08-28 | Standards for HIV Supportive Living Centers |
| **Rule Number** | **Rule Title** |
| 1200-08-28-.06 | Basic HIV Supportive Living Facility Functions |

| Chapter Number | Chapter Title |
|---|---|
| 1200-08-29 | Standards for Home Care Organizations Providing Home Medical Equipment |
| **Rule Number** | **Rule Title** |
| 1200-08-29-.06 | Basic Agency Functions |

| Chapter Number | Chapter Title |
|---|---|
| 1200-08-30 | Standards for Pediatric Emergency Care Facilities |
| **Rule Number** | **Rule Title** |
| 1200-08-30-.05 | Basic Functions |

| Chapter Number | Chapter Title |
|---|---|
| 1200-08-32 | Standards for End Stage Renal Dialysis Clinics |
| **Rule Number** | **Rule Title** |
| 1200-08-32-.04 | Administration |

| Chapter Number | Chapter Title |
|---|---|
| 1200-08-34 | Standards for Home Care Organizations Providing Professional Support Services |
| **Rule Number** | **Rule Title** |
| 1200-08-34-.06 | Basic Agency Functions |

| Chapter Number | Chapter Title |
|---|---|
| 1200-08-35 | Standards for Outpatient Diagnostic Centers |
| **Rule Number** | **Rule Title** |

| | |
|---|---|
| 1200-08-35-.06 | Basic Services |

| **Chapter Number** | **Chapter Title** |
|---|---|
| 1200-08-36 | Standards for Adult Care Homes-Level 2 |
| **Rule Number** | **Rule Title** |
| 1200-08-36-.05 | Administration |

(Rule 1200-08-01-.05, continued)

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, and 68-11-255.* ***Administrative History:*** *Original rule filed March 18, 2000; effective May 30, 2000. Amendment filed April 17, 2000; effective July 1, 2000. Amendment filed September 17, 2002; effective December 1, 2002.*

**1200-08-01-.06 BASIC HOSPITAL FUNCTIONS.**

(1) Performance Improvement.

(a) The hospital must ensure that there is an effective, hospital-wide performance improvement program to evaluate and continually improve patient care and performance of the organization.

(b) The performance improvement program must be ongoing and have a written plan of implementation which assures that:

1. All organized services including services furnished by a contractor, are evaluated (all departments including engineering, housekeeping, and accounting need to show evidence of process improvement.);

2. Nosocomial infections and medication therapy are evaluated;

3. All medical and surgical services performed in the hospital are evaluated as to the appropriateness of diagnosis and treatment;

4. The competency of all staff is evaluated at least annually; and

5. The facility shall develop and implement a system for measuring improvements in adherence to the hand hygiene program, central venous catheter insertion process, and influenza vaccination program.

(c) The hospital must have an ongoing plan, consistent with available community and hospital resources, to provide or make available social work, psychological, and educational services to meet the medically-related needs of its patients which assures that:

1. Discharge planning is initiated in a timely manner; and

2. Patients, along with their necessary medical information, are transferred or referred to appropriate facilities, agencies or outpatient services, as needed, for follow-up or ancillary care.

(d) The hospital must develop and implement plans for improvement to address deficiencies identified by the performance improvement program and must document the outcome of the remedial action.

(e) The hospital must demonstrate that the appropriate governing board or board committee is regularly apprised of process improvement activities, including identified deficiencies and the outcomes of remedial action.

(2) Medical Staff.

(a) The hospital shall have an organized medical staff operating under bylaws adopted by the medical staff and approved by the governing body, to facilitate the medical staff's responsibility in working toward improvement of the quality of patient care.

(Rule 1200-08-01-.06, continued)

(b) The hospital and medical staff bylaws shall contain procedures, governing decisions or recommendations of appropriate authorities concerning the granting, revocation, suspension, and renewal of medical staff appointments, reappointments, and/or delineation of privileges. At a minimum, such procedures shall include the following elements: A procedure for appeal and hearing by the governing body or other designated committee if the applicant or medical staff feels the decision is unfair or wrong.

(c) The governing body shall be responsible for appointing medical staff and for delineating privileges. Criteria for appointment and delineation of privileges shall be clearly defined and included in the medical staff bylaws, and related to standards of patient care, patient welfare, the objectives of the institution or the character or competency of the individual practitioner. Independent patient admission privileges shall only be granted to currently licensed doctors of medicine, osteopathy, podiatry, or dentistry.

(d) The medical staff must adopt and enforce bylaws to effectively carry out its responsibilities and the bylaws must:

1. Be approved by the governing body;

2. Include a statement of the duties and privileges of each category of medical staff;

3. Describe the organization of the medical staff;

4. Describe the qualifications to be met by a candidate in order for the medical staff to recommend that the candidate be appointed by the governing body;

5. Include criteria for determining the privileges to be granted to individual practitioners and a procedure for applying the criteria to individuals requesting privileges; and

6. Include provisions for medical staff appointments granting active, associate, or courtesy medical staff membership, and/or provisions for the granting of clinical privileges. Such individuals must practice within the scope of their current Tennessee license, and the overall care of each patient must be under the supervision of a physician member of the medical staff.

(e) To be eligible for staff membership, an applicant must be a graduate of an approved program of medicine, dentistry, osteopathy, podiatry, optometry, psychology, or nurse-midwifery, currently licensed in Tennessee, competent in his or her respective field, and worthy in character and in matters of professional ethics.

(f) The medical staff shall be composed of currently licensed doctors of medicine, osteopathy, dentistry, and podiatry and may include optometrists, psychologists, and nurse-midwives. The medical staff must:

1. Periodically conduct appraisals of its members;

2. Examine the credentials of candidates for medical staff membership and make recommendations to the hospital on the appointment of the candidates; and

3. Participate actively in the hospital's process improvement plan implementation for the improvement of patient care delivery plans.

(g) The medical staff must be structured in a manner approved by the hospital or its governing body, well organized, and accountable to the hospital for the quality of the

(Rule 1200-08-01-.06, continued)

medical care provided to the patient. Disciplinary action involving medical staff taken by the hospital shall be reported to the appropriate licensing board or professional society.

(h) If the medical staff has an executive committee, a majority of the members of the committee must be doctors of medicine or osteopathy.

(i) The responsibility for organization and conduct of the medical staff must be assigned only to an individual doctor of medicine or osteopathy, or a doctor of dental surgery or dental medicine.

(j) All physicians and non-employee medical personnel working in the hospital must adhere to the policies and procedures of the hospital. The chief executive officer or his or her designee shall provide for the adequate supervision and evaluation of the clinical activities of non-employee medical personnel which occur within the responsibility of the medical staff service.

(3) Infection Control.

(a) The hospital must provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There must be an active performance improvement program for the prevention, control, and investigation of infections and communicable diseases.

(b) The chief executive officer or administrator shall assure that an infection control committee including members of the medical staff, nursing staff and administrative staff develop guidelines and techniques for the prevention, surveillance, control and reporting of hospital infections. Duties of the committee shall include the establishment of:

1. Written infection control policies;

2. Techniques and systems for identifying, reporting, investigating and controlling infections in the hospital;

3. Written procedures governing the use of aseptic techniques and procedures in all areas of the hospital, including adoption of a standardized central venous catheter insertion process which shall contain these key components:

(i) Hand hygiene (as defined in 1200-08-01-.06(3)(g));

(ii) Maximal barrier precautions to include the use of sterile gowns, gloves, mask and hat, and large drape on patient;

(iii) Chlorhexidine skin antisepsis;

(iv) Optimal site selection;

(v) Daily review of line necessity; and

(vi) Development and utilization of a procedure checklist;

4. Written procedures concerning food handling, laundry practices, disposal of environmental and patient wastes, traffic control and visiting rules in high risk areas, sources of air pollution, and routine culturing of autoclaves and sterilizers;

5. A log of incidents related to infectious and communicable diseases;

(Rule 1200-08-01-.06, continued)

6. A method of control used in relation to the sterilization of supplies and water, and a written policy addressing reprocessing of sterile supplies;

7. Formal provisions to educate and orient all appropriate personnel in the practice of aseptic techniques such as handwashing and scrubbing practices, proper grooming, masking and dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of patient care equipment and supplies; and

8. Continuing education provided for all hospital personnel on the cause, effect, transmission, prevention, and elimination of infections, as evidenced by front line employees verbalizing understanding of basic techniques.

(c) The administrative staff shall ensure the hospital prepares, and has readily available on site, an Infection Control Risk Assessment for any renovation or construction within existing hospitals. Components of the Infection Control Risk Assessment may include, but are not limited to, identification of the area to be renovated or constructed, patient risk groups that will potentially be affected, precautions to be implemented, utility services subject to outages, risk of water damage, containment measures, work hours for project, management of traffic flow, housekeeping, barriers, debris removal, plans for air sampling during or following project, anticipated noise or vibration generated during project.

(d) The chief executive officer, the medical staff and the chief nursing officer must ensure that the hospitalwide performance improvement program and training programs address problems identified by the infection control committee and must be responsible for the implementation of successful corrective action plans in affected problem areas.

(e) The facility shall develop policies and procedures for testing a patient's blood for the presence of the hepatitis B virus and the HIV (AIDS) virus in the event that an employee of the facility, a student studying at the facility, or other health care provider rendering services at the facility is exposed to a patient's blood or other body fluid. The testing shall be performed at no charge to the patient, and the test results shall be confidential.

~~(f) The facility shall have an annual influenza vaccination program which shall include at least:~~

~~1. The offer of influenza vaccination to all staff and independent practitioners or accept documented evidence of vaccination from another vaccine source or facility;~~

~~2. A signed declination statement on record from all who refuse the influenza vaccination for other than medical contraindications;~~

~~3. Education of all direct care personnel about the following:~~

~~(i) Flu vaccination,~~

~~(ii) Non-vaccine control measures, and~~

~~(iii) The diagnosis, transmission, and potential impact of influenza;~~

~~4. An annual evaluation of the influenza vaccination program and reasons for non-participation;~~

(Rule 1200-08-01-.06, continued)

~~5. The requirements to complete vaccinations or declination statements are suspended by the Medical Director in the event of a vaccine shortage.~~

(f) A Hospital shall have an annual influenza vaccination program which shall include at least: — Formatted: Indent: Left: 0.75", Hanging: 0.38"

1. The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The Hospital will encourage all staff and independent practitioners to obtain an influenza vaccination; — Formatted: Indent: Left: 1.13"

2. A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at http://tennessee.gov/health/topic/hcf-provider); — Formatted: Indent: Left: 1.13"

3. Education of all employees about the following: — Formatted: Indent: Left: 1.13"

(i) Flu vaccination; — Formatted: Indent: Hanging: 0.38"

(ii) Non-vaccine control measures; and — Formatted: Indent: Hanging: 0.38"

(iii) The diagnosis, transmission, and potential impact of influenza; — Formatted: Indent: Hanging: 0.38"

4. An annual evaluation of the influenza vaccination program and reasons for non-participation; and — Formatted: Indent: Left: 1.13"

5. A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee. — Formatted: Indent: Left: 1.13"

(g) All hospitals shall each year from October 1 through March 1 offer the immunization for influenza and pneumococcal diseases to any inpatient who is sixty-five (65) years of age or older prior to discharging. This condition is subject to the availability of the vaccine.

(h) The facility and its employees shall adopt and utilize standard precautions (per CDC) for preventing transmission of infections, HIV, and communicable diseases, including adherence to a hand hygiene program which shall include:

1. Use of alcohol-based hand rubs or use of non-antimicrobial or antimicrobial soap and water before and after each patient contact if hands are not visibly soiled;

2. Use of gloves during each patient contact with blood or where other potentially infectious materials, mucous membranes, and non-intact skin could occur and gloves changed before and after each patient contact;

3. Use of either a non-antimicrobial soap and water or an antimicrobial soap and water for visibly soiled hands; and

4. Health care worker education programs which may include:

(i) Types of patient care activities that can result in hand contamination;

(ii) Advantages and disadvantages of various methods used to clean hands;

(Rule 1200-08-01-.06, continued)

(iii) Potential risks of health care workers' colonization or infection caused by organisms acquired from patients; and

(iv) Morbidity, mortality, and costs associated with health care associated infections.

(i) All hospitals shall adopt appropriate policies regarding the testing of patients and staff for human immunodeficiency virus (HIV) and any other identified causative agent of acquired immune deficiency syndrome.

(j) Each department of the hospital performing decontamination and sterilization activities must develop policies and procedures in accordance with the current editions of the CDC guidelines for "Prevention and Control of Nosocomial Diseases" and "Isolation in Hospitals".

(k) The central sterile supply area(s) shall be supervised by an employee, qualified by education and/or experience with a basic knowledge of bacteriology and sterilization principles, who is responsible for developing and implementing written policies and procedures for the daily operation of the central sterile supply area, including:

1. Receiving, decontaminating, cleaning, preparing, and disinfecting or sterilizing reusable items;

2. Assembling, wrapping, removal of outer shipping cartons, storage, distribution, and quality control of sterile equipment and medical supplies;

3. Proper utilization of sterilization process monitors, including temperature and pressure recordings, and use and frequency of appropriate chemical indicator or bacteriological spore tests for all sterilizers; and

4. Provisions for maintenance of package integrity and designation of event-related shelf life for hospital-sterilized and commercially prepared supplies;

5. Procedures for recall and disposal or reprocessing of sterile supplies; and

6. Procedures for emergency collection and disposition of supplies and the timely notification of attending physicians, general medical staff, administration and the hospital's risk management program when special warnings have been issued or when warranted by the hospital's performance improvement process.

(l) Precautions shall be taken to prevent the contamination of sterile supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents. Sterile supplies may not be stored in their outermost shipping carton. This would include both hospital and commercially prepared supplies. Decontamination and preparation areas shall be separated.

(m) Space and facilities for housekeeping equipment and supply storage shall be provided in each hospital service area. Storage for bulk supplies and equipment shall be located away from patient care areas. Storage shall not be allowed in the outermost shipping carton. The building shall be kept in good repair, clean, sanitary and safe at all times.

(n) The hospital shall appoint a housekeeping supervisor who is qualified for the position by education, training and experience. The housekeeping supervisor shall be responsible for:

(Rule 1200-08-01-.06, continued)

1. Organizing and coordinating the hospital's housekeeping service;

2. Acquiring and storing sufficient housekeeping supplies and equipment for hospital maintenance;

3. Assuring the clean and sanitary condition of the hospital to provide a safe and hygienic environment for patients and staff. Cleaning shall be accomplished in accordance with the infection control rules and regulations herein and hospital policy; and

4. Verifying regular continuing education and competency for basic housekeeping principles.

(o) Laundry facilities located in the hospital shall:

1. Be equipped with an area for receiving, processing, storing and distributing clean linen;

2. Be located in an area that does not require transportation for storage of soiled or contaminated linen through food preparation, storage or dining areas;

3. Provide space for storage of clean linen within nursing units and for bulk storage within clean areas of the hospital. Linen may not be stored in cardboard containers or other containers which offer housing for bugs; and,

4. Provide carts, bags or other acceptable containers appropriately marked to identify those used for soiled linen and those used for clean linen to prevent dual utilization of the equipment and cross contamination.

(p) The hospital shall appoint a laundry service supervisor who is qualified for the position by education, training and experience. The laundry service supervisor shall be responsible for:

1. Establishing a laundry service, either within the hospital or by contract, that provides the hospital with sufficient clean, sanitary linen at all times;

2. Knowing and enforcing infection control rules and regulations for the laundry service;

3. Assuring the collection, packaging, transportation and storage of soiled, contaminated, and clean linen is in accordance with all applicable infection control rules, regulations and procedures;

4. Assuring that a contract laundry service complies with all applicable infection control rules, regulations and procedures; and,

5. Conducting periodic inspections of any contract laundry facility.

(q) The physical environment of the facility shall be maintained in a safe, clean and sanitary manner.

1. Any condition on the hospital site conducive to the harboring or breeding of insects, rodents or other vermin shall be prohibited. Chemical substances of a poisonous nature used to control or eliminate vermin shall be properly identified. Such substances shall not be stored with or near food or medications.

(Rule 1200-08-01-.06, continued)

2. Cats, dogs or other animals shall not be allowed in any part of the hospital except for specially trained animals for the handicapped and except as addressed by facility policy for pet therapy programs. The facility shall designate in its policies and procedures those areas where animals will be excluded. The areas designated shall be determined based upon an assessment of the facility performed by medically trained personnel.

3. A bed complete with mattress and pillow shall be provided. In addition, patient units shall be provided with at least one chair, a bedside table, an over bed tray and adequate storage space for toilet articles, clothing and personal belongings.

4. Individual wash cloths, towels and bed linens must be provided for each patient. Linen shall not be interchanged from patient to patient until it has been properly laundered.

5. Bath basin water service, emesis basin, bedpan and urinal shall be individually provided.

6. Water pitchers, glasses, thermometers, emesis basins, douche apparatus, enema apparatus, urinals, mouthwash cups, bedpans and similar items of equipment coming into intimate contact with patients shall be disinfected or sterilized after each use unless individual equipment for each is provided and then sterilized or disinfected between patients and as often as necessary to maintain them in a clean and sanitary condition. Single use, patient disposable items are acceptable but shall not be reused.

(4) Nursing Services.

(a) The hospital must have an organized nursing service that provides twenty-four (24) hour nursing services furnished or supervised by a registered nurse, and have a licensed practical nurse or registered nurse on duty at all times.

(b) The hospital must have a well-organized service with a plan of administrative authority and delineation of responsibilities for patient care. The chief nursing officer must be a licensed registered nurse who is responsible for the operation of the service, including determining the types and numbers of nursing personnel and staff necessary to provide nursing care for all areas of the hospital.

(c) The nursing service must have adequate numbers of licensed registered nurses, licensed practical nurses, and other personnel to provide nursing care to all patients as needed. There must be supervisory and staff personnel for each department or nursing unit to ensure, when needed, the immediate availability of a registered nurse for bedside care of any patient.

(d) There must be a procedure to ensure that hospital nursing personnel for whom licensure is required have valid and current licenses.

(e) A registered nurse must assess, supervise and evaluate the nursing care for each patient.

(f) The hospital must ensure that an appropriate individualized plan of care is available for each patient.

(g) A registered nurse must assign the nursing care of each patient to other nursing personnel in accordance with the patient's needs and the specialized qualifications and competence of the nursing staff available. All nursing personnel assigned to special

(Rule 1200-08-01-.06, continued)

care units shall have specialized training and a program in-service and continuing education commensurate with the duties and responsibilities of the individual. All training shall be documented for each individual so employed, along with documentation of annual competency skills.

(h) A registered nurse may make the actual determination and pronouncement of death under the following circumstances:

1. the deceased was a patient at a hospital as defined by T.C.A. § 68-11-201(27);

2. death was anticipated, and the attending physician has agreed in writing to sign the death certificate. Such agreement by the attending physician must be present with the deceased at the place of death;

3. the nurse is licensed by the state; and

4. the nurse is employed by the hospital providing services to the deceased.

(i) Non-employee licensed nurses who are working in the hospital must adhere to the policies and procedures of the hospital. The chief nursing officer must provide for the adequate supervision and evaluation of the clinical activities of non-employee nursing personnel which occur within the responsibility of the nursing service. Annual competency and skill documentation must be demonstrated on these individuals just as employees, if they perform clinical activities.

(j) All drugs, devices and related materials must be administered by, or under the supervision of, nursing or other personnel in accordance with federal and state laws and regulations, including applicable licensing requirements, and in accordance with the approved medical staff policies and procedures.

(k) All orders for drugs, devices and related materials must be in writing and signed by the practitioner or practitioners responsible for the care of the patient. Electronic and computer-generated records and signature entries are acceptable. When telephone or oral orders must be used, they must be:

1. Accepted only by personnel that are authorized to do so by the medical staff policies and procedures, consistent with federal and state law; and

2. Signed or initialed by the prescribing practitioner according to hospital policy.

(l) Blood transfusions and intravenous medications must be administered in accordance with state law and approved medical staff policies and procedures.

(m) There must be a hospital procedure for reporting transfusion reactions, adverse drug reactions, and errors in administration of drugs.

(5) Medical Records.

(a) The hospital shall comply with the Tennessee Medical Records Act, T.C.A. § 68-11-301, et seq. A hospital shall transfer copies of patient medical records in a timely manner to requesting practitioners and facilities.

(b) The hospital must have a medical record service that has administrative responsibility for medical records. The service shall be supervised by a Registered Health Information Administrator (RHIA), a Registered Health Information Technician (RHIT),

(Rule 1200-08-01-.06, continued)

or a person qualified by work experience. A medical record must be maintained for every individual evaluated or treated in the hospital.

(c) The organization of the medical record service must be appropriate to the scope and complexity of the services performed. The hospital must employ adequate personnel to ensure prompt completion, filing and retrieval of records.

(d) The hospital must maintain a medical record for each inpatient and outpatient. Medical records must be accurate, promptly completed, properly filed and retained, and accessible. The hospital must use a system of author identification and record maintenance that ensures the integrity of the authentication and protects the security of all record entries.

(e) All medical records, either written, electronic, graphic or otherwise acceptable form, must be retained in their original or legally reproduced form for a minimum period of at least ten (10) years, or for the period of minority plus one year for newborns, after which such records may be destroyed. Records destruction shall be accomplished by burning, shredding or other effective method in keeping with the confidential nature of its contents. The destruction of records must be made in the ordinary course of business, must be documented and in accordance with the hospital's policies and procedures, and no record may be destroyed on an individual basis.

(f) When a hospital closes with no plans of reopening, an authorized representative of the hospital may request final storage or disposition of the hospital's medical records by the department. Upon transfer to the department, the hospital relinquishes all control over final storage of the records in the files of the Tennessee Department of Finance and Administration and the files shall become property of the State of Tennessee.

(g) The hospital must have a system of coding and indexing medical records. The system must allow for timely retrieval by diagnosis and procedure.

(h) The hospital must have a procedure for ensuring the confidentiality of patient records. Information from or copies of records may be released only to authorized individuals, and the hospital must ensure that unauthorized individuals cannot gain access to or alter patient records. Original medical records must be released by the hospital only in accordance with federal and state laws, court orders or subpoenas.

(i) The medical record must contain information to justify admission and continued hospitalization, support the diagnosis, and describe the patient's progress and response to medications and services.

(j) All entries must be legible, complete, dated and authenticated according to hospital policy.

(k) All records must document the following:

1. Evidence of a physical examination, including a health history, performed and/or updated no more than forty-five (45) days prior to admission or within forty-eight (48) hours following admission;

2. Admitting diagnosis;

3. Results of all consultative evaluations of the patient and appropriate findings by clinical and other staff involved in the care of the patient;

(Rule 1200-08-01-.06, continued)

4. Documentation of complications, hospital acquired infections, and unfavorable reactions to drugs and anesthesia;

5. Properly executed informed consent forms for procedures and treatments specified by hospital policy, or by federal or state law if applicable, as requiring written patient consent;

6. All practitioners' orders, nursing notes, reports of treatment, medication records, radiology, and laboratory reports, and vital signs and other information necessary to monitor the patient's condition;

7. Discharge summary with outcome of hospitalization, disposition of case and plan for follow-up care; and

8. Final diagnosis with completion of medical records within thirty (30) days following discharge.

(l) Electronic and computer-generated records and signature entries are acceptable.

(6) Pharmaceutical Services.

(a) The hospital must have pharmaceutical services that meet the needs of the patients and are in accordance with the Tennessee Board of Pharmacy statutes and regulations. The medical staff is responsible for developing policies and procedures that minimize drug errors. This function may be delegated to the hospital's organized pharmaceutical service.

(b) A full-time, part-time or consulting pharmacist must be responsible for developing, supervising and coordinating all the activities of the pharmacy services.

(c) Current and accurate records must be kept of receipt and disposition of all scheduled drugs.

(d) Adverse drug events, both adverse reactions and medication errors, shall be reported according to established guidelines to the hospital performance improvement/risk management program and as appropriate to physicians, the hospital governing body and regulatory agencies.

(e) Abuses and losses of controlled substances must be reported, in accordance with federal and state laws, to the individual responsible for the pharmaceutical service, and to the chief executive officer, as appropriate.

(f) Current reference materials relating to drug interactions and information of drug therapy, side effects, toxicology, dosage, indications for use, and routes of administration must be available to the professional staff in the pharmacy and in areas where medication is administered.

(g) Any unused portions of prescriptions shall be either turned over to the patient only on a written authorization including directions by the physician, or returned to the pharmacy for proper disposition by the pharmacist.

(h) Whenever patients bring drugs into an institution, such drugs shall not be administered unless they can be identified and ordered to be given by a physician.

(7) Radiologic Services.

(Rule 1200-08-01-.06, continued)

(a) The hospital must maintain, or have available, diagnostic radiologic services according to the needs of the patients. If therapeutic services are also provided, they, as well as the diagnostic services, must meet professionally approved standards for safety and personnel qualifications.

(b) The radiologic services must be free from hazards for patients and personnel.

(c) Patients, employees and the general public shall be provided protection from radiation in accordance with "State Regulations for Protection Against Radiation". All radiation producing equipment shall be registered and all radioactive material shall be licensed by the Division of Radiological Health of the Tennessee Department of Environment and Conservation.

(d) Periodic inspections of equipment must be made and hazards identified must be promptly corrected.

(e) Radiologic services must be provided only on the order of practitioners with clinical privileges or of other practitioners authorized by the medical staff and the governing body to order the services.

(f) X-ray personnel shall be qualified by education, training and experience for the type of service rendered.

(g) All x-ray equipment must be registered with the Tennessee Department of Environment and Conservation, Division of Radiological Health.

(h) X-rays shall be retained for four (4) years and may be retired thereafter provided that a signed interpretation by a radiologist is maintained in the patient's record under T.C.A. § 68-11-305.

(i) Patients must not be left unattended in pre and post radiology areas.

(8) Laboratory Services.

(a) The hospital must maintain, or have available, either directly or through a contractual agreement, adequate laboratory services to meet the needs of its patients. The hospital must ensure that all laboratory services provided to its patients are performed in a facility licensed in accordance with the Tennessee Medical Laboratory Act. All technical laboratory staff shall be licensed in accordance with the TMLA and shall be qualified by education, training and experience for the type of services rendered.

(b) Emergency laboratory services must be available 24 hours a day.

(c) A written description of services provided must be available to the medical staff.

(d) The laboratory must make provision for proper receipt and reporting of tissue specimens.

(e) The medical staff and a pathologist must determine which tissue specimens require a macroscopic (gross) examination and which require both macroscopic and microscopic examination.

(f) Laboratory services must be provided in keeping with services rendered by the hospital. This shall include suitable arrangements for blood and plasma at all times. Written policies and procedures shall be developed in concert with the Standards of American

(Rule 1200-08-01-.06, continued)

Association of Blood Banks. Documentation and record keeping shall be maintained for tracking and performance monitoring.

(9) Food and Dietetic Services.

(a) The hospital must have organized dietary services that are directed and staffed by adequate qualified personnel. A hospital may contract with an outside food management company if the company has a dietitian who serves the hospital on a full-time, part-time, or consultant basis, and if the company maintains at least the minimum standards specified in this section and provides for constant liaison with the hospital medical staff for recommendations on dietetic policies affecting patient treatment. If an outside contract is utilized for management of its dietary services, the hospital shall designate a full-time employee to be responsible for the overall management of the services.

(b) The hospital must designate a person, either directly or by contractual agreement, to serve as the food and dietetic services director with responsibility for the daily management of the dietary services. The food and dietetic services director shall be:

1. A qualified dietitian; or,

2. A graduate of a dietetic technician or dietetic assistant training program, correspondence or classroom, approved by the American Dietetic Association; or,

3. An individual who has successfully completed in-person or online coursework that provided ninety (90) or more hours of classroom instruction in food service supervision. If the course has not been completed, this person shall be enrolled in a course and making satisfactory progress for completion within the time limit specified by the course requirement; or,

4. An individual who is a certified dietary manager (CDM), or certified food protection professional (CFPP); or,

5. A current or former member of the U.S. military who has graduated from an approved military dietary manager training program.

(c) There must be a qualified dietitian, full time, part-time, or on a consultant basis who is responsible for the development and implementation of a nutrition care process to meet the needs of patients for health maintenance, disease prevention and, when necessary, medical nutrition therapy to treat an illness, injury or condition. Medical nutrition therapy includes assessment of the nutritional status of the patient and treatment through diet therapy, counseling and/or use of specialized nutrition supplements.

(d) There must be sufficient administrative and technical personnel competent in their respective duties.

(e) Menus must meet the needs of the patients.

1. Therapeutic diets must be prescribed by the practitioner or practitioners responsible for the care of the patients.

2. Nutritional needs must be met in accordance with recognized dietary practices and in accordance with orders of the practitioners or practitioners responsible for the care of the patients.

(Rule 1200-08-01-.06, continued)

3. A current therapeutic diet manual approved by the dietitian and medical staff must be readily available to all medical, nursing, and food service personnel.

(f) Education programs, including orientation, on-the-job training, inservice education, and continuing education programs shall be offered to dietetic services personnel on a regular basis. Programs shall include instruction in personal hygiene, proper inspection, handling, preparation and serving of food and equipment.

(g) A minimum of three (3) meals in each twenty-four (24) hour period shall be served. A supplemental night meal shall be served if more than fourteen (14) hours lapse between supper and breakfast. Additional nourishment shall be provided to patients with special dietary needs.

(h) All food shall be from sources approved or considered satisfactory by the department and shall be clean, wholesome, free from spoilage, free from adulteration and misbranding and safe for human consumption. No food which has been processed in a place other than a commercial food processing establishment shall be used.

(i) Food shall be protected from sources of contamination whether in storage or while being prepared, served and/or transported. Perishable foods shall be stored at such temperatures as to prevent spoilage. Potentially hazardous foods shall be maintained at safe temperatures as defined in the current "U.S. Public Health Service Food Service Sanitation Manual".

(j) Written policies and procedures shall be followed concerning the scope of food services in accordance with the current edition of the "U.S. Public Health Service Recommended Ordinance and Code Regulating Eating and Drinking Establishments" and the current "U.S. Public Health Service Sanitation Manual" should be used as a guide to food sanitation.

(10) Critical Access Hospital.

(a) Every patient shall be under the care of a physician or under the care of a mid-level practitioner supervised by a physician.

(b) Whenever a patient is admitted to the facility by a mid-level practitioner, the supervising physician shall be notified of that fact, by phone or otherwise, and within 24 hours the supervising physician shall examine the patient or before discharge if discharged within 24 hours, and a plan of care shall be placed in the patient's chart, unless the patient is transferred to a higher level of care within 24 hours.

(c) A physician, a mid-level practitioner or a registered nurse shall be on duty and physically available in the facility when there are inpatients.

(d) A physician on staff shall:

1. Provide medical direction to the facility's health care activities and consultation for non-physician health care providers.

2. In conjunction with the mid-level practitioner staff members, participate in developing, executing, and periodically reviewing the facility's written policies and the services provided to patients.

3. Review and sign the records of each patient admitted and treated by a practitioner no later than fifteen (15) days after the patient's discharge from the facility.

(Rule 1200-08-01-.06, continued)

4. Provide health care services to the patients in the facility, whenever needed and requested.

5. Prepare guidelines for the medical management of health problems, including conditions requiring medical consultation and/or patient referral.

6. At intervals no more than two (2) weeks apart, be physically present in the facility for a sufficient time to provide medical direction, medical care services, and staff consultation as required.

7. When not physically present in the facility, either be available through direct telecommunication for consultation and assistance with medical emergencies and patient referral, or ensure that another physician is available for this purpose.

8. The physical site visit for a given two week period is not required if, during that period, no inpatients have been treated in the facility.

(e) A mid-level practitioner on staff shall:

1. Participate in the development, execution, and periodic review of the guidelines and written policies governing treatment in the facility.

2. Participate with a physician in a review of each patient's health records.

3. Provide health care services to patients according to the facility's policies.

4. Arrange for or refer patients to needed services that are not provided at the facility.

5. Assure that adequate patient health records are maintained and transferred as necessary when a patient is referred.

(f) The Critical Access Hospital, at a minimum, shall provide basic laboratory services essential to the immediate diagnosis and treatment of patients, including:

1. Chemical examinations of urine stick or tablet methods, or both (including urine ketoses);

2. Microscopic examinations of urine sediment;

3. Hemoglobin or hematocrit;

4. Blood sugar;

5. Gram stain;

6. Examination of stool specimens for occult blood;

7. Pregnancy test;

8. Primary culturing for transmittal to a CLIA certified laboratory;

9. Sediment rate; and,

10. CBC.

(Rule 1200-08-01-.06, continued)

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-3-511, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.* ***Administrative History:*** *Original rule filed March 18, 2000; effective May 30, 2000. Amendment filed December 2, 2003; effective February 15, 2004. Amendment filed May 24, 2004; effective August 7, 2004. Amendment filed September 6, 2005; effective November 20, 2005. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed December 23, 2009; effective March 23, 2010. Amendment filed March 18, 2010; effective June 16, 2010. Amendment filed December 16, 2013; effective March 16, 2014.*

**1200-08-01-.07 OPTIONAL HOSPITAL SERVICES.**

(1) Surgical Services.

(a) If the hospital provides surgical services, the services must be well organized and provided in accordance with acceptable standards of practice. If outpatient surgical services are offered, the services must be consistent in quality with inpatient care in accordance with the complexity of services offered.

(b) The organization of the surgical services must be appropriate to the scope of the services offered.

(c) The operating rooms must be supervised by an experienced registered nurse or a doctor of medicine or osteopathy.

(d) A hospital may use scrub nurses in its operating rooms. For the purposes of this rule, a "scrub nurse" is defined as a registered nurse or either a licensed practical nurse (LPN) or a surgical technologist (operating room technician) supervised by a registered nurse who works directly with a surgeon within the sterile field, passing instruments, sponges, and other items needed during the procedure and who scrubs his or her hands and arms with special disinfecting soap and wears surgical gowns, caps, eyewear, and gloves, when appropriate.

(e) Qualified registered nurses may perform circulating duties in the operating room. In accordance with applicable state laws and approved medical staff policies and procedures, LPNs and surgical technologists may assist in circulatory duties under the supervision of a qualified registered nurse who is immediately available to respond to emergencies.

(f) Surgical privileges must be delineated for all practitioners performing surgery in accordance with the competencies of each practitioner. The surgical service must maintain a roster of practitioners specifying the surgical privileges of each practitioner.

(g) Surgical services must be consistent with needs and resources. Policies covering surgical care must be designed to assure the achievement and maintenance of high standards of medical practice and patient care.

(h) Surgical technologists must:

1. Hold current national certification established by the Liaison Council on Certification for the Surgical Technologist (LCC-ST); or

2. Have completed a program for surgical technology accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP); or

(Rule 1200-08-02-.05, continued)

(f) The plan shall be signed by the authorized representative of the PCCC, physician, and parent(s). Copies of the plan shall be given to the parent(s) and the PCCC staff.

(g) A consent form, outlining the purpose of a PCCC facility, family responsibilities, authorized treatment, and emergency disposition plans shall be signed by the parent(s) and witnessed prior to admission to the PCCC facility. The original consent form shall be retained by the facility. The parent(s) shall be provided a copy of the consent form.

(h) At the time of admission, written policies and procedures of the PCCC shall be provided to parents or other applicants. Policies shall include criteria for dismissal of children. A copy of PCCC policies and procedures shall be given to the parent and documentation of receipt filed in the child's record.

(i) A pre-enrollment visit to the center by the parent shall be documented.

(j) Upon enrollment of a child, the parent shall receive a summary of the Department's licensing requirements and receipt of the summary shall be documented by the parent's signature.

(k) Each PCCC shall develop a plan for regular and ongoing communication with parents. This plan shall include communication concerning curriculum, changes in personnel, or planned changes affecting children's routine care. Documentation shall be maintained for the most recent quarter.

(l) During normal operating hours, parents shall be permitted access to their children, and ready access to all areas of the PCCC shall be granted Department representatives and inspection authorities (i.e., fire safety, sanitation, and health).

(m) Parents shall 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.

(n) Children shall not be in care for more than sixteen hours in a twenty-four hour period except in special circumstances (e.g., acute illness of or injury to parents, natural disaster, unusual work hours). Individual plans for extended care shall be maintained, with documentation, signed by parent and administrator, retained on file.

(o) Part-time children shall be counted in the ratio and group and shall have required records on file before they are cared for.

(p) Any infant or child not meeting the criteria set out in 1200-08-02-.05(2)(a)-(c) shall be discharged from the PCCC.

***Authority:*** *T.C.A. §§ 4-5-202, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.* ***Administrative History:*** *Original rule filed June 13, 2002; effective August 27, 2002.*

**1200-08-02-.06 BASIC SERVICES.**

(1) Nursing Services.

(a) The PCCC must have an organized nursing service that provides twenty-four (24) hour nursing services furnished or supervised by a registered nurse. A registered nurse must be on the premises at all times during business hours.

(b) The PCCC must have a well-organized service with a plan of administrative authority and delineation of responsibilities for child care. The nursing director must be a licensed

(Rule 1200-08-02-.06, continued)

registered nurse who is responsible for the operation of the nursing service, including determining the types and numbers of nursing personnel and staff necessary to provide nursing care for the PCCC.

(c) The nursing service must have adequate numbers of licensed registered nurses, licensed practical nurses, and other personnel to provide nursing care to all children as needed. There must be supervisory and staff personnel for each department or unit of the PCCC to ensure, when needed, the immediate availability of a registered nurse.

(d) There must be a procedure to ensure that nursing personnel for whom licensure is required have valid and current licenses.

(e) A registered nurse must assess, supervise and evaluate the nursing care for each child.

(f) The PCCC must ensure that an appropriate individualized plan of care is prepared for each child.

(g) A registered nurse must assign the nursing care of each child to other nursing personnel in accordance with the child's needs and the specialized qualifications and competence of the nursing staff available. All nursing personnel shall have specialized training and a program in-service and continuing education commensurate with the duties and responsibilities of the individual. All training shall be documented for each individual so employed, along with documentation of annual competency skills. Orientation of any new personnel must be conducted within the first two weeks of employment.

(h) Non-employee licensed nurses who are working in the PCCC must adhere to the policies and procedures of the facility. The nursing director must provide for the adequate supervision and evaluation of the clinical activities of non-employee nursing personnel which occur within the responsibility of the nursing service. Annual competency and skill documentation must be demonstrated on these individuals just as on employees, if they perform clinical activities.

(i) All drugs, devices and related materials must be administered by, or under the supervision of, nursing or other personnel in accordance with federal and state laws and regulations, including applicable licensing requirements.

(j) All orders for drugs, devices and related materials must be in writing and signed by the practitioner or practitioners responsible for the care of the child. Electronic and computer-generated records and signature entries are acceptable. When telephone or oral orders must be used, they must be:

1. Accepted only by personnel that are authorized to do so by policies and procedures, consistent with federal and state law; and

2. Signed or initialed by the prescribing practitioner according to policy.

(k) Intravenous medications must be administrated in accordance with state law and approved policies and procedures.

(l) There must be a procedure for reporting adverse drug reactions and errors in administration of drugs.

(2) Physician Services.

(Rule 1200-08-02-.06, continued)

(a) Policies and procedures concerning services provided by the PCCC shall be available to the children's primary care physicians as requested.

(b) If children with mental, physical or other impairments or with a medical disorder are enrolled, and special care is needed, a physician's statement shall identify the condition and give the appropriate care professional special instructions for the child's care.

(c) Children shall be aided in receiving dental care as deemed necessary.

(d) Consultation with a physician shall occur at least annually to review medical care provided within the PCCC and shall include, but not be limited to:

1. Evaluate the delivery of emergency and medical care when the child's primary physician or his/her designated alternative is unavailable;

2. Review reports of accidents or unusual incidents occurring on the premises, identifying hazards to health and safety and recommending corrective action to the administrator;

3. Review performance improvement, infection control and safety action plans for appropriate actions;

4. Monitor the health status of facility personnel to ensure that no health conditions exist which would adversely affect children; and

5. Advise and provide consultation on matters regarding medical care, standards of care, surveillance and infection control.

(3) Educational Services

(a) The PCCC will provide parent(s) education services by including them in care related conferences and teaching them how to perform necessary therapies and how to meet the developmental and psychological needs of their child at home.

(b) Monthly educational development programs shall be conducted and documented. These programs shall be provided to:

1. Develop collaborative relationships between health professionals and parent(s).

2. Increase understanding and coping with the effects of childhood illness, and shall cover a variety of topics including:

(i) issues of death and dying;

(ii) awareness of services available;

(iii) fostering of advocacy skills;

(iv) impact of illness on child development; and

(v) parenting an ill child.

3. Develop case management skills to assist the family in setting priorities and planning and implementing the child's care at home.

(Rule 1200-08-02-.06, continued)

4. Develop a comprehensive Plan of Care to include the medical, nutritional, developmental and psychosocial needs of medically/technologically dependent children, including training in the implementation of new technology.

5. Prepare for management of emergency medical situations.

(c) A comprehensive orientation to acquaint the parent(s) with the philosophy and services of the PCCC shall be provided at the time of the child's placement in the PCCC.

(d) Activities shall be used for the children based on developmentally appropriate educational practices.

(e) To the extent that children are physically able to participate, 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.

(f) Indoor physical activities, requiring children to use both large and small muscles, shall be provided for children of each age group who are physically able to participate.

(g) Activities for infants/toddlers shall provide experience for 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.

(h) Because of the importance of language development and communication skills to infants and toddlers, they shall be talked to, listened to, read to and sung to, in addition to other language experience activities, including but not limited to, finger plays, patty cake, and flannel board activities.

(4) Nutritional Services

(a) The PCCC must have an organized dietary service that is directed and staffed by adequate qualified personnel. A facility may contract with an outside food management company if the company has a dietitian who serves the facility on a full-time, part-time, or consultant basis, and if the company maintains at least the minimum standards specified in this paragraph and provides for consultant liaison with the facility staff for recommendations on dietetic policies affecting the children's treatment. If an outside contract is utilized for management of its dietary services, the facility shall designate a full-time employee to be responsible for the overall management of the services.

(b) The PCCC must designate a person, either directly or by contractual agreement, to serve as the food and dietetic services director with responsibility for the daily management of the dietary services. The food and dietetic services director shall be:

1. A qualified dietitian; or,

2. A graduate of a dietetic technician or dietetic assistant training program, correspondence or classroom, approved by the American Dietetic Association; or,

3. An individual who has successfully completed in-person or online coursework that provided ninety (90) or more hours of classroom instruction in food service supervision. If the course has not been completed, this person shall be enrolled in a course and making satisfactory progress for completion within the time limit specified by the course requirement; or,

(Rule 1200-08-02-.06, continued)

4. An individual who is a certified dietary manager (CDM), or certified food protection professional (CFPP); or,

5. A current or former member of the U.S. military who has graduated from an approved military dietary manager training program.

(c) There must be a qualified dietitian, full time, part-time, or on a consultant basis, who is responsible for the development and implementation of a nutrition care process to meet the needs of health maintenance, disease prevention and, when necessary, medical nutrition therapy to treat an illness, injury or condition. Medical nutrition therapy includes assessment of the nutritional status of the child and treatment through diet therapy, counseling and/or use of specialized nutrition supplements.

(d) Menus must meet the needs of the children.

1. Therapeutic diets must be prescribed by the practitioner or practitioners responsible for the care of the children and must be prepared and served as prescribed.

2. Special diets shall be prepared and served as ordered.

3. Nutritional needs must be met in accordance with recognized dietary practices and in accordance with orders of the practitioner or practitioners responsible for the care of the children.

4. A current therapeutic diet manual approved by the dietitian and nursing director must be readily available to all nursing and food service personnel.

(e) Educational programs, including orientation, on-the-job training, inservice education, and continuing education, shall be offered to dietetic services personnel on a regular basis. Programs shall include instruction in the use of equipment, personal hygiene, proper inspection, and the handling, preparing and serving of food.

(f) A minimum of three (3) meals in each twenty-four (24) hour period shall be served. A supplemental night meal shall be served if more than fourteen (14) hours lapse between supper and breakfast. Additional nourishment shall be provided to children with special dietary needs. A minimum of three (3) days supply of food shall be on hand.

(g) Menus shall be prepared at least one week in advance. A dietitian shall be consulted to help write and plan the menus. If any change in the actual food served is necessary, the change shall be made on the menu to designate the foods actually served to the children. Menus of food served shall be kept on file for a thirty (30) day period.

(h) The dietician or designee shall have a conference, dated on the medical record with each child and/or family within two (2) weeks of admission to discuss the diet plan indicated by the physician. The child's dietary preferences shall be recorded and utilized in planning his/her daily menu.

(i) Food shall be protected from dust, flies, rodents, unnecessary handling, droplet infection, overhead leakage and other sources of contamination whether in storage or while being prepared and served and/or transported through hallways.

(j) Perishable food shall not be allowed to stand at room temperature except during necessary periods of preparation or serving. Prepared foods shall be kept hot (140°F

(Rule 1200-08-02-.06, continued)

or above) or cold (45°F or less). Appropriate equipment for temperature maintenance, such as hot and cold serving units or insulated containers, shall be used.

(k) Food shall not be forced on or withheld from children. Food shall not be used as a reward, nor shall food be used or withheld as punishment.

(l) Specific feeding instructions given by parents shall be in writing. If staff feel instructions to be inappropriate or in conflict with established policy or the therapeutic diet prescribed by the practitioner, staff shall initiate discussion with the parent to resolve the conflict.

(m) New foods shall be introduced to infants and toddlers; foods shall be introduced one at a time over a five-to-seven day period with parental approval.

(n) The feeding schedule for infants shall be in accordance with the child's need rather than according to the hour. (Infants fed breast milk may require more frequent feedings than formula-fed babies.)

(o) Parents and caregivers shall work together when weaning an infant to insure consistency in the weaning process. Weaning shall be delayed until after an infant adjusts to group care.

(p) Children shall not be permitted to carry a bottle with them throughout the day.

(q) All formulas and food brought from home shall be labeled with child's name. Milk shall be placed immediately in the refrigerator. Once milk has been warmed, it shall not be rewarmed or returned to the refrigerator. For optimum digestion, formula is to be served at body temperature.

(r) Frozen breast milk shall be dated when expressed. Bottled breast milk shall not be heated in a microwave oven. To prevent scalding, extreme caution shall be taken when a microwave oven is used to heat food.

(s) Previously opened baby food jars shall be not accepted in the PCCC.

(t) Infants shall be held while being fed if they are unable to sit in a high chair, an infant seat, or at the table. Bottles shall not be propped. A child shall not be given a bottle while lying flat.

(u) 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. Children shall not be left unattended while eating.

(v) Dishwashing machines shall be used according to manufacturer specifications.

(w) All dishes, glassware and utensils used in the preparation and serving of food and drink shall be cleaned and sanitized after each use.

(x) The cleaning and sanitizing of handwashed dishes shall be accomplished by using a three-compartment sink according to the current "U.S. Public Health Services Sanitation Manual":

(y) The kitchen shall contain sufficient refrigeration equipment and space for the storage of perishable foods.

(Rule 1200-08-02-.06, continued)

(z) All refrigerators and freezers shall have thermometers. Refrigerators shall be kept at a temperature not to exceed 45 °F. Freezers shall be kept at a temperature not to exceed 0 °F.

(aa) Written policies and procedures shall be followed concerning the scope of food services in accordance with the current edition of the "U.S. Public Health Service Recommended Ordinance and Code Regulating Eating and Drinking Establishments", and the current "U.S. Public Health Service Sanitation Manual" should be used as a guide to food sanitation.

(5) Pharmaceutical Services.

(a) The PCCC shall have pharmaceutical services that meet the needs of the children and are in accordance with the Tennessee Board of Pharmacy statutes and rules. The administrator is responsible for developing policies and procedures that minimize drug errors.

(b) All internal and external medications and preparations intended for human use shall be stored separately. They shall be properly stored in medicine compartments, including cabinets on wheels, or drug rooms. Such cabinets or drug rooms shall be kept securely locked when not in use, and the key must be in the possession of the supervising nurse or other authorized persons. Poisons or external medications shall not be stored in the same compartment and shall be labeled as such.

(c) Schedule II drugs must be stored behind two (2) separately locked doors at all times and accessible only to persons in charge of administering medication.

(d) Every PCCC shall comply with all state and federal regulations governing Schedule II drugs.

(e) A notation shall be made in a Schedule II drug book and in the child's medical chart each time a Schedule II drug is given. The notation shall include the name of each child receiving the drug, name of the drug, the dosage given, the method of administration, the date and time given and the name of the physician prescribing the drug.

(f) All oral orders shall be immediately recorded, designated as such and signed by the person receiving them and countersigned by the physician within ten (10) days.

(g) All orders for drugs, devices and related materials must be in writing and signed by the practitioner or practitioners responsible for the care of the child. Electronic and computer-generated records and signature entries are acceptable. When telephone or oral orders must be used, they shall be:

1. Accepted only by personnel that are authorized to do so by policies and procedures, consistent with federal and state law; and,

2. Signed or initialed by the prescribing practitioner according to policy.

(h) Medications not specifically limited as to time or number of doses when ordered are controlled by automatic stop orders or other methods in accordance with written policies. No Schedule II drug shall be given or continued beyond seventy-two (72) hours without a written order by the physician.

(i) Medication administration records (MAR) shall be maintained for each child. Each dose shall be properly recorded in the medical record after it has been administered.

(Rule 1200-08-02-.06, continued)

(j) Preparation of doses for more than one scheduled administration time shall not be permitted.

(k) Medication shall be administered only by licensed medical or nursing personnel or other licensed health professionals acting within the scope of their licenses.

(l) Unless the unit dose package system is used, individual prescriptions of drugs shall be kept in the original container with the original label intact showing the name of the child, the drug, the physician, the prescription number and the date dispensed.

(m) Legend drugs shall be dispensed by a licensed pharmacist.

(n) Any unused portions of prescriptions shall be turned over to the parent(s) or only on discharge. A notation of drugs released shall be entered into the medical record. All unused prescriptions not taken by the parent and left at the PCCC must be destroyed on the premises and recorded by a pharmacist. Such record shall be kept in the PCCC.

(6) Rehabilitation Services.

(a) Physical therapy, occupational therapy and speech therapy shall be provided directly or through contractual agreement by individuals who meet the qualifications specified by PCCC policy and consistent with state law.

(b) Speech therapy services shall be provided only by or under supervision of a qualified speech language pathologist in good standing, or by a person qualified as a Clinical Fellow subject to Tennessee Board of Communications Disorders and Sciences Rule 1370-01-.10.

(c) A licensed physical therapist shall be in charge of the physical therapy service and a licensed occupational therapist shall be in charge of the occupational therapy service.

(d) Direct contact shall exist between the child and the therapist for those children that require treatment ordered by a physician.

(e) If ordered by a physician, the physical therapist and the occupational therapist shall provide treatment and training designed to preserve and improve abilities for independent functions, such as: range of motion, strength, tolerance, coordination and activities of daily living.

(f) Therapy services shall be coordinated with the nursing service and made a part of the child's treatment plan.

(g) Sufficient staff shall be made available to provide the service ordered.

(7) Psychologist/Social Work Services.

(a) Social services and psychological services must be available to the children, the child's family and other persons significant to the child, in order to facilitate adjustment of these individuals to the impact of the child's illness and to promote maximum benefits from the health care services provided.

(b) Social work services shall include psychosocial assessment, counseling, coordination of discharge planning, community liaison services, financial assistance and consultation.

(Rule 1200-08-02-.06, continued)

(c) Psychological services shall include psychoanalysis, psychotherapy, psychological testing, psychoeducational evaluation therapy remediation and consultation.

(d) A child's social history shall be obtained within two (2) weeks of admission and shall be appropriately maintained.

(e) Social work services shall be provided by a qualified social worker.

(f) Facilities for social work services shall be readily accessible and shall permit privacy for interviews and counseling.

(8) Respiratory Care Services (Optional).

(a) If the PCCC provides respiratory care services, the PCCC must meet the needs of the patients in accordance with acceptable standards of practice.

(b) The organization of the respiratory care services must be appropriate to the scope and complexity of the services offered.

(c) There must be adequate numbers of licensed respiratory therapists, respiratory technicians, and other personnel to provide the ordered services.

(d) Services must be delivered in accordance with physician directives.

(e) Personnel qualified to perform specific procedures and the amount of supervision required for personnel to carry out specific procedures must be designated in writing.

(9) Infection Control.

(a) The PCCC must provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There must be an active program for the prevention, control, and investigation of infections and communicable diseases.

(b) The administrator shall assure that an infection control program, including members of the multidisciplinary staff such as nursing and administrative staff, develop guidelines and techniques for the prevention, surveillance, control and reporting of facility infections. Duties of the program shall include the establishment of:

1. Written infection control policies;

2. Techniques and systems for identifying, reporting, investigating and controlling infections in the facility;

3. Written procedures governing the use of aseptic techniques and procedures in the facility;

4 Written procedures concerning food handling, laundry practices, disposal of environmental and human wastes, traffic control and visiting rules, sources of air pollution, and routine culturing of autoclaves and sterilizers;

5. A log of incidents related to infectious and communicable diseases;

6. Formal provisions to educate and orient all appropriate personnel in the practice of aseptic techniques such as handwashing, proper grooming, masking, dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of equipment and supplies; and,

7. Continuing education for all facility personnel on the cause, effect, transmission, prevention, and elimination of infections.

(c) The administrator must ensure that the facility-wide performance improvement program and training programs address problems identified by the infection control program and must be responsible for the implementation of successful corrective action plans in affected problem areas.

(d) Parents of every child enrolled shall be notified immediately if one of the following communicable diseases has been introduced into the child care center: hepatitis A, foodborne outbreaks (food poisoning) salmonella, shigella, measles, mumps, rubella, pertussis, polio, haemophilus influenza type B, meningococcal meningitis. The PCCC shall report the occurrence of the above diseases to the local health department.

(e) Impetigo and diagnosed strep shall be treated appropriately for 24 hours prior to readmission to the center. Children having scabies or lice shall have proof of treatment to be readmitted. The PCCC shall provide care and/or isolation for a child with a contagious condition only if written instructions of a licensed physician or certified health care provider are obtained first.

(f) The PCCC shall develop policies and procedures for testing a child's blood for the presence of the hepatitis B virus and the HIV virus in the event that an employee of the facility, a student studying at the facility, or other health care provider rendering services at the facility is exposed to a child's blood or other body fluid. The testing shall be performed at no charge to the child and the test results shall be confidential.

(g) The facility and its employees shall adopt and utilize standard or universal precautions of the Centers for Disease Control (CDC) for preventing transmission of infections, HIV, and communicable diseases.

(h) All PCCCs shall adopt appropriate policies regarding the testing of children and staff for HIV and any other identified causative agent of acquired immune deficiency syndrome.

(i) Precautions shall be taken to prevent the contamination of sterile supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents. Decontamination and preparation areas shall be separated.

(j) Space and facilities for housekeeping equipment and supplies shall be provided in each service area. Storage for bulk supplies and equipment shall be located away from child care areas. The building shall be kept in good repair, clean, sanitary and safe at all times.

(10) Performance Improvement.

(a) The PCCC must ensure that there is an effective, facility-wide performance improvement program to evaluate child care and performance of the organization.

(b) The performance improvement program must be ongoing and have a written plan of implementation which assures that:

1. All organized services related to child care, including services furnished by a contractor, are evaluated;

2. Nosocomial infections and medication therapy are evaluated; and,

(Rule 1200-08-02-.06, continued)

3. All services performed in the facility are evaluated as to the appropriateness of diagnosis and treatment.

(c) The PCCC must have an ongoing plan, consistent with available community and facility resources, to provide or make available services that meet the medically-related needs of its children.

(d) The facility must develop and implement plans for improvement to address deficiencies identified by the performance improvement program and must document the outcome of the remedial action.

(e) Performance improvement program records shall be disclosable to the Department to demonstrate compliance with this section.

(f) Good faith attempts by the performance improvement program committee to identify and correct deficiencies will not be used as a basis for sanctions.

(11) Transportation Services (If Provided)

(a) If a PCCC provides transportation, its management shall recognize its full responsibility for the child between home and facility and on field trips. On field trips or when transporting children between home and the facility, staff shall maintain an accurate list of children being transported and shall take roll frequently. The driver or accompanying staff member shall assure that every child is received by a parent or other designated person. The owner of the vehicle shall carry adequate liability insurance.

(b) Parents shall be notified of each field trip and notification documented.

(c) Vehicles used to transport children shall be maintained in safe working condition. Regular scheduled inspections shall be documented. Documentation of regular maintenance shall be kept on file in the facility. (See Appendix A)

(d) The driver shall comply with the health requirements as specified in Appendix C of these Rules.

(e) On field trips off premises, at least two (2) adults shall be in the vehicle, in addition to the driver.

(f) Children shall always be attended by a licensed nurse while in a vehicle.

(g) The number of infants and other non-ambulatory children transported by one licensed nurse shall be limited to six. A second licensed nurse shall be in the vehicle supervising the children when seven or more children are being transported.

(h) Transportation provided by the PCCC or under PCCC auspices shall comply with state law.

(i) All children and the driver shall be secured in individual passenger restraint devices at all times during the transportation by the PCCC or under PCCC auspices. Exception: Children four (4) years of age and older transported by a school bus or public transportation are not required to be restrained because these vehicles are not required to be equipped with restraint devices.

(j) No child shall be allowed to ride on the floor of a vehicle, and no child shall be placed with another child in the same restraint device.

(Rule 1200-08-02-.06, continued)

(k) Drivers of any vehicle used to transport children shall have a proper license and endorsement required for the transportation of the number of passengers transported and the vehicle size and weight as required in Chapter 50 of Title 55 of the Tennessee Code Annotated.

(l) 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 by all staff responsible for transporting children on a regular basis.

(m) Storage of firearms is prohibited in vehicles used to transport children.

(n) A minimum of ten (10) inches seat space per child is required in a vehicle transporting children.

(o) Children shall not spend more than ninety (90) minutes traveling one way.

(12) Recreational Services.

(a) The PCCC shall provide opportunities for recreational activities appropriate to the needs, interests, and ages of the children being served.

(b) Equipment needs for Children:

1. General

(i) All indoor and outdoor equipment shall be well made and safe. There shall be no dangerous angles, no sharp edges, splinters, or nails sticking out, no open S-hooks or pinch points within children's reach.

(ii) Damaged equipment shall be repaired or removed from the room or playground immediately.

(iii) Equipment shall be kept clean by washing frequently with soap and water.

(iv) There shall be developmentally appropriate equipment and furnishings for each age group in attendance.

(v) Material and equipment shall be provided to meet the needs of all the children enrolled.

(vi) Individual lockers, separate hooks and shelves or other containers (placed at children's reaching level for mobile children) shall be provided for each child's belongings.

2. Indoor Play Equipment

(i) Pieces of equipment, such as television sets, bookcases and appliances, shall be secured or supported so that they will not fall or tip over.

(ii) Indoor equipment, materials, and toys shall be available to:

(I) Meet active and quiet play needs of all children enrolled;

(II) Provide a variety of developmentally appropriate activities so that each child has at least three choices during play time; and

(Rule 1200-08-02-.06, continued)

(III) Adequately provide for all the activities required in other sections of this rule.

(iii) Toys, educational and play materials shall be organized and displayed within children's reach so that, if physically able, they can select and return items independently.

(iv) 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 (Optional)

(i) All outdoor play equipment shall be sufficient in amount and variety so that children can take part in many kinds of play each day.

(ii) The Consumer Products Safety Commission's "Handbook on Public Playground Safety" or similar authority shall be used for guidance on playground construction and maintenance.

(iii) All outdoor play equipment shall be placed to avoid injury. Fall zones shall extend at least four (4) feet and preferably 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.

(iv) Resilient surfacing material shall cover fall zones at a recognized acceptable depth. (See Appendix B)

(v) 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.

(13) Environmental Services.

(a) Environmental services shall be provided to assure the clean and sanitary condition of the PCCC and to provide a safe and hygienic environment for children and staff. Cleaning shall be accomplished in accordance with the infection control rules and regulations herein and PCCC policy; and

(b) There shall be verification of regular continuing education and competency for basic housekeeping principles.

(c) Each facility shall have routine cleaning of articles and surfaces such as furniture, floors, walls, ceilings, supplies, exhaust, grills and lighting fixtures.

(d) Sufficient and proper cleaning supplies and equipment shall be available to housekeeping staff. Cleaning supplies, toxic substances and equipment shall be secured at all times to prevent access by children. Toxic substances shall not be left unattended when not secured.

(e) A closet for janitorial supplies shall be provided.

(f) Storage for bulk supplies and equipment shall be located away from child care areas. Storage shall not be allowed in the outmost shipping carton.

(g) The building shall be kept in good repair, clean, sanitary and safe at all times.

(14) Infection Control. A Prescribed Child Care Center shall have an annual influenza vaccination program which shall include at least:

(a) The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The Prescribed Child Care Center will encourage all staff and independent practitioners to obtain an influenza vaccination;

(b) A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at http://tennessee.gov/health/topic/hcf-provider);

(c) Education of all employees about the following:

1. Flu vaccination,

2. Non-vaccine control measures, and

3. The diagnosis, transmission, and potential impact of influenza;

(d) An annual evaluation of the influenza vaccination program and reasons for non-participation; and

(e) A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee.

(15)~~(14)~~ Laundry Services.

(a) Laundry services shall:

1. Provide space for storage of clean linen within nursing units and for bulk storage within clean areas of the PCCC; and

2. Provide carts, bags or other acceptable containers appropriately marked to identify those used for soiled linen and those used for clean linen to prevent dual utilization of the equipment and cross contamination.

(b) The PCCC shall name an individual who is responsible for laundry service. This individual shall be responsible for:

1. Establishing a laundry service, either within the PCCC or by contract, that provides the facility with sufficient clean, sanitary linen at all times;

2. Knowing and enforcing infection control rules and regulations for the laundry service;

3. Assuring the collection, packaging, transportation and storage of soiled, contaminated, and clean linen is in accordance with all applicable infection control rules and procedures; and,

4. Assuring that a contract laundry service complies with all applicable infection control rules and procedures.

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(Rule 1200-08-02-.06, continued)

***Authority:*** *§§ 4-5-202, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-216, and 68-11-222.* ***Administrative History:*** *Original rule filed June 13, 2002; effective August 27, 2002. Amendment filed December 16, 2013; effective March 16, 2014. Amendment filed September 15, 2015; effective December 14, 2015.*

**1200-08-02-.07 BUILDING STANDARDS.**

(1) A PCCC shall construct, arrange, and maintain the condition of the physical plant and the overall facility environment in such a manner that the safety and well-being of the occupants are assured.

(2) After the applicant has submitted an application and licensure fees, the applicant must submit the building construction plans to the department. All facilities shall conform to the current edition of the following applicable codes as approved by the Board for Licensing Health Care Facilities: International Building Code (excluding Chapters 1 and 11) including referenced International Fuel Gas Code, International Mechanical Code, and International Plumbing Code; National Fire Protection Association (NFPA) NFPA 101 Life Safety Code excluding referenced NFPA 5000; Guidelines for Design and Construction of Health Care Facilities (FGI) including referenced Codes and Standards; U.S. Public Health Service Food Code; and Americans with Disabilities Act (ADA) Standards for Accessible Design. When referring to height, area or construction type, the International Building Code shall prevail. Where there are conflicts between requirements in local codes, the above listed codes, regulations and provisions of this chapter, the most stringent requirements shall apply.

(3) The codes in effect at the time of submittal of plans and specifications, as defined by these rules, shall be the codes to be used throughout the project.

(4) The licensed contractor shall perform all new construction and renovations to PCCCs, other than minor alterations not affecting fire and life safety or functional issues, in accordance with the specific requirements of these regulations governing new construction in PCCCs, including the submission of phased construction plans and the final drawings and the specifications to each.

(5) No new PCCC shall be constructed, nor shall major alterations be made to an existing PCCC without prior written approval of the department, and unless in accordance with plans and specifications approved in advance by the department. Before any new PCCC is licensed or before any alteration or expansion of a licensed PCCC can be approved, the applicant must furnish two (2) complete sets of plans and specifications to the department, together with fees and other information as required. Plans and specifications for new construction and major renovations, other than minor alterations not affecting fire and life safety or functional issues, shall be prepared by or under the direction of a licensed architect and/or a licensed engineer and in accordance with the rules of the Board of Architectural and Engineering Examiners.

(6) Final working drawings and specifications shall be accurately dimensioned and include all necessary explanatory notes, schedules and legends. The working drawings and specifications shall be complete and adequate for contract purposes.

(7) Detailed plans shall be drawn to a scale of at least one-eighth inch equals one foot (1/8" = 1'), and shall show the general arrangement of the building, the intended purpose and the fixed equipment in each room, with such additional information as the department may require. An architect or engineer licensed to practice in the State of Tennessee shall prepare the plans the department requires.

(a) The project architect or engineer shall forward two (2) sets of plans to the appropriate section of the department for review. After receipt of approval of phased construction plans, the owner may proceed with site grading and foundation work prior to receipt of

(Rule 1200-08-06-.05, continued)

(13) Where an involuntary transfer is proposed, in addition to any other relevant factors, the following factors shall be taken into account:

(a) The traumatic effect on the resident.

(b) The proximity of the proposed nursing home to the present nursing home and to the family and friends of the resident.

(c) The availability of necessary medical and social services at the proposed nursing home.

(d) Compliance by the proposed nursing home with all applicable Federal and State regulations.

(14) When the attending physician has ordered a resident transferred or discharged, but the resident or a representative of the resident opposes the action, the nursing home shall counsel with the resident, the next of kin, sponsor and representative, if any, in an attempt to resolve the dispute and shall not transfer the resident until such counseling has been provided. No involuntary transfer or discharge shall be made until the nursing home has first informed the department and the area long-term care ombudsman. Unless a disaster occurs on the premises or the attending physician orders the transfer as a medical emergency (due to the resident's immediate need for a higher level of care) no involuntary transfer or discharge shall be made until five (5) business days after these agencies have been notified, unless they each earlier declare that they have no intention of intervening.

(15) Except when the Board has revoked or suspended the license, a nursing home which intends to close, cease doing business, or reduce its licensed bed capacity by ten percent (10%) or more shall notify both the department and the area long-term care ombudsman at the earliest moment of the decision, but not later than thirty (30) days before the action is to be implemented. The facility shall establish a protocol, subject to the department's approval, for the transfer or discharge of the residents. Should the nursing home violate the provisions of this paragraph, the department shall request the Attorney General of the State of Tennessee to intervene to protect the residents, as is provided by T.C.A. § 68-11-213(a).

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-257, and 71-6-121.* ***Administrative History:*** *Original rule filed March 27; effective April 25, 1975. Repeal and new rule filed July 14, 1983; effective August 15, 1983. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed April 10, 2000; effective June 24, 2000. Amendment filed February 23, 2007; effective May 9, 2007. Amendment filed April 17, 2007; effective July 1, 2007.*

**1200-08-06-.06 BASIC SERVICES.**

(1) Performance Improvement.

(a) The nursing home must ensure that there is an effective, facility-wide performance improvement program to evaluate resident care and performance of the organization.

(b) The performance improvement program must be ongoing and have a written plan of implementation which assures that:

1. All organized services related to resident care, including services furnished by a contractor, are evaluated;

2. Nosocomial infections and medication therapy are evaluated;

(Rule 1200-08-06-.06, continued)

3. All services performed in the facility are evaluated as to the appropriateness of diagnosis and treatment; and

4. The facility shall develop and implement a system for measuring improvements in adherence to the hand hygiene program and influenza vaccination program.

(c) The nursing home must have an ongoing plan, consistent with available community and facility resources, to provide or make available services that meet the medically-related needs of its residents.

(d) The facility must develop and implement plans for improvement to address deficiencies identified by the performance improvement program and must document the outcome of the remedial action.

(e) Performance improvement program records are not disclosable, except when such disclosure is required to demonstrate compliance with this section.

(f) Good faith attempts by the performance improvement program committee to identify and correct deficiencies will not be used as a basis for sanctions.

(2) Physician Services.

(a) Policies and procedures concerning services provided by the nursing home shall be available for the admitting physicians.

(b) Residents shall be aided in receiving dental care as deemed necessary.

(c) Each nursing home shall retain by written agreement a physician to serve as a Medical Director.

(d) The Medical Director shall be responsible for the medical care in the nursing home. The Medical Director shall:

1. Delineate the responsibilities of and communicate with attending physicians to ensure that each resident receives medical care;

2. Ensure the delivery of emergency and medical care when the resident's attending physician or his/her designated alternate is unavailable;

3. Review reports of all accidents or unusual incidents occurring on the premises, identifying hazards to health and safety and recommending corrective action to the administrator;

4. Make periodic visits to the nursing home to evaluate the existing conditions and make recommendations for improvements;

5. Review and take appropriate action on reports from the Director of Nursing regarding significant clinical developments;

6. Monitor the health status of nursing home personnel to ensure that no health conditions exist which would adversely affect residents; and,

7. Advise and provide consultation on matters regarding medical care, standards of care, surveillance and infection control.

(3) Infection Control.

(Rule 1200-08-06-.06, continued)

(a) The nursing home must provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There must be an active program for the prevention, control, and investigation of infections and communicable diseases.

(b) The physical environment shall be maintained in such a manner to assure the safety and well being of the residents.

1. Any condition on the nursing home site conducive to the harboring or breeding of insects, rodents or other vermin shall be prohibited. Chemical substances of a poisonous nature used to control or eliminate vermin shall be properly identified. Such substances shall not be stored with or near food or medications.

2. Cats, dogs or other animals shall not be allowed in any part of the facility except for specially trained animals for the handicapped and except as addressed by facility policy for pet therapy programs. The facility shall designate in its policies and procedures those areas where animals will be excluded. The areas designated shall be determined based upon an assessment of the facility performed by medically trained personnel.

3. Telephones shall be readily accessible and at least one (1) shall be equipped with sound amplification and shall be accessible to wheelchair residents.

4. Equipment and supplies for physical examination and emergency treatment of residents shall be available.

5. A bed complete with mattress and pillow shall be provided. In addition, resident units shall be provided with at least one chair, a bedside table, an over bed tray and adequate storage space for toilet articles, clothing and personal belongings.

6. Individual wash cloths, towels and bed linens must be provided for each resident. Linen shall not be interchanged from resident to resident until it has been properly laundered.

7. Bath basin water service, emesis basin, bedpan and urinal shall be individually provided.

8. Water pitchers, glasses, thermometers, emesis basins, douche apparatus, enema apparatus, urinals, mouthwash cups, bedpans and similar items of equipment coming into intimate contact with residents shall be disinfected or sterilized after each use unless individual equipment for each is provided and then sterilized or disinfected between residents and as often as necessary to maintain them in a clean and sanitary condition. Single use, resident disposable items are acceptable but shall not be reused.

9. The facility shall have written policies and procedures governing care of residents during the failure of the air conditioning, heating or ventilation system, including plans for hypothermia and hyperthermia. When the temperature of any resident area falls below 65° F. or exceeds 85° F., or is reasonably expected to do so, the facility shall be alerted to the potential danger, and the department shall be notified.

(c) The administrator shall assure that an infection control program including members of the medical staff, nursing staff and administrative staff develop guidelines and

(Rule 1200-08-06-.06, continued)

techniques for the prevention, surveillance, control and reporting of facility infections. Duties of the program shall include the establishment of:

1. Written infection control policies;

2. Techniques and systems for identifying, reporting, investigating and controlling infections in the facility;

3. Written procedures governing the use of aseptic techniques and procedures in the facility;

4. Written procedures concerning food handling, laundry practices, disposal of environmental and resident wastes, traffic control and visiting rules, sources of air pollution, and routine culturing of autoclaves and sterilizers;

5. A log of incidents related to infectious and communicable diseases;

6. Formal provisions to educate and orient all appropriate personnel in the practice of aseptic techniques such as handwashing, proper grooming, masking, dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of resident care equipment and supplies; and,

7. Continuing education for all facility personnel on the cause, effect, transmission, prevention, and elimination of infections.

(d) The administrator, the medical staff and director of nursing services must ensure that the facility-wide performance improvement program and training programs address problems identified by the infection control program and must be responsible for the implementation of successful corrective action plans in affected problem areas.

(e) The facility shall develop policies and procedures for testing a resident's blood for the presence of the hepatitis B virus and the HIV virus in the event that an employee of the facility, a student studying at the facility, or other health care provider rendering services at the facility is exposed to a resident's blood or other body fluid. The testing shall be performed at no charge to the resident, and the test results shall be confidential.

(f) The facility and its employees shall adopt and utilize standard precautions (per CDC) for preventing transmission of infections, HIV, and communicable diseases, including adherence to a hand hygiene program which shall include:

1. Use of alcohol-based hand rubs or use of non-antimicrobial or antimicrobial soap and water before and after each patient contact if hands are not visibly soiled;

2. Use of gloves during each patient contact with blood or where other potentially infectious materials, mucous membranes, and non-intact skin could occur and gloves changed before and after each patient contact;

3. Use of either a non-antimicrobial soap and water or an antimicrobial soap and water for visibly soiled hands; and

4. Health care worker education programs which may include:

   (i) Types of patient care activities that can result in hand contamination;

   (ii) Advantages and disadvantages of various methods used to clean hands;

(iii) Potential risks of health care workers' colonization or infection caused by organisms acquired from patients; and

(iv) Morbidity, mortality, and costs associated with health care associated infections.

(g) All nursing homes shall adopt appropriate policies regarding the testing of residents and staff for HIV and any other identified causative agent of acquired immune deficiency syndrome.

(h) The facility shall document evidence of annual vaccination against influenza for each resident, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control most recent to the time of the vaccine. Influenza vaccination is medically contraindicated or the resident has refused the vaccine. Influenza vaccination for all residents accepting the vaccine shall be completed by November 30 of each year or within ten (10) days of the vaccine becoming available. Residents admitted after this date during the flu season and up to February 1, shall as medically appropriate, receive influenza vaccination prior to or on admission unless refused by the resident.

The facility shall document evidence of vaccination against pneumococcal disease for all residents who are 65 years of age or older, in accordance with the recommendation of the Advisory Committee on Immunization Practices of the Centers for Disease Control at the time of vaccination, unless such vaccination is medically contraindicated or the resident has refused offer of the vaccine. The facility shall provide or arrange the pneumococcal vaccination of residents who have not received this immunization prior to or on admission unless the resident refuses offer of the vaccine.

~~(i) The facility shall have an annual influenza vaccination program which shall include at least:~~

~~1. The offer of influenza vaccination to all staff and independent practitioners or accept documented evidence of vaccination from another vaccine source or facility;~~

~~2. A signed declination statement on record from all who refuse the influenza vaccination for other than medical contraindications;~~

~~3. Education of all direct care personnel about the following:~~

~~(i) Flu vaccination,~~

~~(ii) Non-vaccine control measures, and~~

~~(iii) The diagnosis, transmission, and potential impact of influenza;~~

~~4. An annual evaluation of the influenza vaccination program and reasons for non-participation;~~

~~5. The requirements to complete vaccinations or declination statements are suspended by the Medical Director in the event of a vaccine shortage.~~

(i) A Nursing Home shall have an annual influenza vaccination program which shall include at least:

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(Rule 1200-08-06-.06, continued)

1. The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The Nursing Home will encourage all staff and independent practitioners to obtain an influenza vaccination;

2. A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at http://tennessee.gov/health/topic/hcf-provider);

3. Education of all employees about the following:

   (i) Flu vaccination,

   (ii) Non-vaccine control measures, and

   (iii) The diagnosis, transmission, and potential impact of influenza;

4. An annual evaluation of the influenza vaccination program and reasons for non-participation; and

5. A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee.

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(j) Precautions shall be taken to prevent the contamination of sterile supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents. Decontamination and preparation areas shall be separated.

(k) Space and facilities for housekeeping equipment and supply storage shall be provided in each service area. Storage for bulk supplies and equipment shall be located away from patient care areas. The building shall be kept in good repair, clean, sanitary and safe at all times.

(l) The facility shall appoint a housekeeping supervisor who shall be responsible for:

1. Organizing and coordinating the facility's housekeeping service;

2. Acquiring and storing sufficient housekeeping supplies and equipment for facility maintenance; and,

3. Assuring the clean and sanitary condition of the facility to provide a safe and hygienic environment for residents and staff. Cleaning shall be accomplished in accordance with the infection control rules herein and facility policy.

(m) Laundry facilities located in the nursing home shall:

1. Be equipped with an area for receiving, processing, storing and distributing clean linen;

2. Be located in an area that does not require transportation for storage of soiled or contaminated linen through food preparation, storage or dining areas;

3. Provide space for storage of clean linen within nursing units and for bulk storage within clean areas of the facility; and,

(Rule 1200-08-06-.06, continued)

4. Provide carts, bags or other acceptable containers appropriately marked to identify those used for soiled linen and those used for clean linen to prevent dual utilization of the equipment and cross contamination.

(n) The facility shall name an individual who is responsible for laundry service. This individual shall be responsible for:

1. Establishing a laundry service, either within the nursing home or by contract, that provides the facility with sufficient clean, sanitary linen at all times;

2. Knowing and enforcing infection control rules and regulations for the laundry service;

3. Assuring the collection, packaging, transportation and storage of soiled, contaminated, and clean linen is in accordance with all applicable infection control rules and procedures; and,

4. Assuring that a contract laundry service complies with all applicable infection control rules and procedures.

(4) Nursing Services.

(a) Each nursing home must have an organized nursing service that provides twenty-four (24) hour nursing services furnished or supervised by a registered nurse. Each home shall have a licensed practical nurse or registered nurse on duty at all times and at least two (2) nursing personnel on duty each shift.

(b) The facility must have a well-organized nursing service with a plan of administrative authority and delineation of responsibilities for resident care. The Director of Nursing (DON) must be a licensed registered nurse who has no current disciplinary actions against his/her license. The DON is responsible for the operation of the service, including determining the types and numbers of nursing personnel and staff necessary to provide nursing care for all areas of the facility.

(c) The Director of Nursing shall have the following responsibilities:

1. Develop, maintain and periodically update:

(i) Nursing service objectives and standards of practice;

(ii) Nursing service policy and procedure manuals;

(iii) Written job descriptions for each level of nursing personnel;

(iv) Methods for coordination of nursing service with other resident services; and,

(v) Mechanisms for monitoring quality of nursing care, including the periodic review of medical records.

2. Participate in selecting prospective residents in terms of the nursing services they need and nursing competencies available.

3. Make daily rounds to see residents.

4. Notify the resident's physician when medically indicated.

(Rule 1200-08-06-.06, continued)

5. Review each resident's medications periodically and notify the physician where changes are indicated.

6. Supervise the administration of medications.

7. Supervise assignments of the nursing staff for the direct care of all residents.

8. Plan, develop and conduct monthly in-service education programs for nursing personnel and other employees of the nursing home where indicated. An organized orientation program shall be developed and implemented for all nursing personnel.

9. Supervise and coordinate the feeding of all residents who need assistance.

10. Coordinate the dietary requirements of residents with the staff responsible for the dietary service.

11. Coordinate housekeeping personnel.

12. Assure that discharge planning is initiated in a timely manner.

13. Assure that residents, along with their necessary medical information, are transferred or referred to appropriate facilities, agencies or outpatient services, as needed, for follow-up or ancillary care.

(d) The nursing service must have adequate numbers of licensed registered nurses, licensed practical nurses, and certified nurse aides to provide nursing care to all residents as needed. Nursing homes shall provide a minimum of two (2) hours of direct care to each resident every day including 0.4 hours of licensed nursing personnel time. There must be supervisory and staff personnel for each department or nursing unit to ensure, when needed, the availability of a licensed nurse for bedside care of any resident.

(e) A registered nurse must supervise and evaluate the nursing care for each resident.

(f) The facility must ensure that an appropriate individualized plan of care is prepared for each resident with input from appropriate disciplines, the resident and/or the resident's family or the resident's representative.

(g) A registered nurse must assign the nursing care of each resident to other nursing personnel in accordance with the resident's needs and the specialized qualifications and competence of the nursing staff available.

(h) Non-employee licensed nurses who are working in the nursing home must adhere to the policies and procedures of the facility. The director of the nursing service must provide for the adequate supervision and evaluation of the clinical activities of non-employee nursing personnel which occur within the responsibility of the nursing service.

(i) All drugs, devices and related materials must be administered by, or under the supervision of, nursing or other personnel in accordance with federal and state laws and regulations, including applicable licensing requirements, and in accordance with the approved medical staff policies and procedures.

(Rule 1200-08-06-.06, continued)

(j) There must be a facility procedure for reporting adverse drug reactions and errors in administration of drugs.

(k) When non-employees are utilized as sitters or attendants, they shall be under the authority of the nursing service and their duties shall be set forth clearly in written nursing service policies.

(l) Each resident shall be given proper personal attention and care of skin, feet, nails and oral hygiene in addition to the specific professional nursing care as ordered by the resident's physician.

(m) Medications, treatments, and diet shall be carried out as prescribed to safeguard the resident, to minimize discomfort and to attain the physician's objective.

(n) Residents shall have baths or showers at least two (2) times each week, or more often if requested by the resident.

(o) Body position of residents in bed or chair bound shall be changed at least every two (2) hours, day and night, while maintaining good body alignment. Proper skin care shall be provided for bony prominences and weight bearing parts to prevent discomfort and the development of pressure areas, unless contraindicated by physician's orders.

(p) Residents who are incontinent shall have partial baths each time the bed or bed clothing has been wet or soiled. The soiled or wet bed linen and the bed clothing shall be replaced with clean, dry linen and clothing immediately after being soiled.

(q) Residents shall have shampoos, haircuts and shaves as needed, or desired.

(r) Rehabilitation measures such as assisting patients with range of motion, prescribed exercises and bowel and bladder retraining programs shall be carried out according to the individual needs and abilities of the resident.

(s) Residents shall be active and out of bed except when contraindicated by written physician's orders.

(t) Residents shall be encouraged to achieve independence in activities of daily living, self-care, and ambulation as a part of daily care.

(u) Residents shall have clean clothing as needed and shall be kept free from odor.

(v) Residents' weights shall be taken and recorded at least monthly unless contraindicated by a physician's order.

(w) Physical restraints shall be checked every thirty (30) minutes and released every two (2) hours so the resident may be exercised and offered toilet access.

(x) Restraints may be applied or administered to residents only on the signed order of a physician. The signed physician's order must be for a specified and limited period of time and must document the necessity of the restraint. There shall be no standing orders for restraints.

(y) When a resident's safety or safety of others is in jeopardy, the nurse in charge shall use his/her judgment to use physical restraints if a physician's order cannot be immediately obtained. A written order must be obtained as soon as possible.

(z) Locked restraints are prohibited.

(Rule 1200-08-06-.06, continued)

(aa) Assistance with eating shall be given to the resident as needed in order for the resident to receive the diet for good health care.

(bb) Abnormal food intake will be evaluated and recorded.

(cc) A registered nurse may make the actual determination and pronouncement of death under the following circumstances:

1. The deceased was a resident of a nursing home;

2. The death was anticipated, and the attending physician or nursing home medical director has agreed in writing to sign the death certificate. Such agreement by the attending physician or nursing home medical director must be present with the deceased at the place of death;

3. The nurse is licensed by the state; and,

4. The nurse is employed by the nursing home in which the deceased resided.

(5) Medical Records.

(a) The nursing home shall comply with the Tennessee Medical Records Act, T.C.A. §§ 68-11-301, et seq.

(b) The nursing home must maintain a medical record for each resident. Medical records must be accurate, promptly completed, properly filed and retained, and accessible. The facility must use a system of author identification and record maintenance that ensures the integrity of the authentication and protects the security of all record entries.

(c) All medical records, in either written, electronic, graphic or otherwise acceptable form, must be retained in their original or legally reproduced form for a minimum period of at least ten (10) years after which such records may be destroyed. However, in cases of residents under mental disability or minority, their complete facility records shall be retained for the period of minority or known mental disability, plus one (1) year, or ten (10) years following the discharge of the resident, whichever is longer. Records destruction shall be accomplished by burning, shredding or other effective method in keeping with the confidential nature of the contents. The destruction of records must be made in the ordinary course of business, must be documented and in accordance with the facility's policies and procedures, and no record may be destroyed on an individual basis.

(d) When a nursing home closes with no plans of reopening, an authorized representative of the facility may request final storage or disposition of the facility's medical records by the department. Upon transfer to the department, the facility relinquishes all control over final storage of the records and the files shall become property of the State of Tennessee.

(e) The nursing home must have a system of coding and indexing medical records. The system must allow for timely retrieval by diagnosis and procedure.

(f) The nursing home must have a procedure for ensuring the confidentiality of resident records. Information from or copies of records may be released only to authorized individuals, and the facility must ensure that unauthorized individuals cannot gain access to or alter resident records. Original medical records must be released by the facility only in accordance with federal and state laws, court orders or subpoenas.

(Rule 1200-08-06-.06, continued)

(g) The medical record must contain information to justify admission, support the diagnosis, and describe the resident's progress and response to medications and services.

(h) All entries must be legible, complete, dated and authenticated according to facility policy.

(i) All records must document the following:

1. Evidence of a physical examination, including a health history, performed no more than thirty (30) days prior to admission or within forty-eight (48) hours following admission;

2. Admitting diagnosis;

3. A dietary history as part of each resident's admission record;

4. Results of all consultative evaluations of the resident and appropriate findings by clinical and other staff involved in the care of the resident;

5. Documentation of complications, facility acquired infections, and unfavorable reactions to drugs;

6. Properly executed informed consent forms for procedures and treatments specified by facility policy, or by federal or state law if applicable, as requiring written resident consent;

7. All practitioners' orders, nursing notes, reports of treatment, medication records, radiology and laboratory reports, and vital signs and other information necessary to monitor the resident's condition;

8. Discharge summary with disposition of case and plan for follow-up care; and,

9. Final diagnosis with completion of medical records within thirty (30) days following discharge.

(j) Electronic and computer-generated records and signature entries are acceptable.

(6) Pharmaceutical Services.

(a) The nursing home shall have pharmaceutical services that meet the needs of the residents and are in accordance with the Tennessee Board of Pharmacy statutes and rules. The medical staff is responsible for developing policies and procedures that minimize drug errors.

(b) All internal and external medications and preparations intended for human use shall be stored separately. They shall be properly stored in medicine compartments, including cabinets on wheels, or drug rooms. Such cabinets or drug rooms shall be kept securely locked when not in use, and the key must be in the possession of the supervising nurse or other authorized persons. Poisons or external medications shall not be stored in the same compartment and shall be labeled as such.

(c) Schedule II drugs must be stored behind two (2) separately locked doors at all times and accessible only to persons in charge of administering medication.

(Rule 1200-08-06-.06, continued)

(d) Every nursing home shall comply with all state and federal regulations governing Schedule II drugs.

(e) A notation shall be made in a Schedule II drug book and in the resident's nursing notes each time a Schedule II drug is given. The notation shall include the name of the resident receiving the drug, name of the drug, the dosage given, the method of administration, the date and time given and the name of the physician prescribing the drug.

(f) All oral orders shall be immediately recorded, designated as such and signed by the person receiving them and countersigned by the physician within ten (10) days.

(g) All orders for drugs, devices and related materials must be in writing and signed by the practitioner or practitioners responsible for the care of the resident. Electronic and computer-generated records and signature entries are acceptable. When telephone or oral orders must be used, they shall be:

1. Accepted only by personnel that are authorized to do so by the medical staff policies and procedures, consistent with federal and state law; and,

2. Signed or initialed by the prescribing practitioner according to nursing home policy.

(h) Medications not specifically limited as to time or number of doses when ordered are controlled by automatic stop orders or other methods in accordance with written policies. No Schedule II drug shall be given or continued beyond seventy-two (72) hours without a written order by the physician.

(i) Medication administration records (MAR) shall be checked against the physician's orders. Each dose shall be properly recorded in the clinical record after it has been administered.

(j) Preparation of doses for more than one scheduled administration time shall not be permitted.

(k) Medication shall be administered only by licensed medical or licensed nursing personnel or other licensed health professionals acting within the scope of their licenses.

(l) Unless the unit dose package system is used, individual prescriptions of drugs shall be kept in the original container with the original label intact showing the name of the resident, the drug, the physician, the prescription number and the date dispensed.

(m) Legend drugs shall be dispensed by a licensed pharmacist.

(n) Any unused portions of prescriptions shall be turned over to the resident only on a written order by the physician. A notation of drugs released to the resident shall be entered into the medical record. All unused prescriptions left in a nursing home must be destroyed on the premises and recorded be a pharmacist. Such record shall be kept in the nursing home.

(7) Radiology Services. The nursing home must maintain or have available diagnostic radiologic services according to the needs of the residents. If therapeutic services are also provided, they, as well as the diagnostic services, must meet professionally approved standards for safety and personnel qualifications.

(Rule 1200-08-06-.06, continued)

(8) Laboratory Services. The nursing home must maintain or have available, either directly or through a contractual agreement, adequate laboratory services to meet the needs of the residents. The nursing home must ensure that all laboratory services provided to its residents are performed in a facility licensed in accordance with the Tennessee Medical Laboratory Act (TMLA). All technical laboratory staff shall be licensed in accordance with the TMLA and shall be qualified by education, training and experience for the type of services rendered.

(9) Food and Dietetic Services.

(a) The nursing home must have organized dietary services that are directed and staffed by adequate qualified personnel. A facility may contract with an outside food management company if the company has a dietitian who serves the facility on a full-time, part-time, or consultant basis, and if the company maintains at least the minimum standards specified in this paragraph and provides for constant liaison with the facility medical staff for recommendations on dietetic policies affecting resident treatment. If an outside contract is utilized for management of its dietary services, the facility shall designate a full-time employee to be responsible for the overall management of the services.

(b) The nursing home must designate a person, either directly or by contractual agreement, to serve as the food and dietetic services director with responsibility for the daily management of the dietary services. The food and dietetic services director shall be:

1. A qualified dietitian; or,

2. A graduate of a dietetic technician or dietetic assistant training program, correspondence or classroom, approved by the American Dietetic Association; or,

3. An individual who has successfully completed in-person or online coursework that provided ninety (90) or more hours of classroom instruction in food service supervision. If the course has not been completed, this person shall be enrolled in a course and making satisfactory progress for completion within the time limit specified by the course requirement; or,

4. An individual who is a certified dietary manager (CDM), or certified food protection professional (CFPP); or,

5. A current or former member of the U.S. military who has graduated from an approved military dietary manager training program.

(c) There must be a qualified dietitian, full time, part-time, or on a consultant basis, who is responsible for the development and implementation of a nutrition care process to meet the needs of residents for health maintenance, disease prevention and, when necessary, medical nutrition therapy to treat an illness, injury or condition. Medical nutrition therapy includes assessment of the nutritional status of the resident and treatment through diet therapy, counseling and/or use of specialized nutrition supplements.

(d) Menus must meet the needs of the residents.

1. Therapeutic diets must be prescribed by the practitioner or practitioners responsible for the care of the residents and must be prepared and served as prescribed.

(Rule 1200-08-06-.06, continued)

2. Special diets shall be prepared and served as ordered.

3. Nutritional needs must be met in accordance with recognized dietary practices and in accordance with orders of the practitioner or practitioners responsible for the care of the residents.

4. A current therapeutic diet manual approved by the dietitian and medical staff must be readily available to all medical, nursing, and food service personnel.

(e) Education programs, including orientation, on-the-job training, inservice education, and continuing education shall be offered to dietetic services personnel on a regular basis. Programs shall include instruction in the use of equipment, personal hygiene, proper inspection, and the handling, preparing and serving of food.

(f) A minimum of three (3) meals in each twenty-four (24) hour period shall be served. A supplemental night meal shall be served if more than fourteen (14) hours lapse between supper and breakfast. Additional nourishments shall be provided to patients with special dietary needs. A minimum of three (3) days supply of food shall be on hand.

(g) Menus shall be prepared at least one week in advance. A dietitian shall be consulted to help write and plan the menus. If any change in the actual food served is necessary, the change shall be made on the menu to designate the foods actually served to the residents. Menus of food served shall be kept on file for a thirty (30) day period.

(h) The dietitian or designee shall have a conference, dated on the medical chart, with each resident and/or family within two (2) weeks of admission to discuss the diet plan indicated by the physician. The resident's dietary preferences shall be recorded and utilized in planning his/her daily menu.

(i) Food shall be protected from dust, flies, rodents, unnecessary handling, droplet infection, overhead leakage and other sources of contamination whether in storage or while being prepared and served and/or transported through hallways.

(j) Perishable food shall not be allowed to stand at room temperature except during necessary periods of preparation or serving. Prepared foods shall be kept hot (140 °F or above) or cold (45 °F or less). Appropriate equipment for temperature maintenance, such as hot and cold serving units or insulated containers, shall be used.

(k) All nursing homes shall have commercial automatic dishwashers approved by the National Sanitation Foundation. Dishwashing machines shall be used according to manufacturer specifications.

(l) All dishes, glassware and utensils used in the preparation and serving of food and drink shall be cleaned and sanitized after each use.

(m) The cleaning and sanitizing of handwashed dishes shall be accomplished by using a three-compartment sink according to the current "U.S. Public Health Service Sanitation Manual".

(n) The kitchen shall contain sufficient refrigeration equipment and space for the storage of perishable foods.

(o) All refrigerators and freezers shall have thermometers. Refrigerators shall be kept at a temperature not to exceed 45 °F. Freezers shall be kept at a temperature not to exceed 0 °F.

(Rule 1200-08-06-.06, continued)

(p) Written policies and procedures shall be followed concerning the scope of food services in accordance with the current edition of the "U.S. Public Health Service Recommended Ordinance and Code Regulating Eating and Drinking Establishments" and the current "U.S. Public Health Service Sanitation Manual" should be used as a guide to food sanitation.

(10) Social Work Services.

(a) Social services must be available to the resident, the resident's family and other persons significant to the resident, in order to facilitate adjustment of these individuals to the impact of illness and to promote maximum benefits from the health care services provided.

(b) Social work services shall include psychosocial assessment, counseling, coordination of discharge planning, community liaison services, financial assistance and consultation.

(c) A resident's social history shall be obtained within two (2) weeks of admission and shall be appropriately maintained.

(d) Social work services shall be provided by a qualified social worker.

(e) Facilities for social work services shall be readily accessible and shall permit privacy for interviews and counseling.

(11) Physical, Occupational and Speech Therapy Services.

(a) Physical therapy, occupational therapy and speech therapy shall be provided directly or through contractual agreement by individuals who meet the qualifications specified by nursing home policy, consistent with state law.

(b) Speech therapy services shall be provided only by or under supervision of a qualified speech language pathologist in good standing, or by a person qualified as a Clinical Fellow subject to Tennessee Board of Communications Disorders and Sciences Rule 1370-01-.10.

(c) A licensed physical therapist shall be in charge of the physical therapy service and a licensed occupational therapist shall be in charge of the occupational therapy service.

(d) Direct contact shall exist between the resident and the therapist for those residents that require treatment ordered by a physician.

(e) The physical therapist and occupational therapist, pursuant to a physician order, shall provide treatment and training designed to preserve and improve abilities for independent functions, such as: range of motion, strength, tolerance, coordination and activities of daily living.

(f) Therapy services shall be coordinated with the nursing service and made a part of the resident care plan.

(g) Sufficient staff shall be made available to provide the service offered.

(12) Ventilator Services. A nursing home that provides ventilator services shall meet or exceed the following minimum standards by:

(Rule 1200-08-06-.06, continued)

(a) Ensuring a licensed respiratory care practitioner as defined by Tennessee Code Annotated Section 63-27-102(7), shall be physically present at the facility twenty four (24) hours per day, seven (7) days per week to provide:

1. ventilator care;

2. administration of medical gases;

3. administration of aerosol medications; and

4. diagnostic testing and monitoring of life support systems;

(b) Ensuring that an appropriate, individualized plan of care is prepared for each patient requiring ventilator services. The plan of care shall be developed with input and participation from a pulmonologist or a physician with experience in ventilator care;

(c) Ensuring that admissions criteria is established to ensure the medical stability of ventilator-dependent patients prior to transfer from an acute care setting;

(d) Ensuring that Arterial Blood Gas (ABG) is readily available in order to document the patient's acid base status and/or End Tidal Carbon Dioxide (etCOs) and whether continuous pulse oximetry measurements should be performed in lieu of ABG studies;

(e) Ensuring that an audible, redundant external alarm system is located outside of each ventilator-dependent patient's room for the purpose of alerting caregivers of patient disconnection, ventilator disconnection or ventilator failure;

(f) Ensuring that the nursing home is equipped with emergency suction equipment and an adequate number of Ambu bags for manual ventilation;

(g) Ensuring that ventilator equipment is connected to electrical outlets connected to back-up generator power;

(h) Ensuring that ventilators are equipped with battery back-up systems;

(i) Ensuring that the nursing home is equipped to employ the use of current ventilator technology consistent with meeting patients' needs for mobility and comfort; and

(j) Ensuring that a back-up ventilator is available at all times.

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-3-511, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.* ***Administrative History:*** *Original rule filed March 27, 1975; effective April 25, 1975. Repeal and new rule filed July 14, 1983; effective August 15, 1983. Amendment filed March 13, 1986; effective April 12, 1986. Amendment filed January 29, 1991; effective March 15, 1991. Amendment filed December 29, 1992; effective February 15, 1993. Amendment filed June 15, 1993; effective July 30, 1993. Amendment filed April 17, 1996; effective July 1, 1996. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed January 31, 2000; effective April 15, 2000. Amendment filed March 29, 2000; effective June 12, 2000. Amendment filed September 13, 2002; effective November 27, 2002. Amendment filed September 4, 2003; effective November 18, 2003. Amendment filed September 21, 2005; effective December 5, 2005. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed December 16, 2013; effective March 16, 2014. Amendment filed September 15, 2015; effective December 14, 2015.*

**1200-08-06-.07 SPECIAL SERVICES: ALZHEIMER'S UNITS.** Structurally distinct parts of a nursing home may be designated as special care units for ambulatory residents with dementia or Alzheimer's

(Rule 1200-08-10-.05, continued)

(8) The ASTC shall have available a plan for emergency transportation to a licensed local hospital.

(9) The facility must ensure continuity of care and provide an effective discharge planning process that applies to all patients. The facility's discharge planning process, including discharge policies and procedures, must be specified in writing and must:

(a) Be developed and/or supervised by a registered nurse, social worker or other appropriately qualified personnel;

(b) Begin upon admission;

(c) Be provided when identified as a need by the patient, a person acting on the patient's behalf, or by the physician; and

(d) Include the likelihood of a patient's capacity for self-care or the possibility of the patient returning to his or her pre-ambulatory surgical treatment center environment.

(10) A discharge plan is required on every patient, even if the discharge is to home.

(11) The facility must arrange for the initial implementation of the patient's discharge plan and must reassess the patient's discharge plan if there are factors that may affect continuing care needs or the appropriateness of the discharge plan.

(12) As needed, the patient and family members or interested persons must be taught and/or counseled to prepare them for post-operative care.

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.* ***Administrative History:*** *Original rule filed July 22, 1977; effective August 22, 1977. Repeal and new rule filed June 30, 1992; effective August 14, 1992. Repeal and new rule filed March 21, 2000; effective June 4, 2000. Amendment filed June 16, 2003; effective August 30, 2003.*

**1200-08-10-.06 BASIC SERVICES.**

(1) Surgical Services.

(a) Facilities restricted in services they provide, e.g. those that restrict services to radiation therapy or use of local anesthetics only, may be exempted from all or part of the requirements of this rule pertaining to laboratory services, food and dietetic services, surgical services, and anesthesia services.

(b) If the facility provides surgical services, the services must be well organized and provided in accordance with acceptable standards of practice. If outpatient surgical services are offered, the services must be consistent in quality with inpatient care in accordance with the complexity of services offered.

(c) A hospital may choose to separately license a portion of the facility as an Ambulatory Surgical Treatment Center; the licensure fee for such is not required.

(d) The organization of the surgical services must be appropriate to the scope of the services offered.

(e) The operating rooms must be supervised by an experienced registered nurse or a doctor of medicine or osteopathy.

(Rule 1200-08-10-.06, continued)

(f) An ASTC may use scrub nurses in its operating rooms. For the purposes of this rule, a "scrub nurse" is defined as a registered nurse or either a licensed practical nurse (L.P.N.) or a surgical technologist (operating room technician) supervised by a registered nurse who works directly with a surgeon within the sterile field, passing instruments, sponges, and other items needed during the procedure and who scrubs his or her hands and arms with special disinfecting soap and wears surgical gowns, caps, eyewear, and gloves, when appropriate.

(g) Qualified registered nurses may perform circulating duties in the operating room. In accordance with applicable State laws and approved medical staff policies and procedures, LPNs and surgical technologists may assist in circulatory duties under the supervision of a qualified registered nurse who is immediately available to respond to emergencies.

(h) Surgical privileges must be delineated for all practitioners performing surgery in accordance with the competencies of each practitioner. The surgical service must maintain a roster of practitioners specifying the surgical privileges of each practitioner.

(i) Surgical services must be consistent with needs and resources. Policies covering surgical care must be designed to assure the achievement and maintenance of high standards of medical practice and patient care.

(j) Surgical technologists must:

1. Hold current national certification established by the Liaison Council on Certification for the Surgical Technologist (LCC-ST); or

2. Have completed a program for surgical technology accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP); or

3. Have completed an appropriate training program for surgical technologists in the armed forces or at a CAAHEP accredited hospital or CAAHEP accredited ambulatory surgical treatment center; or

4. Successfully complete the surgical technologists LCC-ST certifying exam; or

5. Provide sufficient evidence that, prior to May 21, 2007, the person was at any time employed as a surgical technologist for not less than eighteen (18) months in the three (3) years preceding May 21, 2007 in a hospital, medical office, surgery center, or an accredited school of surgical technology; or has begun the appropriate training to be a surgical technologist prior to May 21, 2007, provided that such training is completed within three (3) years of May 21, 2007.

(k) An ASTC can petition the director of health care facilities of the department for a waiver from the provisions of 1200-08-10-.06(1)(j) if they are unable to employ a sufficient number of surgical technologists who meet the requirements. The facility shall demonstrate to the director that a diligent and thorough effort has been made to employ surgical technologist who meet the requirements. The director shall refuse to grant a waiver upon finding that a diligent and thorough effort has not been made. A waiver shall exempt a facility from meeting the requirements for not more than nine (9) months. Additional waivers may be granted, but all exemptions greater than twelve (12) months shall be approved by the Board for Licensing Health Care Facilities.

(l) Surgical technologists shall demonstrate continued competence in order to perform their professional duties in surgical technology. The employer shall maintain evidence

(Rule 1200-08-10-.06, continued)

of the continued competence of such individuals. Continued competence activities may include but are not limited to continuing education, in-service training, or certification renewal. Persons qualified to be employed as surgical technologists shall complete fifteen (15) hours of continuing education or contact hours annually. Current certification by the National Board of Surgical Technology and Surgical Assisting shall satisfy this requirement.

(m) There must be a complete history and physical work-up in the chart of every patient prior to surgery, except in emergencies. If the history has been dictated, but not yet recorded in the patient's chart, there must be a statement to that effect and an admission note in the chart by the practitioner who admitted the patient.

(n) Properly executed informed consent, advance directive, if available, and organ donation forms, if available, must be in the patient's chart before surgery, except in emergencies. The patient is not required to sign advance directive and organ donation forms.

(o) Adequate equipment and supplies must be available as determined by the governing body and the medical staff, and must meet the current acceptable standards of practice in the ASTC industry. In conjunction with their governing body and the medical staff, the facility shall develop policies and procedures specifying the types of emergency equipment that are appropriate for the facility's patient population, and shall make the items immediately available at the ASTC to handle inter- or post-operative emergencies.

(p) At least one registered nurse shall be in the recovery area during the patient's recovery period.

(q) The operating room register must be complete and up-to-date.

(r) An operative report describing techniques, findings, and tissues removed or altered must be written or dictated immediately following surgery and signed by the surgeon.

(s) The ASTC shall provide one or more surgical suites which shall be constructed, equipped, and maintained to assure the safety of patients and personnel.

(t) Surgical suites are required to meet the same standards as hospital operating rooms, including those using general anesthesia.

(u) The ASTC shall have separate areas for waiting rooms, recovery rooms, treatment and/or examining rooms.

(2) Anesthesiology Services. Anesthesia shall be administered by:

(a) A qualified anesthesiologist;

(b) A doctor of medicine or osteopathy (other than an anesthesiologist);

(c) A dentist, oral surgeon, or podiatrist who is qualified to administer anesthesia under State law;

(d) A certified registered nurse anesthetist (CRNA); or

(e) A graduate registered nurse anesthetist under the supervision of an anesthesiologist who is immediately available if needed.

(Rule 1200-08-10-.06, continued)

(f) After the completion of anesthesia, patients shall be constantly attended by competent personnel until responsive and able to summon aid. Each center shall maintain a log of the inspections made prior to each day's use of the anesthesia equipment. A record of all service and maintenance performed on all anesthesia machines, vaporizers and ventilators shall also be on file.

(g) When inhaled general anesthesia known to trigger malignant hyperthermia and/or succinylcholine are maintained in the facility, there shall be thirty-six (36) ampules of Dantrolene for injection onsite. This requirement applies to anesthesia agents, current or future, that are shown to cause malignant hyperthermia. If Dantrolene is administered, appropriate monitoring must be provided post-operatively.

(h) Written policies and procedures relative to the administration of anesthesia shall be developed and approved by the Medical Staff and governing body.

(i) Any patient receiving conscious sedation shall receive:

1. continuous EKG monitoring;

2. continuous oxygen saturations;

3. serial BP monitoring at intervals no less than every 5 minutes; and

4. supplemental oxygen therapy and immediately available:

(i) ambubag;

(ii) suction;

(iii) endotracheal tube; and

(iv) crash cart.

(3) Medical Staff.

(a) The ASTC shall have a medical staff organized under written by-laws that are approved by the governing body. The medical staff of the ASTC shall define a mechanism to:

1. Assure that an optimal level of professional performance is maintained;

2. Appoint independent practitioners through a defined credentialing process;

3. Apply credentialing criteria uniformly;

4. Utilize the current license, relevant training and experience, current competence and the ability to perform requested privileges in the credentialing process; and

5. Provide for participation in required committees of the facility to ensure that quality medical care is provided to the patients.

(b) Each licensed independent practitioner shall provide care under the auspices of the facility in accordance with approved privileges.

(Rule 1200-08-10-.06, continued)

(c) Clinical privileges shall be granted based on the practitioners' qualifications and the services provided by the facility, and shall be reviewed and/or revised at least every two (2) years.

(4) Nursing Service. A licensed registered nurse (R.N.) shall be on duty at all times. Additional appropriately trained staff shall be provided as needed to ensure that the medical needs of the patients are fully met.

(a) The ASTC shall be organized under written policies and procedures relating to patient care, establishment of standards for nursing care and mechanisms for evaluating such care and nursing services.

(b) A qualified registered nurse designated by the administrator shall be responsible for coordinating and supervising all nursing services.

(c) There shall be a sufficient staffing pattern of registered nurses to provide quality nursing care to each surgical patient from admission through discharge. Additional staff shall be on duty and available to assist the professional staff to adequately handle routine and emergency patient needs.

(d) The ASTC shall establish written procedures for emergency services which will ensure that professional staff members who have been trained in emergency resuscitation procedures shall be on duty at all times when there is a patient in the ASTC and until the patient has been discharged.

(e) Nursing care policies and procedures shall be consistent with professionally recognized standards of nursing practice and shall be in accordance with the Nurse Practice Act of the State of Tennessee and the Association of Operating Room Nurses Standards of Practice.

(f) Staff development and training shall be provided to the nursing staff and other ancillary staff in order to maintain and improve knowledge and skills. The educational/training program shall be planned, documented and conducted on a continuing basis. There shall be at least appropriate training on equipment, safety concerns, infection control and emergency care on an annual basis.

(5) Pharmaceutical Services. The ASTC must provide drugs and biologicals in a safe and effective manner in accordance with accepted standards of practice. Such drugs and biologicals must be stored in a separate room or cabinet which shall be kept locked at all times.

(6) Ancillary Services. All ancillary or supportive health or medical services, including but not limited to, radiological, pharmaceutical, or medical laboratory services shall be provided in accordance with all applicable state and federal laws and regulations.

(7) Radiological Services. The ASTC shall provide within the facility, or through arrangement, diagnostic radiological services commensurate with the needs of the ambulatory surgical treatment center.

(a) If radiological services are provided by facility staff, the services shall be maintained free of hazards for patients and personnel.

(b) New installations of radiological equipment, and subsequent inspections for the identification of radiation hazards shall be made as specified in state and federal requirements.

(Rule 1200-08-10-.06, continued)

(c) Personnel monitoring shall be maintained for each individual working in the area of radiation. Readings shall be on at least a monthly basis and reports kept on file and available for review.

1. Personnel - The ASTC shall have a radiologist either full-time or part-time on a consulting basis, both to supervise the service and to discharge professional radiological services.

2. The use of all radiological apparatus shall be limited to personnel designated as qualified by the radiologist; and use of fluoroscopes shall be limited to physicians.

(d) If provided under arrangement with an outside provider, the radiological services must be directed by a qualified radiologist and meet state and federal requirements.

(8) Laboratory Services.

(a) The ASTC shall provide on the premises or by written agreement with a laboratory licensed under T.C.A. § 68-29-105, a clinical laboratory to provide those services commensurate with the needs and services of the ASTC.

(b) Any patient terminating pregnancy in an ASTC shall have an Rh type, documented prior to the procedure, performed on her blood. In addition, she shall be given the opportunity to receive Rh immune globulin after an appropriate crossmatch procedure is performed within a licensed laboratory.

(9) Food and Dietetic Services. If a patient will be in the facility for more than four (4) hours post-op, an appropriate diet shall be provided.

(10) Environmental Services.

(a) The facility shall provide a safe, accessible, effective and efficient environment of care consistent with its mission, service, law and regulation.

(b) The facility shall develop policies and procedures that address:

1. Safety;

2. Security;

3. Control of hazardous materials and waste;

4. Emergency preparedness;

5. Life safety;

6. Medical equipment; and,

7. Utility systems.

(c) Staff shall have been oriented to and educated about the environment of care and possess knowledge and skills to perform responsibilities under the environment of care policies and procedures.

(Rule 1200-08-10-.06, continued)

(d) Utility systems, medical equipment, life safety elements, and safety elements of the environment of care shall be maintained, tested and inspected.

(e) Safety issues shall be addressed and resolved.

(f) Appropriate staff shall participate in implementing safety recommendations and monitoring their effectiveness.

(g) The building and grounds shall be suitable to services provided and patients served.

(11) Infection Control. An Ambulatory Surgical Treatment Center shall have an annual influenza vaccination program which shall include at least: — Formatted: Indent: Left: 0.38", Hanging: 0.38"

(a) The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The Ambulatory Surgical Treatment Center will encourage all staff and independent practitioners to obtain an influenza vaccination; — Formatted: Indent: Left: 0.75", Hanging: 0.38"

(b) A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at http://tennessee.gov/health/topic/hcf-provider); — Formatted: Indent: Left: 0.75", Hanging: 0.38"

(c) Education of all employees about the following: — Formatted: Indent: Left: 0.75", Hanging: 0.38"

1. Flu vaccination, — Formatted: Indent: Hanging: 0.25"

2. Non-vaccine control measures, and — Formatted: Indent: Hanging: 0.31"

3. The diagnosis, transmission, and potential impact of influenza; — Formatted: Indent: Hanging: 0.31"

(d) An annual evaluation of the influenza vaccination program and reasons for non-participation; and — Formatted: Indent: Left: 0.75", Hanging: 0.38"

(e) A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee. — Formatted: Indent: Left: 0.75", Hanging: 0.38"

(12)~~(11)~~ Medical Records. — Formatted: Tab stops: Not at 0.38" + 0.75" + 1.13" + 1.5" + 1.88" + 2.25" + 2.38" + 2.63" + 3" + 3.5" + 6.5"

(a) The ASTC shall comply with the Medical Records Act of 1974, T.C.A. § 68-11-301, et seq.

(b) A medical record shall be maintained for each person receiving medical care provided by the ASTC and shall include:

1. Patient identification;

2. Name of nearest relative or other responsible agent;

3. Identification of primary source of medical care;

4. Dates and times of visits;

5. Signed informed consent;

(Rule 1200-08-10-.06, continued)

6. Pertinent medical history;

7. Diagnosis;

8. Physician examination report;

9. Anesthesia records of pertinent preoperative and postoperative reports including preanesthesia evaluation, type of anesthesia, technique and dosage used;

10. Operative report;

11. Discharge summary, including instructions for self care and instructions for obtaining postoperative emergency care;

12. Reports of all laboratory and diagnostic procedures along with tests performed and the results authenticated by the appropriate personnel; and,

13. X-ray reports.

(c) Medical records shall be current and confidential. Medical records and copies thereof shall be made available when requested by an authorized representative of the board or the department.

(13)~~(12)~~ Invasive Procedures

(a) Only a medical doctor, licensed pursuant to *T.C.A. § 63-6-101 et seq.*, or an osteopathic physician, licensed pursuant to *T.C.A. § 63-9-101 et seq.*, who meet the following qualifications will be permitted to perform invasive procedures of the spine, spinal cord, sympathetic nerves of the spine or block of major peripheral nerves of the spine:

1. Board certified through the American Board of Medical Specialties (ABMS) or the American Osteopathic Association (AOA) or the American Board of Physician Specialties (ABPS)/American Association of Physician Specialists (AAPS) in one of the following medical specialties:

   (i) Anesthesiology;

   (ii) Neurological surgery, or Neuromusculoskeletal medicine;

   (iii) Orthopedic surgery;

   (iv) Physical medicine and rehabilitation;

   (v) Radiology; or

   (vi) Any other board certified physician who had completed an ABMS subspecialty board in pain medicine or completed an ACGME accredited pain fellowship;

2. A recent graduate in a medical specialty listed in part 1 not yet eligible to apply for ABMS, AOA, or ABPS/AAPS board certification; provided, there is a practice relationship with a medical doctor or an osteopathic physician who meets the requirements of part 1.;

(Rule 1200-08-10-.06, continued)

3. A licensee who is not board certified in one of the specialties listed in part 1, but is board certified in a different ABMS, AOA, or ABPS/AAPS specialty and has completed a post-graduate training program in interventional pain management approved by the board;

4. A licensee who serves as a clinical instructor in pain medicine at an accredited Tennessee medical training program; or

5. A licensee who has an active pain management practice in a clinic accredited in outpatient interdisciplinary pain rehabilitation by the Commission on Accreditation of Rehabilitation Facilities or any successor organizations.

(b) An advanced practice nurse or physician assistant shall only perform invasive procedures involving any portion of the spine, spinal cord, sympathetic nerves of the spine or block of major peripheral nerves of the spine under the direct supervision of a medical doctor or an osteopathic physician who meets the qualifications of Rule 1200-08-10-.06 (12)(a)1 or 3. Direct supervision is defined as being physically present in the center at the time the invasive procedure is performed.

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68, 68-11-209, 68-11-216, 68-57-101, 68-57-102, 68-57-104, and 68-57-105.* ***Administrative History:*** *Original rule filed July 22, 1977; effective August 22, 1977. Amendment filed September 10, 1991; effective October 25, 1991. Repeal and new rule filed June 30, 1992; effective August 14, 1992. Repeal and new rule filed March 21, 2000; effective June 4, 2000. Amendment filed June 16, 2003; effective August 30, 2003. Amendment filed February 23, 2006; effective May 9, 2006. Amendment filed February 23, 2007; effective May 9, 2007. Amendment filed February 22, 2010; effective May 23, 2010. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed December 16, 2013; effective March 16, 2014. Amendments filed March 27, 2015; effective June 25, 2015. Amendment filed October 20, 2015; effective January 18, 2016.*

**1200-08-10-.07 RESERVED.**

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-209, and 68-57-105.* ***Administrative History:*** *Original rule filed June 30, 1992; effective August 14, 1992. Repeal and new rule filed March 4, 2000; effective June 4, 2000. Amendment filed June 16, 2003; effective August 30, 2003. Amendment filed January 3, 2012; effective April 2, 2012.*

**1200-08-10-.08 BUILDING STANDARDS.**

(1) An ASTC shall construct, arrange, and maintain the condition of the physical plant and the overall ASTC environment in such a manner that the safety and well-being of the patients are assured.

(2) After the applicant has submitted an application and licensure fees, the applicant must submit the building construction plans to the department. All facilities shall conform to the current edition of the following applicable codes as approved by the Board for Licensing Health Care Facilities: International Building Code (excluding Chapters 1 and 11) including referenced International Fuel Gas Code, International Mechanical Code, and International Plumbing Code; National Fire Protection Association (NFPA) NFPA 101 Life Safety Code excluding referenced NFPA 5000; Guidelines for Design and Construction of Health Care Facilities (FGI) including referenced Codes and Standards; U.S. Public Health Service Food Code; and Americans with Disabilities Act (ADA) Standards for Accessible Design. When referring to height, area or construction type, the International Building Code shall prevail. Where there are conflicts between requirements in local codes, the above listed codes, regulations and provisions of this chapter, the most stringent requirements shall apply.

(Rule 1200-08-11-.03, continued)

(4) The Commissioner may suspend the admission of any new residents to the home, pending a prompt hearing before the board or an administrative law judge, when the conditions are or are likely to be detrimental to the health, safety or welfare of the residents.

(5) Whenever the Commissioner suspends the admission of any new residents to the home because of the detrimental conditions found, the home shall post a copy of the Commissioner's Order upon the public entrance doors of the facility and prominently display it there for so long as it remains effective and until the Commissioner or the board removes the suspension and restores the facility's ability to admit new residents. During the suspension, the home shall inform any person who inquires about the admission of a new resident of the provisions of the order and make a copy of the order available for the inquirer's inspection.

(6) Following a contested case hearing, the board may find a facility's license subject to suspension or revocation and may then immediately impose any sanction authorized by law.

(7) The board may recommend the appointment of one or more special monitors to serve such term and to be present in the home for such hours each week as the board finds necessary and appropriate, as specified in its order. The home shall reimburse the reasonable fees and expenses of any special monitor so appointed by the board.

(8) Any licensee or applicant for a license, aggrieved by a decision or action of the department or board, pursuant to this rule, may request a hearing before the board. The proceedings and judicial review of the board's decision shall be in accordance with the Uniform Procedures Act, T.C.A. § 4-5-101, et seq.

(9) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-04-01-.18 regarding petitions for reconsiderations and stays in that case.

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-208, 68-11-209, and 68-11-221.* ***Administrative History:*** *Original rule filed June 21, 1979; effective August 6, 1979. Amendment filed August 16, 1988; effective September 30, 1988. Repeal and new rule filed July 27, 2000; effective October 10, 2000. Amendment filed March 1, 2007; effective May 15, 2007.*

**1200-08-11-.04 ADMINISTRATION.**

(1) The licensee shall be at least eighteen (18) years of age, of reputable and responsible character, able to comply with these rules, and must maintain financial resources and income sufficient to provide for the needs of the residents, including their room, board and personal services.

(2) The licensee must designate in writing a capable and responsible person to act on administrative matters and to exercise all the powers and responsibilities of the licensee as set forth in this chapter in the absence of the licensee.

(3) Each home must have an administrator who shall be certified by the board, unless the administrator is currently licensed in Tennessee as a nursing home administrator pursuant to T.C.A. § 63-16-101, et seq.

(4) An applicant for certification as a home for the aged administrator shall meet the following requirements:

(a) Must be at least eighteen (18) years of age and a high school graduate or the holder of a general equivalency diploma.

(Rule 1200-08-11-.04, continued)

(b) Must not have been convicted of a criminal offense involving the abuse or intentional neglect of an elderly or vulnerable individual.

(c) Must submit an application, on a form provided by the department, and a fee of one hundred eighty dollars ($180) prior to issuance or renewal of a certificate. All certificates shall expire biennially on June 30, thereafter.

(d) Biennial renewal of certification is required. The renewal application and fee of one hundred eighty dollars ($180) shall be submitted with written proof of attendance, during the period prior to renewal, of at least twenty-four (24) classroom hours of continuing education courses. The initial biennial re-certification expiration date of Home for the Aged administrator candidates who receive their initial administrator certification between the dates of January 1 and June 30 of any year will be extended to two (2) years plus the additional months remaining in the fiscal year. The extension applies only to the first biennial certification period for any such administrator and may only be applied when there are less than six (6) months remaining in the State fiscal year.

(e) Continuing education.

1. The twenty-four (24) classroom hours of required continuing education courses shall include instruction in the following:

   (i) State rules and regulations for homes for the aged;

   (ii) Health care management;

   (iii) Nutrition and food service;

   (iv) Financial management; and

   (v) Healthy lifestyles.

2. All educational courses must be approved by the board. Courses sponsored by the National Association of Residential Care Facilities and the National Association of Nursing Home Administrators are deemed approved by the board.

3. In order to obtain board approval for educational courses, a copy of the course curriculum must be submitted to the board for approval prior to attending the course.

4. Proof of administrator certification course attendance shall be submitted to the department upon completion of the course.

(5) Infection Control. A Home for the Aged shall have an annual influenza vaccination program which shall include at least

(a) The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The Home for the Aged will encourage all staff and independent practitioners to obtain an influenza vaccination;

(b) A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at http://tennessee.gov/health/topic/hcf-provider).

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(Rule 1200-08-11-.04, continued)

(c) Education of all employees about the following: — Formatted: Indent: Left: 0.75", Hanging: 0.38"

1. Flu vaccination. — Formatted: Indent: First line: 0.63"

2. Non-vaccine control measures, and — Formatted: Indent: First line: 0.63"

3. The diagnosis, transmission, and potential impact of influenza; — Formatted: Indent: First line: 0.63"

(d) An annual evaluation of the influenza vaccination program and reasons for non-participation; and — Formatted: Indent: Left: 0.75", Hanging: 0.38"

(e) A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee. — Formatted: Indent: Left: 0.75", Hanging: 0.38"

(6)~~(5)~~ Each home for the aged shall:

(a) Have an identified responsible attendant and a sufficient number of employees to meet the needs of the residents. The responsible attendant must be at least eighteen (18) years of age and able to comply with these rules.

(b) Have a responsible awake attendant on the premises at all times.

(c) Maintain documentation of the checks of the "Registry of Persons who have Abused or Intentionally Neglected Elderly or Vulnerable Individuals" prior to hiring any employee.

(d) Have a written statement of policies and procedures outlining the responsibilities of the licensee to the resident and any obligation of the resident to the facility.

(e) Post whether they have liability insurance, the identity of their primary insurance carrier, and if self-insured, the corporate entity responsible for payment of any claims. It shall be posted on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height and displayed at the main public entrance.

(f) Keep a written up-to-date log of all residents and produce the log for the local fire department in the event of an emergency.

(g) Maintain written policies and procedures informing the resident of his/her rights and how to register grievances and complaints.

(h) Not allow an owner, responsible attendant, employee or representative thereof to act as a court-appointed guardian, trustee, or conservator for any resident of the facility or any of such resident's property or funds, except as provided by rule 1200-08-11-.10.

(i) Cooperate in the Department's inspections including allowing entry at any hour and providing all required records.

(j) Develop and follow a written policy, plan, procedure, technique or system regarding a subject whenever these rules require that a licensee develop such a plan. A residential home which violates a required policy also violates the rule establishing the requirements.

(k) Not retaliate against or, in any manner, discriminate against any person because of a complaint made in good faith and without malice to the board, the department, Adult

(Rule 1200-08-11-.04, continued)

Protective Services, the Comptroller of the State Treasury or the Long Term Care Ombudsman Program. A home shall neither retaliate nor discriminate because of information lawfully provided to these authorities, because of a person's cooperation with them or because a person is subpoenaed to testify at a hearing involving one of these authorities.

(l) Allow pets in the home only when they are not a nuisance or do not pose a health hazard.

(m) Comply with all local laws, rules or ordinances, and with this chapter.

(n) The facility shall develop a concise statement of its charity care policies and shall post such statement in a place accessible to the public.

(7)~~(6)~~ No occupant or employee who has a reportable communicable disease, as stipulated by the department, is permitted to reside or work in a home unless the home has a written protocol approved by the department.

(8)~~(7)~~ All health care facilities licensed pursuant to T.C.A. § 68-11-201, et seq. shall post the following in the main public entrance:

(a) Contact information including statewide toll-free number of the division of adult protective services, and the number for the local district attorney's office;

(b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and

(c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

(9)~~(8)~~ "No Smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted at every entrance.

(10)~~(9)~~ Residents of the facility are exempt from the smoking prohibition. The resident smoking practices shall be governed by the policies and procedures established by the facility. Smoke from such areas shall not infiltrate into areas where smoking is prohibited.

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 39-17-1803, 39-17-1804, 39-17-1805, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-257, 68-11-268 and 71-6-121.* ***Administrative History:*** *Original rule filed June 21, 1997; effective August 6, 1979. Amendment filed August 16, 1988; effective September 30, 1988. Repeal and new rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 20, 2006; effective July 4, 2006. Amendment filed February 23, 2007; effective May 9, 2007. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed February 22, 2010; effective May 23, 2010.*

**1200-08-11-.05 ADMISSIONS, DISCHARGES AND TRANSFERS.**

(1) Only residents whose needs can be met by the facility within its licensure category shall be admitted.

(Rule 1200-08-15-.05, continued)

(a) Documentation that each secured patient or resident has been evaluated by an interdisciplinary team consisting of at least a physician, a social worker, a registered nurse, and a family member and/or significant other (or patient care advocate) prior to admittance to the unit;

(b) Ongoing and up-to-date documentation of quarterly review by each patient or resident's interdisciplinary team as to the appropriateness of placement in the secured unit;

(c) A current listing of the number of deaths and hospitalizations with diagnoses that have occurred on the unit;

(d) A current listing of all unusual incidents and/or complications on the unit;

(e) An up-to-date staffing pattern and staff ratios for the unit that is recorded on a daily basis. The staffing pattern must ensure that there is a minimum of one (1) attendant, awake, on duty, and physically located on the unit twenty-four (24) hours per day, seven (7) days per week at all times;

(f) A formulated calendar of daily group activities scheduled including a resident attendance record for the previous three (3) months;

(g) An up-to-date listing of any incidences of decubitus and/or nosocomial infections, including resident identifiers; and,

(h) Documentation showing that 100% of the staff working on the unit receives and has received annual in-service training which shall include, but not be limited to the following subject areas:

1. Basic facts about the causes, progression and management of Alzheimer's Disease and related disorders;

2. Dealing with dysfunctional behavior and catastrophic reactions in the residents;

3. Identifying and alleviating safety risks to the resident;

4. Providing assistance in the activities of daily living for the resident; and,

5. Communicating with families and other persons interested in the resident.

(18) Any residential facility licensed by the board of licensing health care facilities shall upon admission provide to each resident the division of adult protective services' statewide toll-free number: 888-277-8366.

***Authority***: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 71-6-121.* ***Administrative History:*** *Original rule filed August 18, 1995; effective November 1, 1995. Repeal and new rule filed April 27, 2000; effective July 11, 2000. Amendment filed April 20, 2006; effective July 4, 2006.*

**1200-08-15-.06 BASIC HOSPICE FUNCTIONS.**

(1) Core Functions. A residential hospice must ensure that substantially all core services are routinely provided directly by hospice employees. A residential hospice may use contracted staff if necessary to supplement residential hospice employees in order to meet the needs of patients and residents.

(Rule 1200-08-15-.06, continued)

(a) Nursing services. The residential hospice must provide nursing care and services by, or under the supervision of, a registered nurse (R.N.) at all times.

1. Nursing services must be directed and staffed to assure the nursing needs of patients and residents are met.

2. Patient and resident care responsibilities of nursing personnel must be specified.

3. Hospice services and HIV care services must be provided in accordance with recognized standards of practice.

4. Nursing services include the authorization of a Registered Nurse to pronounce the death of a patient or resident.

(b) Medical Social Services. Medical Social Services must be provided by a qualified social worker under the direction of a physician.

(c) Physician Services. In addition to palliation and management of terminal illness and related conditions and HIV care, physician employees of the residential hospice including the physician member(s) of the interdisciplinary group, must also meet the general medical needs of the patients and residents to the extent these needs are not met by the attending physician.

(d) Counseling Services. Counseling services must be made available to both the individual and the family. Counseling includes bereavement counseling, provided both prior to and after the patient's or resident's death, as well as dietary, therapeutic, spiritual and may include any other counseling services identified in the plan of care for the individual and family provided while the individual is a patient or resident of the residential hospice.

1. Bereavement counseling. There must be an organized program for the provision of bereavement services under the supervision of a qualified professional. The plan of care for these services should reflect family needs, services to be provided, and the frequency of services.

2. Dietary counseling. Dietary counseling, when required, must be provided by a qualified individual.

3. Spiritual counseling. Spiritual counseling must include notice to patients as to the availability of clergy.

4. Additional counseling. Counseling may be provided by other members of the interdisciplinary group as well as by other qualified professionals as determined by the residential hospice.

(2) Plan of Care.

A written plan of care must be established and maintained for each individual admitted to a residential hospice, and the care provided to an individual must be in accordance with the plan.

(a) Establishment of plan. The plan must be established by the attending physician, the medical director or the physician's designee and the interdisciplinary group prior to providing care.

(Rule 1200-08-15-.06, continued)

(b) Review of plan. The plan must be reviewed and updated as the patient's condition changes, but at intervals of no more than fifteen (15) days, by the attending physician, the medical director or the physician's designee and the interdisciplinary group. These reviews must be documented.

(c) Content of plan. The plan must include an assessment of the individual's needs and identification of the HIV care services or hospice services required including the management of discomfort and symptom relief. It must state in detail the scope and frequency of services needed to meet the patient's or resident's and family's needs.

(3) Interdisciplinary Group.

The organization providing hospice services must designate an interdisciplinary group and groups composed of individuals who provide or supervise the care and services offered by the residential hospice:

(a) Composition of Group. The residential hospice must have an interdisciplinary group or groups that include at least the following individuals who are employees of the residential hospice:

1. A doctor of medicine or osteopathy;

2. A registered nurse;

3. A social worker; and

4. A pastoral or other counselor.

(b) Role of Group. The interdisciplinary group is responsible for:

1. Participation in the establishment of the plan of care;

2. Provision or supervision of the quality of hospice care and services and/or HIV care services;

3. Periodic review and updating of the plan of care for each individual receiving hospice care or HIV care; and

4. Establishing and maintaining policies governing the day-to-day provision of hospice care and services and/or HIV care and services.

(c) If a residential hospice has more than one interdisciplinary group, it must designate in advance the group it chooses to execute the functions described in paragraph (b)(4) of this section.

(d) Coordinator. The residential hospice must designate a registered nurse to coordinate the implementation of the plan of care of each patient and/or resident.

(e) Volunteers. The residential hospice may use volunteers, in defined roles, under the supervision of a designated residential hospice employee.

1. Training. The residential hospice must provide appropriate orientation and training that is consistent with acceptable standards of residential hospice practice.

(Rule 1200-08-15-.06, continued)

2. Role. Volunteers may be used in administrative or direct patient or resident care roles.

3. Recruiting and retaining. The hospice must document active and ongoing efforts to recruit and train volunteers.

4. Availability of clergy. The residential hospice must make reasonable efforts to arrange for visits of clergy and other members of religious organizations in the community to patients or residents who request such visits and must advise patients and/or residents of this opportunity.

(4) Continuation of Care. A residential hospice must assist in coordinating continued care should the patient or resident be transferred or discharged from the residential hospice.

(5) Drug and Treatments. Drugs and treatments shall be administered by appropriately licensed facility personnel acting within the scope of their license. Oral orders for drugs and treatments shall be given to appropriately licensed personnel acting within the scope of their licenses, immediately recorded, signed and dated, and countersigned and dated by the physician.

(6) Performance Improvement Program. The residential hospice must ensure that there is an effective facility-wide performance improvement program to evaluate resident care and performance of the organization. The performance improvement program must be ongoing and have a written plan of implementation which assures that:

(a) All organized services related to resident care, including services furnished by a contractor, are evaluated;

(b) Nosocomial infections and medication therapy are evaluated;

(c) All services performed in the facility are evaluated as to the appropriateness of diagnosis and treatment;

(d) The residential hospice must have an ongoing plan, consistent with available community and facility resources, to provide or make available services that meet the medically-related needs of its patients and/or HIV care residents;

(e) The facility must develop and implement plans for improvement to address deficiencies identified by the performance improvement program and must document the outcome of the remedial action;

(f) Performance improvement program records are not disclosable except when such disclosure is required to demonstrate compliance with this section;

(g) Good faith attempts by the Performance Improvement Program Committee to identify and correct deficiencies will not be used as a basis for sanctions.

(7) Infection Control.

(a) The residential hospice must provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There must be an active program for the prevention, control, and investigation of infections and communicable diseases.

(b) The administrator shall assure that an infection control committee, including the medical director and members of the nursing staff and administrative staff, develops

(Rule 1200-08-15-.06, continued)

guidelines and techniques for the prevention, surveillance, control and reporting of facility infections. Duties of the committee shall include the establishment of:

1. Written infection control policies;

2. Techniques and systems for identifying, reporting, investigating and controlling infections in the facility;

3. Written procedures governing the use of aseptic techniques and procedures in the facility;

4. Written procedures concerning food handling, laundry practices, disposal of environmental and patient and/or resident wastes, traffic control and visiting rules, sources of air pollution, and routine culturing of autoclaves and sterilizers;

5. A log of incidents related to infectious and communicable diseases;

6. Formal provisions to educate and orient all appropriate personnel in the practice of aseptic techniques such as handwashing, proper grooming, masking and dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of patient and/or resident equipment and supplies; and,

7. Continuing education for all facility personnel on the cause, effect, transmission, prevention, and elimination of infections.

(c) The administrator, the medical director and a registered nurse must ensure that the facility-wide performance improvement program and training programs address problems identified by the infection control program and must be responsible for the implementation of successful corrective action plans in affected problem areas.

(d) The facility shall develop policies and procedures for testing a patient's or resident's blood for the presence of the hepatitis B virus and the HIV (AIDS) virus in the event that an employee of the facility, a student studying at the facility, or other health care provider rendering services at the facility is exposed to a patient's or resident's blood or other body fluid. The testing shall be performed at no charge to the patient or resident, and the test results shall be confidential.

(e) The facility and its employees shall adopt and utilize standard or universal precautions for preventing transmission of infections, HIV, and communicable diseases.

(f) A Residential Hospice shall have an annual influenza vaccination program which shall include at least: — **Formatted:** Indent: Left: 0.75", Hanging: 0.38"

1. The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The Residential Hospice will encourage all staff and independent practitioners to obtain an influenza vaccination; — **Formatted:** Indent: Left: 1.13", Hanging: 0.38"

2. A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at http://tennessee.gov/health/topic/hcf-provider); — **Formatted:** Indent: Left: 1.13", Hanging: 0.38"

3. Education of all employees about the following: — **Formatted:** Indent: Left: 1.13", Hanging: 0.38"

(i) Flu vaccination. — **Formatted:** Indent: Hanging: 0.38"

(Rule 1200-08-15-.06, continued)

(ii) Non-vaccine control measures; and

(iii) The diagnosis, transmission, and potential impact of influenza;

4. An annual evaluation of the influenza vaccination program and reasons for non-participation; and

5. A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee.

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(g)~~(f)~~ Every residential hospice shall adopt appropriate policies regarding the testing of patients and staff for human immunodeficiency virus (HIV) and any other identified causative agent of acquired immune deficiency syndrome.

(h)~~(g)~~ Precautions shall be taken to prevent the contamination of sterile supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents. Decontamination and preparation areas shall be separated.

(i)~~(h)~~ Space and facilities for housekeeping equipment and supply storage shall be provided in each service area. Storage for bulk supplies and equipment shall be located away from patient and resident care areas. The building shall be kept in good repair, clean, sanitary and safe at all times.

(j)~~(i)~~ The facility shall appoint a housekeeping supervisor who shall be responsible for:

1. Organizing and coordinating the facility's housekeeping service;

2. Acquiring and storing sufficient housekeeping supplies and equipment for facility maintenance; and,

3. Assuring the clean and sanitary condition of the facility to provide a safe hygienic environment for patients and/or residents and staff. Cleaning shall be accomplished in accordance with the infection control rules and regulations herein and facility policy.

(k)~~(j)~~ Laundry facilities located in the residential hospice shall:

1. Be equipped with an area for receiving, processing, storing and distributing clean linen;

2. Be located in an area that does not require transportation for storage of soiled or contaminated linen through food preparation, storage or dining areas;

3. Provide space for storage of clean linen and for bulk storage within clean areas of the facility; and,

4. Provide carts, bags or other acceptable containers appropriately marked to identify those used for soiled linen and those used for clean linen to prevent dual utilization of the equipment and cross contamination.

(l)~~(k)~~ The facility shall name an individual who is responsible for laundry service. This individual shall be responsible for:

(Rule 1200-08-15-.06, continued)

1. Establishing a laundry service, either within the residential hospice or by contract, that provides the facility with sufficient clean, sanitary linen at all times;

2. Knowing and enforcing infection control rules and regulations for the laundry service;

3. Assuring the collection, packaging, transportation and storage of soiled, contaminated, and clean linen is in accordance with all applicable infection control rules, regulations and procedures; and,

4. Assuring that a contract laundry service complies with all applicable infection control rules, regulations and procedures.

(8) Hospice Aide Services. Aide Services must be available and adequate in frequency to meet the needs of the patients.

(a) The hospice aide shall be assigned to a particular patient or resident by a registered nurse. Written instructions for patient or resident care shall be prepared by a registered nurse or therapist as appropriate. Duties may include the performance of simple procedures as an extension of therapy services, personal care, ambulation and exercises, reporting changes in the patient's or resident's condition and needs, and completing appropriate records.

(b) The registered nurse, or appropriate professional staff member, shall monitor and assess the hospice aide's competence in providing care, relationships and determine whether goals are being met.

(c) There shall be regularly scheduled continuing in-service programs which include on-the-job training as issues are identified.

(9) Physical therapy, occupational therapy, respiratory therapy and speech language pathology.

(a) Physical therapy services, occupational therapy services, respiratory therapy services and speech language pathology services must be available, and when provided, offered in a manner consistent with accepted standards of practice.

(b) Speech therapy services shall be provided only by or under supervision of a qualified speech language pathologist in good standing, or by a person qualified as a Clinical Fellow subject to Tennessee Board of Communications Disorders and Sciences Rule 1370-01-.10.

(10) Medical supplies. Medical supplies and appliances including drugs and biologicals, must be provided as needed for the palliation and management of the terminal illness or conditions directly attributable to the terminal diagnosis.

(a) Administration. All drugs and biologicals must be administered in accordance with accepted standards of practice, only by appropriately licensed employees of the hospice.

(b) The residential hospice must have a policy for the disposal of controlled drugs when those drugs are no longer needed by the patient.

(c) Drugs and biologicals may be administered by the patient or resident or his/her family member if the patient's or resident's attending physician has approved.

(11) Medical Records.

(Rule 1200-08-15-.06, continued)

(a) A medical record containing past and current findings in accordance with accepted professional standards shall be maintained for every residential hospice patient and/or HIV care resident. The record must be complete, promptly and accurately documented, readily accessible and systematically organized to facilitate retrieval. Each clinical record is a comprehensive compilation of information. Entries are made for all services provided. Entries are made and signed by the person providing the services. The record includes all services whether furnished directly or under arrangements made by the hospice. Each individual's record must contain:

1. The initial and subsequent assessments;
2. The plan of care;
3. Identification data;
4. Consent and authorization and election forms;
5. Pertinent medical history; and
6. Complete documentation of all services and events, including but not limited to evaluations, treatments and progress notes.

(b) All medical records, either written, electronic, graphic or otherwise acceptable form, must be retained in their original or legally reproduced form for a minimum period of at least (10) years after which such records may be destroyed. However, in cases of patients or residents under mental disability or minority, their complete residential hospice records shall be retained for the period of minority or known mental disability, plus one (1) year, or ten (10) years following the discharge of the patient or resident, whichever is longer. Records destruction shall be accomplished by burning, shredding or other effective method in keeping with the confidential nature of the contents. The destruction of records must be made in the ordinary course of business, must be documented and in accordance with the residential hospice's policies and procedures, and no record may be destroyed on an individual basis.

(c) Even if the residential hospice discontinues operations, records shall be maintained as mandated by these rules and the Tennessee Medical Records Act (see T.C.A. § 68-11-308). If a patient or resident is transferred to another health care facility or agency, a copy of the record or an abstract shall accompany the patient or resident when the residential hospice is directly involved in the transfer.

(d) The residential hospice must have a procedure for ensuring the confidentiality of patient and resident records. Information from, or copies of, records may be released only to authorized individuals, and the facility must ensure that unauthorized individuals cannot gain access to, or alter, patient or resident records. Original medical records must be released by the facility only in accordance with federal and state laws.

(e) For purposes of this rule, the requirements for signature or countersignature by a physician or other person responsible for signing, countersigning and entry may be satisfied by the electronic entry by such person of a unique code assigned exclusively to him or her, or by entry of other unique electronic or mechanical symbols, provided that such person has adopted same as his or her signature in accordance with established protocol or rules.

(f) All entries must be legible, complete, dated and authenticated according to facility policy.

(Rule 1200-08-15-.06, continued)

(12) Pharmaceutical Services.

(a) The residential hospice shall have pharmaceutical services that meet the needs of the residents and are in accordance with the Tennessee Board of Pharmacy statutes and regulations. The facility is responsible for developing policies and procedures that minimize drug errors.

(b) Test reagents, germicides, and disinfectants shall be stored separately from drugs, devices and related materials. External drugs and related materials must be stored separately from internal drugs, devices and related materials. All drugs, devices and related materials must be properly labeled. They shall be properly stored in medicine compartments, including cabinets on wheels, or drug rooms. Such cabinets or drug rooms shall be kept securely locked when not in use and the key must be in the possession of the supervising nurse or other authorized persons.

(c) Schedule II drugs must be stored behind two (2) separately locked doors at all times and accessible only to persons in charge of administering medication.

(d) Every residential hospice shall comply with all state and federal regulations governing Schedule II drugs.

(e) A notation shall be made in a Schedule II drug book and in the patient's or resident's nursing notes each time a Schedule II drug is given. The notation shall include the name of the patient or resident receiving the drug, name of the drug, the dosage given, the method of administration, the date and time given and the name of the physician prescribing the drug.

(f) All oral orders shall be immediately recorded, designated as such and signed by the person receiving them and countersigned by the physician within ten (10) days.

(g) All orders for drugs, devices and related materials must be in writing and signed by the practitioner or practitioners responsible for the care of the patient or resident. Electronic and computer-generated records and signature entries are acceptable. When telephone or oral orders must be used, they shall be:

1. Accepted only by personnel that are authorized to do so by the medical staff policies and procedures, consistent with federal and state law; and,

2. Signed or initialed by the prescribing practitioner according to residential hospice policy.

(h) Medications not specifically limited as to time or number of doses when ordered are controlled by automatic stop orders or other methods in accordance with written policies. No Schedule II drug shall be given or continued beyond seventy-two (72) hours without a written order by the physician.

(i) Medication administration records (MAR) shall be checked against the physician's orders. Each dose shall be properly recorded in the clinical record after it has been administered.

(j) Preparation of doses for more than one scheduled administration time shall not be permitted.

(k) Medication shall be administered only by licensed medical or licensed nursing personnel or other licensed health professionals acting within the scope of their license.

(Rule 1200-08-15-.06, continued)

(l) Unless the unit dose package system is used, individual prescriptions of drugs shall be kept in the original container with the original label intact showing the name of the patient or resident, the drug, the physician, the prescription number and the date dispensed.

(m) Legend drugs shall be dispensed by a licensed pharmacist.

(n) Any unused portions of prescriptions shall be turned over to the patient or resident only on a written order by the physician. A notation of drugs released to the patient or resident shall be entered into the medical record. All unused prescriptions left in a residential hospice shall be destroyed on the premises and recorded by a pharmacist. Such record shall be kept in the residential hospice.

(13) Laboratory Services.

The residential hospice must maintain or have available, either directly or through a contractual agreement, adequate laboratory services to meet the needs of the patients and/or residents. The residential hospice must ensure that all laboratory services provided to its patients and/or residents are performed in a facility licensed in accordance with the Tennessee Medical Laboratory Act (TMLA). All technical laboratory staff shall be licensed in accordance with the TMLA and shall be qualified by education, training and experience for the type of services rendered.

(14) Food and Dietetic Services.

(a) The residential hospice must designate a person, either directly or by contractual agreement, to serve as the food and dietetic services director with responsibility for the daily management of the dietary services.

(b) There must be a qualified dietitian, full time, part-time, or on a consultant basis who is responsible for the development and implementation of a nutrition care process to meet the needs of patients and/or residents for health maintenance, disease prevention and, when necessary, medical nutrition therapy to treat an illness, injury or condition.

(c) Menus must meet the needs of the patients and/or residents.

1. Therapeutic diets must be prescribed by the practitioner or practitioners responsible for the care of the patients and/or residents and must be prepared and served as prescribed.

2. Special diets shall be prepared and served as ordered.

3. Nutritional needs must be met in accordance with recognized dietary practices and in accordance with orders of the practitioner or practitioners responsible for the care of the patients and/or residents.

4. A current therapeutic diet manual approved by the dietitian and medical director must be readily available to all medical, nursing, and food service personnel.

(d) Education programs, including orientation, on-the-job training, inservice education, and continuing education shall be offered to dietetic services personnel on a regular basis. Programs shall include instruction in the use of equipment, personal hygiene, proper inspection, and the handling, preparing and serving of food.

(Rule 1200-08-15-.06, continued)

(e) A minimum of three (3) meals in each twenty-four (24) hour period shall be offered. A supplemental night meal shall be offered if more than fourteen (14) hours lapse between supper and breakfast. Additional nourishments shall be provided to patients and/ or residents with special dietary needs. A minimum of three (3) days supply of food shall be on hand.

(f) Food shall be protected from dust, flies, rodents, unnecessary handling, droplet infection, overhead leakage and other sources of contamination whether in storage, while being prepared and served, and/or transported through hallways.

(g) Perishable food shall not be allowed to stand at room temperature except during necessary periods of preparation or serving. Prepared foods shall be kept hot (140 °F or above) or cold (45 °F or less). Appropriate equipment for temperature maintenance, such as hot and cold serving units or insulated containers, shall be used.

(h) Dishwashing machines shall be used according to manufacturer specifications.

(i) All dishes, glassware and utensils used in the preparation and serving of food and drink shall be cleaned and sanitized after each use.

(j) The cleaning and sanitizing of handwashed dishes shall be accomplished by using a three-compartment sink according to the current "U.S. Public Health Service Sanitation Manual".

(k) The kitchen shall contain sufficient refrigeration equipment and space for the storage of perishable foods.

(l) All refrigerators and freezers shall have thermometers. Refrigerators shall be kept at a temperature not to exceed 45 °F. Freezers shall be kept at a temperature not to exceed 0 °F.

(m) Written policies and procedures shall be followed concerning the scope of food services in accordance with the current edition of the "U.S. Public Health Service Recommended Ordinance and Code Regulating Eating and Drinking Establishments" and the current "U.S. Public Health Service Sanitation Manual" should be used as a guide to food sanitation.

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.* ***Administrative History:*** *Original rule filed August 18, 1995; effective November 1, 1995. Repeal and new rule filed April 27, 2000; effective July 11, 2000. Amendment filed November 22, 2005; effective February 5, 2006. Amendment filed March 27, 2015; effective June 25, 2015. Amendment filed September 15, 2015; effective December 14, 2015.*

**1200-08-15-.07 RESERVED.**

**1200-08-15-.08 BUILDING STANDARDS.**

(1) A residential hospice shall construct, arrange, and maintain the condition of the physical plant and the overall residential hospice environment in such a manner that the safety and well-being of the patients are assured.

(2) After the applicant has submitted an application and licensure fees, the applicant must submit the building construction plans to the department. All facilities shall conform to the current edition of the following applicable codes as approved by the Board for Licensing Health Care Facilities: International Building Code (excluding Chapters 1 and 11) including referenced International Fuel Gas Code, International Mechanical Code, and International Plumbing

(Rule 1200-08-24-.05, continued)

name, address and phone number of the department contact person, and shall encourage the mother to involve the Department of Children's Services in the relinquishment of the infant. If practicable, the birthing center shall also provide the mother with both orally delivered and written information concerning the requirements of these rules relating to recovery of the child and abandonment of the child.

(c) The birthing center, any birthing center employee and any member of the professional medical community at such birthing center shall perform any act necessary to protect the physical health or safety of the child.

(d) As soon as reasonably possible, and no later than twenty-four (24) hours after receiving a newborn infant, the birthing center shall contact the Department of Children's Services, but shall not do so before the mother leaves the birthing center premises. Upon receipt of notification, the department shall immediately assume care, custody and control of the infant.

(e) Notwithstanding any provision of law to the contrary, any birthing center, any birthing center employee and any member of the professional medical community shall be immune from any criminal or civil liability for damages as a result of any actions taken pursuant to the requirements of these rules, and no lawsuit shall be predicated thereon; provided, however, that nothing in these rules shall be construed to abrogate any existing standard of care for medical treatment or to preclude a cause of action based upon violation of such existing standard of care for medical treatment.

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-255.* ***Administrative History:*** *Original rule filed March 31, 1998; effective June 12, 1998. Amendment filed September 17, 2002; effective December 1, 2002.*

**1200-08-24-.06 BASIC BIRTHING CENTER FUNCTIONS.**

(1) Quality Assurance. The birthing center governing body must ensure that there is an established program for evaluating the quality of direct care services to childbearing families, and the environment in which the services are provided. with an organizational plan to identify and resolve problems.

(2) Staff.

(a) The governing body must ensure that there are adequate numbers of qualified and, where required, licensed personnel to provide services needed by mothers and families and to provide for safe maintenance of the birthing center.

(b) The governing body must appoint a medical director who:

1. Is a qualified specialist in obstetrics/gynecology or family practice;

2. Approves all policies, procedures and practice guidelines for the medical management of care;

3. Approves standardized criteria for admission screening and monitoring the risk status of each mother during pregnancy, labor, birth and postpartum; and

4. Is available for consultation and referral in obstetrics or pediatrics or has made arrangements with a qualified physician for these services.

(3) Equipment.

(Rule 1200-08-24-.06, continued)

(a) A readily accessible emergency cart or tray for the mother, equipped to carry out the written emergency procedures of the center and securely placed with a written log of routine maintenance for readiness.

(b) A readily accessible emergency cart or tray for the newborn, equipped to carry out the written emergency procedures of the center and securely placed with a written log of routine maintenance for readiness.

(c) Properly maintained equipment for routine care of women and neonates including but not limited to:

1. A heat source for infant examination or resuscitation;

2. Transfer incubator or isolette or demonstrated capability of ready access to transfer incubator;

3. Sterilizer or demonstration of sterilizing capability;

4. Blood pressure equipment, thermometers, fetoscope/doptone;

5. Intravenous equipment;

6. Oxygen equipment for mother and newborn; and,

7. Instruments for episiotomy and repair.

(4) Prenatal Care. The physician, certified professional midwife and nurse-midwife shall ensure that patients have adequate education and prenatal care by generally accepted definitions. Records of this care should be available in the center at the time of admission. When, in the course of prenatal care. risk factors are identified which preclude childbirth at the center, the woman shall be referred for care in a hospital setting and her prenatal records made available to the attending clinicians.

(5) Surgical Services. Surgical procedures shall be limited to those normally accomplished during uncomplicated childbirth, such as episiotomy and repair, and must not include operative obstetrics or cesarean section.

(6) If intervention beyond what is allowed in the practice guidelines is required at any time during the course of pregnancy and/or labor, the woman and her newborn must be managed at a more intensive level of care.

(7) Laboratory Services. The birthing center shall have the capacity to perform on site routinely necessary tests such as hematocrit and urinalysis for glucose, protein, bacteria, and specific gravity.

(8) Intrapartum Care. Labor shall not be inhibited, stimulated. or augmented with chemical agents during the first or second stage of labor. Drugs for induction or augmentation of labor, vacuum extractors, forceps, continuous electronic fetal monitoring and ultrasound imaging are not appropriate during normal labor. A nurse midwife. certified professional midwife or physician must be in attendance or available to attend during all stages of the delivery.

(9) Analgesia and Anesthesia. General and conduction anesthesia shall not be administered at birthing centers. Local anesthesia for pudendal block may be performed. Systemic analgesia may be administered, but pain control should depend primarily on close emotional support and adequate preparation for the birth experience.

(Rule 1200-08-24-.06, continued)

(10) Postpartum Care. Mothers and infants must be discharged in accordance with standards set by the clinical staff and specified in the policy and procedures manual, including laboratory tests required by state laws. A program for prompt follow-up care and postpartum evaluation after discharge shall be ensured and outlined in the manual of policies and procedures. This program should include assessment of infant health including physical examination, laboratory screening tests at the appropriate times, maternal postpartum status, instruction in child care including immunization, referral to sources of pediatric care, provision of family planning services, and assessment of mother-child relationship including breast feeding.

(11) Food Services. The birthing center must provide mothers and families with nutritious liquids and snacks as required. Food may be prepared by the family, catered, or prepared in the birthing center's kitchen. Meals that are prepared and served by the birthing center will be subject to local regulations for food preparation and service.

(12) The physical environment of the facility shall be maintained in a safe, clean and sanitary manner.

(a) Any condition on the birthing center site conducive to the harboring or breeding of insects, rodents or other vermin shall be prohibited. Chemical substances of a poisonous nature used to control or eliminate vermin shall be properly identified. Such substances shall not be stored with or near food or medications.

(b) Cats, dogs or other animals shall not be allowed in any part of the facility except for specially trained animals for the handicapped. The facility shall designate in its policies and procedures those areas where animals will be excluded. The areas designated shall be determined based upon an assessment of the facility performed by medically trained personnel.

(13) Infection Control. A Birthing Center shall have an annual influenza vaccination program which shall include at least: — **Formatted:** Indent: Left: 0.38", Hanging: 0.38"

(a) The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The Birthing Center will encourage all staff and independent practitioners to obtain an influenza vaccination; — **Formatted:** Indent: Left: 0.75", Hanging: 0.38"

(b) A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at http://tennessee.gov/health/topic/hcf-provider); — **Formatted:** Indent: Left: 0.75", Hanging: 0.38", Tab stops: 1.13", Left

(c) Education of all employees about the following: — **Formatted:** Indent: Left: 0.75", Hanging: 0.38"

1. Flu vaccination, — **Formatted:** Indent: Hanging: 0.38"

2. Non-vaccine control measures, and — **Formatted:** Indent: Hanging: 0.25"

3. The diagnosis, transmission, and potential impact of influenza; — **Formatted:** Indent: Hanging: 0.25"

(d) An annual evaluation of the influenza vaccination program and reasons for non-participation; and — **Formatted:** Indent: Left: 0.75", Hanging: 0.38"

(e) A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee. — **Formatted:** Indent: Left: 0.75", Hanging: 0.38"

(Rule 1200-08-24-.06, continued)

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.* ***Administrative History:*** *Original rule filed March 31, 1998; effective June 12, 1998. Amendment filed January 3, 2006; effective March 19, 2006.*

**1200-08-24-.07 BUILDING STANDARDS.**

(1) A birthing center shall construct, arrange, and maintain the condition of the physical plant and the overall birthing center environment in such a manner that the safety and well-being of the patients are assured.

(2) After the applicant has submitted an application and licensure fees, the applicant must submit the building construction plans to the department. All facilities shall conform to the current edition of the following applicable codes as approved by the Board for Licensing Health Care Facilities: International Building Code (excluding Chapters 1 and 11) including referenced International Fuel Gas Code, International Mechanical Code, and International Plumbing Code; National Fire Protection Association (NFPA) NFPA 101 Life Safety Code excluding referenced NFPA 5000; Guidelines for Design and Construction of Health Care Facilities (FGI) including referenced Codes and Standards; U.S. Public Health Service Food Code; and Americans with Disabilities Act (ADA) Standards for Accessible Design. When referring to height, area or construction type, the International Building Code shall prevail. Where there are conflicts between requirements in local codes, the above listed codes, regulations and provisions of this chapter, the most stringent requirements shall apply.

(3) The codes in effect at the time of submittal of plans and specifications, as defined by these rules, shall be the codes to be used throughout the project.

(4) The licensed contractor shall perform all new construction and renovations to birthing centers, other than minor alterations not affecting fire and life safety or functional issues, in accordance with the specific requirements of these regulations governing new construction in birthing centers, including the submission of phased construction plans and the final drawings and the specifications to each.

(5) No new birthing center shall be constructed, nor shall major alterations be made to an existing birthing center without prior written approval of the department, and unless in accordance with plans and specifications approved in advance by the department. Before any new birthing center is licensed or before any alteration or expansion of a licensed birthing center can be approved, the applicant must furnish two (2) complete sets of plans and specifications to the department, together with fees and other information as required. Plans and specifications for new construction and major renovations, other than minor alterations not affecting fire and life safety or functional issues, shall be prepared by or under the direction of a licensed architect and/or a licensed engineer and in accordance with the rules of the Board of Architectural and Engineering Examiners.

(6) Final working drawings and specifications shall be accurately dimensioned and include all necessary explanatory notes, schedules and legends. The working drawings and specifications shall be complete and adequate for contract purposes.

(7) Detailed plans shall be drawn to a scale of at least one-eighth inch equals one foot (1/8" = 1'), and shall show the general arrangement of the building, the intended purpose and the fixed equipment in each room, with such additional information as the department may require. An architect or engineer licensed to practice in the State of Tennessee shall prepare the plans the department requires.

(a) The project architect or engineer shall forward two (2) sets of plans to the appropriate section of the department for review. After receipt of approval of phased construction

(Rule 1200-08-25-.05, continued)

(6) Each violation of any statute, rule or order enforceable by the Board shall constitute a separate and distinct offense and may render the ACLF committing the offense subject to a separate penalty for each violation.

(7) A licensee may appeal any disciplinary action taken against it in accordance with the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-101, *et seq.*

(8) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-04-01-.18 regarding petitions for reconsiderations and stays in that case.

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-213 (i), and 68-11-257.* ***Administrative History:*** *Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed November 25, 1998; effective February 8, 1999. Amendment filed February 15, 2000; effective April 30, 2000. Amendment filed September 13, 2002; effective November 27, 2002. Amendment filed May 24, 2004; effective August 7, 2004. Amendment filed April 20, 2006; effective July 4, 2006. Amendment filed February 23, 2007; effective May 9, 2007. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009.*

**1200-08-25-.06 ADMINISTRATION.**

(1) Each ACLF shall meet the following staffing and procedural standards:

(a) Staffing Requirements:

1. The licensee must designate in writing a capable and responsible person to act on administrative matters and to exercise all the powers and responsibilities of the licensee as set forth in this chapter in the absence of the licensee.

2. If the licensee is a natural person, the licensee shall be at least eighteen (18) years of age, of reputable and responsible character, able to comply with these rules, and must maintain financial resources and income sufficient to provide for the needs of the residents, including their room, board, and personal services.

3. An ACLF shall have an identified responsible attendant who is alert and awake at all times and a sufficient number of employees to meet the residents' needs, including medical services as prescribed. The responsible attendant and direct care staff must be at least eighteen (18) years of age and capable of complying with statutes and rules governing ACLFs.

4. An ACLF shall have a licensed nurse available as needed.

5. An ACLF shall employ a qualified dietitian, full time, part-time, or on a consultant basis.

6. An ACLF may not employ an individual listed on the Abuse Registry maintained by the Department of Health.

(b) Policies and Procedures:

1. An ACLF shall have a written statement of policies and procedures outlining the facility's responsibilities to its residents, any obligation residents have to the facility, and methods by which residents may file grievances and complaints.

(Rule 1200-08-25-.06, continued)

2. An ACLF shall develop and implement an effective facility-wide performance improvement plan that addresses plans for improvement for self-identified deficiencies and documents the outcome of remedial action.

3. An ACLF shall develop a written policy, plan or procedure concerning a subject and adhere to its provisions whenever required to do so by these rules. A licensee that violates its own policy established as required by these rules and regulations also violates the rules and regulations establishing the requirement.

4. An ACLF shall develop a written policy and procedure governing smoking practices of residents.

(i) Residents of the facility are exempt from the smoking prohibition that otherwise applies to the ACLF.

(ii) Smoke from permissible smoking areas shall not infiltrate into areas where smoking is prohibited.

5. An ACLF shall develop a concise statement of its charity care policies and shall post such statement in a place accessible to the public.

(c) An ACLF shall keep a written up-to-date log of all residents that can be produced in the event of an emergency.

(d) An ACLF shall allow pets in the ACLF only when they are not a nuisance and do not pose a health hazard. Plans for pet management must be approved by the Department.

(e) No person associated with the licensee or ACLF shall act as a court-appointed guardian, trustee, or conservator for any resident of the ACLF or any of such resident's property or funds, except as provided by rule 1200-08-25-.14(1)(i).

(f) An ACLF shall not retaliate against or, in any manner, discriminate against any person because of a complaint made in good faith and without malice to the Board, the Department, the Adult Protective Services, or the Comptroller of the State Treasury. An ACLF shall neither retaliate nor discriminate, because any person lawfully provides information to these authorities, cooperates with them, or is subpoenaed to testify at a hearing involving them.

(2) In the event a resident dies at an ACLF, a registered nurse may make the actual determination and pronouncement of death under the following circumstances.

(a) Death was anticipated and the attending physician has agreed in writing to sign the death certificate. Such agreement by the attending physician must be present and with the deceased at the place of death;

(b) The nurse is licensed by the Tennessee Board of Nursing; and

(c) The nurse is employed by the ACLF in which the deceased resided.

(3) In the event that resident, receiving services of a Medicare certified hospice program licensed by the state, dies at an ACLF, a registered nurse may make the actual determination and pronouncement of death under the following circumstances:

(a) The deceased was suffering from a terminal illness;

(Rule 1200-08-25-.06, continued)

(b) Death was anticipated and the attending physician has agreed in writing to sign the death certificate. Such agreement by the attending physician must be present and with the deceased at the place of death;

(c) The nurse is licensed by the Tennessee Board of Nursing; and

(d) The nurse is employed by the hospice program from which the deceased had been receiving hospice services.

(4) An ACLF shall post the following at the main public entrance:

(a) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the Division of Adult Protective Services. The statement shall include the statewide toll-free number for the Division and the telephone number for the local district attorney's office. The posting shall be on a sign no smaller than eleven inches by seventeen inches. (This same information shall be provided to each resident in writing upon admission to any facility);

(b) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline for immediate assistance, with that number printed in boldface type, and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height;

(c) A statement regarding whether it has liability insurance, the identity of their primary insurance carrier, and if self-insured, the corporate entity responsible for payment of any claims. It shall be posted on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height; and

(d) "No Smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted at every entrance.

(e) A statement that any person who has experienced a problem with a specific licensed ACLF may file a complaint with the Division of Health Care Facilities. The posting shall include the statewide toll-free telephone number for the Division's centralized complaint intake unit.

(5) Infection Control

(a) An ACLF shall ensure that neither a resident nor an employee of the ACLF with a reportable communicable disease shall reside or work in the ACLF unless the ACLF has a written protocol approved by the Board's administrative office.

~~(b) An ACLF shall have an annual influenza vaccination program which shall include at least:~~

~~1. The offer of influenza vaccination to all staff and independent practitioners or acceptance of documented evidence of vaccination from another vaccine source or facility. The ACLF will encourage all staff and independent practitioners to obtain an influenza vaccination;~~

~~2. A signed declination statement on record from all who refuse the influenza vaccination for other than medical contraindications;~~

~~3. Education of all employees about the following:~~

(Rule 1200-08-25-.06, continued)

~~(i) Flu vaccination;~~

~~(ii) Non-vaccine control measures; and~~

~~(iii) The diagnosis, transmission, and potential impact of influenza;~~

~~4. An annual evaluation of the influenza vaccination program and reasons for non-participation; and~~

~~5. A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage.~~

(b) An Assisted-Care Living Facility shall have an annual influenza vaccination program which shall include at least: **Formatted:** Indent: Left: 0.75", Hanging: 0.38"

1. The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The Assisted-Care Living Facility will encourage all staff and independent practitioners to obtain an influenza vaccination. **Formatted:** Indent: Hanging: 0.38"

2. A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at http://tennessee.gov/health/topic/hcf-provider); **Formatted:** Indent: Hanging: 0.38"

3. Education of all employees about the following: **Formatted:** Indent: Hanging: 0.13"

   i. Flu vaccination;

   ii. Non-vaccine control measures; and

   iii. The diagnosis, transmission, and potential impact of influenza.

4. An annual evaluation of the influenza vaccination program and reasons for non-participation; and **Formatted:** Indent: Hanging: 0.38"

5. A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee. **Formatted:** Indent: Hanging: 0.38"

(c) An ACLF and its employees shall adopt and utilize standard precautions in accordance with guidelines established by the Centers for Disease Control and Prevention (CDC) for preventing transmission of infections, HIV, and communicable diseases, including adherence to a hand hygiene program which shall include:

1. Use of alcohol-based hand rubs or use of non-antimicrobial or antimicrobial soap and water before and after each resident contact if hands are not visibly soiled;

2. Use of gloves during each resident contact with blood or where other potentially infectious materials, mucous membranes, and non-intact skin could occur and gloves shall be changed before and after each resident contact;

3. Use of either non-antimicrobial soap and water or antimicrobial soap and water for visibly soiled hands; and

(Rule 1200-08-25-.06, continued)

4. Health care worker education programs which may include:

(i) Types of resident care activities that can result in hand contamination;

(ii) Advantages and disadvantages of various methods used to clean hands;

(iii) Potential risks of health care workers' colonization or infection caused by organisms acquired from residents; and

(iv) Morbidity, mortality, and costs associated with health care associated infections.

(d) An ACLF shall develop and implement a system for measuring improvements in adherence to the hand hygiene program and influenza vaccination program.

(6) An ACLF shall ensure that no person will be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the provision of any care or service of the ACLF on the grounds of race, color, national origin, or handicap. An ACLF shall protect the civil rights of residents under the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

***Authority:*** *T.C.A. §§ 39-17-1804, 39-17-1805, 68-3-511, 4-5-202, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-254, 68-11-268, and 71-6-121.* ***Administrative History:*** *Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed January 7, 2000; effective March 22, 2000. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendment filed March 27, 2015; effective June 25, 2015.*

**1200-08-25-.07 SERVICES PROVIDED.**

(1) An ACLF may provide medical services as follows:

(a) Administer medications to residents that are typically self-administered as subject to limitations described within these rules and regulations.

(b) All other medical services prescribed by the physician that could be provided to a private citizen in the citizen's home, including, but not limited to:

1. Part-time or intermittent nursing care;

2. Various therapies;

3. Podiatry care;

4. Medical social services;

5. Medical supplies;

6. Durable medical equipment; and

7. Hospice services.

(c) Intravenous medications may only be administered to:

1. Existing residents who receive them on an intermittent basis; and

(Rule 1200-08-26-.05, continued)

(8) No medication or treatment shall be provided to any patient of an agency except on the order of a physician or dentist lawfully authorized to give such an order.

(9) A medical record shall be developed and maintained for each patient admitted.

(10) A discharge plan and summary shall be completed on each patient.

(11) The agency must provide an effective discharge planning process that applies to all patients. The agency's discharge planning process, including discharge policies and procedures, must be in writing and must:

(a) Be developed and/or supervised by a registered nurse, social worker or other appropriately qualified personnel;

(b) Begin upon admission of any patient;

(c) Include the likelihood of a patient's capacity for self-care;

(d) Identify the patient's continuing physical, emotional, housekeeping, transportation, social and other needs;

(e) Involve the patient, the patient's family or individual acting on the patient's behalf, the physician, nursing and social work professionals and other appropriate staff, and must be documented in the patient's medical record; and

(f) Be conducted on an ongoing basis throughout the continuum of care. Coordination of services may involve promoting communication to facilitate family support, social work, nursing care, consultation, referral or other follow-up.

(12) The patient and family members or interested persons must be taught and/or counseled to prepare them for post-agency care.

(13) The agency shall ensure that no person on the grounds of race, color, national origin or handicap, will be excluded from participation in, be denied benefits of, or otherwise subjected to discrimination in the provision of any care or service of the agency. The agency shall protect the civil rights of residents under the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

***Authority:*** *T.C.A. §§4-5-202, 4-5-204, 68-11-202, and 68-11-209.* ***Administrative History:*** *Original rule filed May 31, 2000; effective August 14, 2000.*

**1200-08-26-.06 BASIC AGENCY FUNCTIONS.**

(1) An agency shall provide at least one of the qualifying home health services directly through agency employees, but may arrange with another licensed organization or health care professional to provide any additional home health services. Home health services provided under arrangements with another licensed home care organization or professional organization shall be subject to a written contract conforming with the requirements of this chapter.

(2) All personnel providing home health services shall assure that their efforts effectively complement one another and support the objectives outlined in the plan of care. The medical record or minutes of case conferences shall establish that effective interchange, reporting,

(Rule 1200-08-26-.06, continued)

and coordinated patient evaluation does occur. A written summary report for each patient shall be sent to the attending physician at least every sixty-two (62) days.

(3) Plan of Care.

(a) The written plan of care, developed in consultation with the organization staff, shall cover all pertinent diagnoses, including mental status, types of services and equipment required, frequency of services, prognosis, rehabilitation potential, functional limitations, activities permitted, nutritional requirements, medications and treatments, any safety measures to protect against injury, instructions for timely discharge or referral, and any other appropriate items. If a physician refers a patient under a plan of care which cannot be completed until after an evaluation visit, the physician shall be consulted to approve additions or modifications to the original plan. Orders for home health therapy services shall include the specific treatment or modalities to be used and their amount, frequency and duration. The therapist and other organization personnel shall participate in developing the plan of care.

(b) The total plan of care shall be reviewed by the attending physician and agency personnel involved in the patient's care as often as the severity of the patient's condition requires, but at least once every sixty-two (62) days. Evidence of review by the physician must include the physician's signature and date of the review on the plan of care. A facsimile of the physician's signature is acceptable. Professional staff shall promptly alert the physician to any changes that suggest a need to alter the plan of care.

(4) Drugs and treatments shall be administered by appropriately licensed agency personnel, acting within the scope of their licenses. Oral orders for drugs and treatments shall be given to appropriately licensed personnel acting within the scope of their licenses, immediately recorded, signed and dated, and countersigned and dated by the physician.

(5) Skilled Nursing Services.

(a) The agency shall provide skilled nursing services by or under the supervision of a registered nurse who has no current disciplinary action against his/her license, in accordance with the plan of care. This person shall be available at all times during operating hours and participate in all activities relevant to the professional home health services provided, including the development of qualifications and assignment of personnel.

(b) The registered nurse's duties shall include but are not limited to the following: make the initial evaluation visit, except in those circumstances where the physician has ordered therapy services as the only skilled service; regularly evaluate the patient's nursing needs; initiate the plan of care and necessary revisions; provide those services requiring substantial specialized nursing skill; initiate appropriate preventive and rehabilitative nursing procedures; prepare clinical and progress notes; coordinate services; inform the physician and other personnel of changes in the patient's condition and needs; counsel the patient and family in meeting nursing and related needs; participate in in-service programs; supervise and teach other nursing personnel. The registered nurse or appropriate agency staff shall initially and periodically evaluate drug interactions, duplicative drug therapy and non-compliance to drug therapy.

(c) The licensed practical nurse shall provide services in accordance with agency policies, which may include but are not limited to the following: prepare clinical and progress notes; assist the physician and/or registered nurse in performing specialized procedures; prepare equipment and materials for treatments; observe aseptic

(Rule 1200-08-26-.06, continued)

technique as required; and assist the patient in learning appropriate self-care techniques.

(d) A registered nurse may make the actual determination and pronouncement of death under the following circumstances:

1. The deceased was receiving the services of a licensed home care organization;

2. The death was anticipated, and the attending physician has agreed in writing to sign the death certificate. Such agreement by the attending physician must be present with the deceased at the place of death;

3. The nurse is licensed by the state; and

4. The nurse is employed by the home care organization providing services to the deceased.

(6) Therapy Services.

(a) All therapy services offered by the agency directly or under arrangement shall be planned, delegated, supervised or provided by a qualified therapist in accordance with the plan of care. A qualified therapist assistant may provide therapy services under the supervision of a qualified therapist in accordance with the plan of care. The therapist shall assist the physician in evaluating the level of function, helping develop the plan of care (revising as necessary), preparing clinical and progress notes, advising and consulting with the family and other agency personnel, and participating in in-service programs.

(b) Speech therapy services shall be provided only by or under supervision of a qualified speech language pathologist in good standing, or by a person qualified as a Clinical Fellow subject to Tennessee Board of Communications Disorders and Sciences Rule 1370-01-.10.

(c) A qualified therapist may make the initial evaluation visit when therapy is the only skilled service ordered.

(7) Home Health Aide Services.

(a) Aides shall be selected on the basis of such factors as: a sympathetic attitude toward the care of the sick; the ability to read, write and carry out directions; and the maturity and ability to deal effectively with the demands of the job. Aides shall be formally and carefully trained in: methods of assisting patients to achieve maximum self-reliance in nutrition and meal preparation; the aging process and emotional problems of illness; procedures for maintaining a clean, healthy and pleasant environment; changes in a patient's condition that should be reported; work of the agency and the health team; ethics; confidentiality; respect for human dignity and the awareness of individual differences; and record keeping. Any home health aide training programs must comply with the federal home health aide training and competency regulations. Copies of these regulations may be obtained from the department.

(b) The home health aide shall be assigned to a particular patient by a registered nurse. Written instructions for patient care shall be prepared by a registered nurse or therapist as appropriate. Duties may include the performance of simple procedures as an extension of therapy services, personal care, ambulation and exercises, household services essential to health care at home, assistance with medications that are

(Rule 1200-08-26-.06, continued)

ordinarily self-administered, reporting changes in the patient's condition and needs, and completing appropriate records.

(c) The registered nurse, or appropriate professional staff member if other home health services are provided, shall make a supervisory visit to the patient's residence at least monthly, either when the aide is present to observe and assist or when the aide is absent (preferably alternating visits), to assess the aide's competence in providing care and determine whether goals are being met.

(d) There shall be continuing in-service programs on a regularly scheduled basis with on-the-job training during supervisor visits and more often as needed.

(8) Medical Social Services, when provided, shall be given by a certified master social worker, a licensed clinical social worker, or by a social work assistant employed by the agency and under the supervision of a certified master social worker or licensed clinical social worker, and in accordance with the plan of care. The medical social services provider shall assist the physician and other team members in understanding the significant social and emotional factors related to the health problems, participate in the development of the plan of care, prepare clinical and progress notes, work with the family, utilize appropriate community resources, participate in discharge planning and in-service programs, and act as a consultant to other agency personnel.

(9) Performance Improvement.

(a) An agency shall have a committee to review, at least annually, past and present home health services including contract services, in accordance with a written plan, to determine their appropriateness and effectiveness and to ascertain that professional policies are followed in providing these services.

(b) The objectives of the review committee shall be:

1. To assist the agency in using its personnel and facilities to meet individual and community needs;

2. To identify and correct deficiencies which undermine quality of care and lead to waste of agency and personnel resources;

3. To help the agency make critical judgments regarding the quality and quantity of its services through self-examination;

4. To provide opportunities to evaluate the effectiveness of agency policies and when necessary make recommendations to the administration as to controls or changes needed to assure high standards of patient care;

5. To augment in-service staff education;

6. To provide data needed to satisfy state licensure and certification requirements;

7. To establish criteria to measure the effectiveness and efficiency of the home health services provided to patients; and

8. To develop a record review system for the agency to evaluate the necessity or appropriateness of the home health services provided and their effectiveness and efficiency.

(Rule 1200-08-26-.06, continued)

(10) Infection Control.

(a) There must be an active performance improvement program for developing guidelines, policies, procedures and techniques for the prevention, control and investigation of infections and communicable diseases.

(b) Formal provisions must be developed to educate and orient all appropriate personnel and/or family members in the practice of aseptic techniques such as handwashing and scrubbing practices, proper hygiene, use of personal protective equipment, dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of patient care equipment and supplies.

(c) Continuing education shall be provided for all agency patient care providers on the cause, effect, transmission, prevention and elimination of infections, as evidenced by the ability to verbalize/or demonstrate an understanding of basic techniques.

(d) A Home Care Organization Providing Home Health Services shall have an annual influenza vaccination program which shall include at least: — **Formatted:** Indent: Left: 0.75", Hanging: 0.38"

1. The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The Home Care Organization Providing Home Health Services will encourage all staff and independent practitioners to obtain an influenza vaccination; — **Formatted:** Indent: Hanging: 0.31"

2. A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at http://tennessee.gov/health/topic/hcf-provider); — **Formatted:** Indent: Hanging: 0.31"

3. Education of all employees about the following: — **Formatted:** Indent: Hanging: 0.31"

   (i) Flu vaccination,

   (ii) Non-vaccine control measures, and

   (iii) The diagnosis, transmission, and potential impact of influenza;

4. An annual evaluation of the influenza vaccination program and reasons for non-participation; and — **Formatted:** Indent: Hanging: 0.31"

5. A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee. — **Formatted:** Indent: Hanging: 0.31"

(e)~~(d)~~ The agency shall develop policies and procedures for testing a patient's blood for the presence of the hepatitis B virus and the HIV (AIDS) virus in the event that an employee of the agency, a student studying at the agency or other health care provider rendering services at the agency is exposed to a patient's blood or other body fluid. The testing shall be performed at no charge to the patient, and the test results shall be confidential.

(f)~~(e)~~ The agency and its employees shall adopt and utilize standard precautions (per CDC) for preventing transmission of infections, HIV and communicable diseases.

(Rule 1200-08-26-.06, continued)

(g)~~(f)~~ Precautions shall be taken to prevent the contamination of sterile and clean supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents.

(11) Medical Records.

(a) A medical record containing past and current findings in accordance with accepted professional standards shall be maintained for every patient receiving home health services. In addition to the plan of care, the record shall contain: appropriate identifying information; name of physician; all medications and treatments; signed and dated clinical notes. Clinical notes shall be written the day on which service is rendered and incorporated no less often than weekly; copies of summary reports shall be sent to the physician; and a discharge summary shall be dated and signed within 7 days of discharge.

(b) A home care organization providing home health services is authorized to receive and appropriately act on a written order for a plan of care for a patient concerning a home health service signed by a physician that is transmitted to the agency by electronically signed electronic mail. Such order that is transmitted by electronic mail shall be deemed to meet any requirement for written documentation imposed by this regulation.

(c) All medical records, either written, electronic, graphic or otherwise acceptable form, must be retained in their original or legally reproduced form for a minimum period of at least ten (10) years after which such records may be destroyed. However, in cases of patients under mental disability or minority, their complete agency records shall be retained for the period of minority or known mental disability, plus one (1) year, or ten (10) years following the discharge of the patient, whichever is longer. Records destruction shall be accomplished by burning, shredding or other effective method in keeping with the confidential nature of the contents. The destruction of records must be made in the ordinary course of business, must be documented and in accordance with the agency's policies and procedures, and no record may be destroyed on an individual basis.

(d) Even if the agency discontinues operations, records shall be maintained as mandated by this chapter and the Tennessee Medical Records Act (T.C.A. §§ 68-11-308). If a patient is transferred to another health care facility or agency, a copy of the record or an abstract shall accompany the patient when the agency is directly involved in the transfer.

(e) Medical records information shall be safeguarded against loss or unauthorized use. Written procedures govern use and removal of records and conditions for release of information. The patient's written consent shall be required for release of information when the release is not otherwise authorized by law.

(f) For purposes of this rule, the requirements for signature or countersignature by a physician or other person responsible for signing, countersigning or authenticating an entry may be satisfied by the electronic entry by such person of a unique code assigned exclusively to him or her, or by entry of other unique electronic or mechanical symbols, provided that such person has adopted same as his or her signature in accordance with established protocol or rules.

***Authority:*** *T.C.A. §§4-5-202, 4-5-204, 68-3-511, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-260 and 68-11-304.* ***Administrative History:*** *Original rule filed May 31, 2000; effective August 14,*

(Rule 1200-08-26-.06, continued)
*2000. Amendment filed September 13, 2002; effective November 27, 2002. Amendment filed February 23, 2007; effective May 9, 2007. Amendment filed September 15, 2015; effective December 14, 2015.*

**1200-08-26-.07 RESERVED.**

**1200-08-26-.08 RESERVED.**

**1200-08-26-.09 RESERVED.**

**1200-08-26-.10 INFECTIOUS AND HAZARDOUS WASTE.**

(1) Each agency must develop, maintain and implement written policies and procedures for the definition and handling of its infectious and hazardous waste. These policies and procedures must comply with the standards of this rule and all other applicable state and federal regulations.

(2) The following waste shall be considered to be infectious waste:

(a) Waste human blood and blood products such as serum, plasma, and other blood components;

(b) All discarded sharps (including but not limited to, hypodermic needles, syringes, pasteur pipettes, broken glass, scalpel blades) used in patient care; and

(c) Other waste determined to be infectious by the agency in its written policy.

(3) Waste must be packaged in a manner that will protect waste handlers and the public from possible injury and disease that may result from exposure to the waste. Such packaging must provide for containment of the waste from the point of generation up to the point of proper treatment or disposal. Packaging must be selected and utilized for the type of waste the package will contain, how the waste will be treated and disposed, and how it will be handled and transported prior to treatment and disposal.

(a) Contaminated sharps must be directly placed in leakproof, rigid and puncture-resistant containers which must then be tightly sealed.

(b) Infectious and hazardous waste must be secured in fastened plastic bags before placement in a garbage can with other household waste.

(c) Reusable containers for infectious waste must be thoroughly sanitized each time they are emptied, unless the surfaces of the containers have been completely protected from contamination by disposable liners or other devices removed with the waste.

(4) After packaging, waste must be handled, transported and stored by methods ensuring containment and preserving of the integrity of the packaging, including the use of secondary containment where necessary.

(5) Waste must be stored in a manner which preserves the integrity of the packaging, inhibits rapid microbial growth and putrefaction, and minimizes the potential of exposure or access by unknowing persons. Waste must be stored in a manner and location which affords protection from animals, precipitation, wind and direct sunlight, does not present a safety hazard, does not provide a breeding place or food source for insects or rodents and does not create a nuisance.

(Rule 1200-08-27-.05, continued)

(4) The agency staff shall determine if the patient's needs can be met by the organization's services and capabilities.

(5) Every person admitted for care or treatment to any agency covered by these rules shall be under the supervision of a physician as defined in this chapter who holds a license in good standing. The name of the patient's attending physician shall be recorded in the patient's medical record.

(6) The agency staff shall obtain the patient's written consent for hospice services.

(7) The signed consent form shall be included with the patient's individual clinical record.

(8) A diagnosis must be entered in the admission records of the agency for every person admitted for care or treatment.

(9) No medication or treatment shall be provided to any patient of an agency except on the order of a physician or dentist lawfully authorized to give such an order.

(10) A medical record shall be developed and maintained for each patient admitted.

(11) No patient shall be involuntarily discharged without a written order from the attending physician or the medical director stating the patient does not meet hospice criteria, or through other legal processes, and timely notification of next of kin and/or the authorized representative.

(12) When a patient is discharged, a summary of the significant findings and events of the patient's care, the patient's condition on discharge and the recommendation and arrangement for future care, if any, is required.

(13) The agency shall ensure that no person on the grounds of race, color, national origin or handicap, will be excluded from participation in, be denied benefits of, or otherwise subjected to discrimination in the provision of any care or service of the agency. The agency shall protect the civil rights of patients under the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

***Authority:*** *T.C.A. §§4-5-202, 4-5-204, 68-11-202, and 68-11-209.* ***Administrative History:*** *Original rule filed April 17, 2000; effective July 1, 2000. Amendment filed December 23, 2009; effective March 23, 2010.*

**1200-08-27-.06 BASIC AGENCY FUNCTIONS.**

(1) An organization providing hospice services must ensure that substantially all core services are routinely provided directly by hospice employees. The hospice services program may contract for physician services. The hospice services program may use contracted staff for nursing services, medical social services, and counseling services if necessary to supplement hospice employees in order to meet the needs of patients during periods of peak patient loads or under extraordinary circumstances. If contracting is used, the hospice services program must maintain professional, financial, and administrative responsibility for the services and must assure that the qualifications of the individuals and services meet the requirements specified in this rule.

(a) Nursing services. The hospice service program must provide nursing care and services by or under the supervision of a registered nurse (R.N.) at all times.

(Rule 1200-08-27-.06, continued)

1. Nursing services must be directed and staffed to assure the nursing needs of patients are met.

2. Patient care responsibilities of nursing personnel must be specified.

3. Hospice services must be provided in accordance with recognized standards of practice.

4. A registered nurse may make the actual determination and pronouncement of death under the following circumstances:

   (i) The deceased was receiving the services of a licensed home care organization providing Medicare-certified hospice services;

   (ii) Death was anticipated, and the attending physician and/or the hospice medical director has agreed in writing to sign the death certificate. Such agreement must be present with the deceased at the place of death;

   (iii) The nurse is licensed by the state; and,

   (iv) The nurse is employed by the home care organization providing hospice services to the deceased.

(b) Medical Social Services. Medical Social Services must be provided by a qualified social worker under the direction of a physician.

(c) Physician Services. In addition to palliation and management of terminal illness and related conditions, physician employees of the hospice service program, including the physician member(s) of the interdisciplinary group, must also meet the general medical needs of the patients to the extent these needs are not met by the attending physician.

(d) Counseling Services. Counseling services must be made available to both the patient and the family. Counseling includes bereavement counseling, provided both prior to and after the patient's death, as well as dietary, therapeutic, spiritual and any other counseling services identified in the Plan of Care for the patient and family.

1. Bereavement counseling. There must be an organized program for the provision of bereavement services under the supervision of a qualified professional. The plan of care for these services should reflect family needs, services to be provided and the frequency of services.

2. Dietary counseling. Dietary counseling, when required, must be provided by a qualified individual.

3. Spiritual counseling. Spiritual counseling must include notice as to the availability of clergy.

4. Additional counseling. Counseling may be provided by other members of the interdisciplinary group as well as by other qualified professionals as determined by the hospice program.

(2) Plan of Care. A written plan of care must be established and maintained for each patient admitted to a hospice program and the care provided must be in accordance with the plan.

(Rule 1200-08-27-.06, continued)

(a) Establishment of plan. The plan must be established by the attending physician, the medical director or the physician's designee and the interdisciplinary group prior to providing care.

(b) Review of Plan. The plan must be reviewed and updated as the patient's condition changes, but at intervals of no more than fifteen (15) days, by the attending physician, the medical director or the physician's designee and interdisciplinary group. These reviews must be documented.

(c) Content of plan. The plan must include an assessment of the individual's needs and identification of the hospice services required, including the management of discomfort and symptom relief. It must state in detail the scope and frequency of services needed to meet the patient's and family's needs.

(3) Interdisciplinary Group. The organization providing hospice services must designate an interdisciplinary group(s) composed of individuals who provide or supervise the care and services offered by the hospice program:

(a) Composition of Group. The hospice service program must have an interdisciplinary group or groups that include at least the following individuals who are employees of the hospice service program:

1. A doctor of medicine or osteopathy;

2. A registered nurse;

3. A social worker; and

4. A pastoral or other counselor.

(b) Role of Group. The interdisciplinary group is responsible for:

1. Participation in the establishment of the plan of care;

2. Provision or supervision of hospice care and services;

3. Periodic review and updating of the plan of care for each individual receiving hospice care; and

4. Establishment of policies governing the day-to-day provision of hospice care and services.

(c) If a hospice service program has more than one interdisciplinary group, it must designate in advance the group it chooses to execute the functions described in part (b) of this paragraph.

(4) Coordinator. The hospice service program must designate a registered nurse to coordinate the implementation of the plan of care of each patient.

(5) Volunteers. The hospice service program may use volunteers, in defined roles, under the supervision of a designated hospice program employee.

(a) Training. The hospice program must provide appropriate orientation and training that is consistent with acceptable standards of hospice practice.

(Rule 1200-08-27-.06, continued)

(b) Role. Volunteers may be used in administrative or direct patient care roles.

1. Recruiting and retaining. The hospice must document active and ongoing efforts to recruit and train volunteers.

2. Availability of clergy. The hospice service program must make reasonable efforts to arrange for visits of clergy and other members of religious organizations in the community to patients who request such visits and must advise patients of this opportunity.

(6) Continuation of Care. An organization providing hospice services must assist in coordinating continued care should the patient be transferred or discharged from the hospice program or the organization.

(7) Short Term Inpatient Care. Short term inpatient care is available for pain control, symptom management and respite services, and if not provided directly, must be provided under a legally binding written agreement that meets the requirements of subparagraph (b) of this paragraph in a licensed nursing home, hospital, or residential hospice which meets the following minimum requirements:

(a) Whether provided directly or indirectly, the facility that provides short term inpatient care must provide twenty-four (24) hour nursing services which are sufficient to meet total nursing needs in accordance with the patient's plan of care. Each hospice patient must receive treatments, medications, and diet as prescribed, and must be kept comfortable, clean, well-groomed and protected from accident, injury and infection. Each shift must include a registered nurse (R.N.) who provides direct patient care.

1. Respite services shall be staffed in accordance with the patient's Hospice Plan of Care.

2. The Hospice Plan of Care will state whether a registered nurse is required to provide direct care to the hospice patient.

3. Respite services may be provided in an Assisted Care Living Facility so long as the provisions of Rule 1200-08-27-.06 (7)(b)-(g) are met.

(b) The facility must be designed and equipped for the comfort and privacy of each hospice patient and family member(s) by providing physical space for private patient/family visiting, accommodations for family members to remain with the patient throughout the night, accommodations for family privacy following a patient's death and decor which is home-like in design and function.

(c) The hospice must furnish to the inpatient provider a copy of the patient's plan of care and specify the inpatient services to be furnished.

(d) The inpatient provider must have established policies consistent with those of the hospice and agree to abide by the patient care protocols established by the hospice for its patients.

(e) The medical record must include a record of all inpatient services and events. A copy of the discharge summary must be provided to the hospice and, if requested, a copy of the medical record is to be provided to the hospice.

(f) The written agreement must designate the party responsible for the implementation of the provisions of the agreement.

(g) The hospice shall retain responsibility for appropriate hospice care training of the personnel who provide the care under the agreement.

(8) Drugs and treatments shall be administered by appropriately licensed agency personnel, acting within the scope of their licenses. Oral orders for drugs and treatments shall be given to appropriately licensed personnel acting within the scope of their licenses, immediately recorded, signed and dated, and countersigned and dated by the physician.

(9) Performance Improvement Program. Each agency must conduct an ongoing, comprehensive, integrated, self-assessment of the quality and appropriateness of past and present care provided, including inpatient care and contract services. The written performance improvement plan findings are to be used by the hospice to determine the appropriateness and effectiveness of the care provided and to ascertain that professional policies are followed in providing these services. The objectives of those responsible for the performance improvement program are as follows:

(a) To assist the agency in using its personnel and facilities to meet individual and community needs;

(b) To identify and correct problems and/or deficiencies which undermine quality of care and lead to waste of agency and personnel resources;

(c) To help the agency make critical judgments regarding the quality and quantity of its services through self-examination;

(d) To provide opportunities to evaluate the effectiveness of agency policies and when necessary make recommendations to the administration as to controls or changes needed to assure high standards of patient care;

(e) To provide data needed to satisfy state licensure and federal certification requirements; and

(f) To establish criteria to measure the effectiveness and efficiency of the hospice services provided to patients.

(10) Infection Control.

(a) There must be an active performance improvement program for developing guidelines, policies, procedures and techniques for the prevention, control and investigation of infections and communicable diseases.

(b) Formal provisions must be developed to educate and orient all appropriate personnel and/or family members in the practice of aseptic techniques such as handwashing and scrubbing practices, proper hygiene, use of personal protective equipment, dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of patient care equipment and supplies.

(c) Continuing education shall be provided for all agency patient care providers on the cause, effect, transmission, prevention and elimination of infections, as evidenced by the ability to verbalize/or demonstrate an understanding of basic techniques.

(d) A Home Care Organization Providing Hospice Services shall have an annual influenza vaccination program which shall include at least:

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1. The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The Home Care Organization Providing Hospice Services will encourage all staff and independent practitioners to obtain an influenza vaccination; Formatted: Indent: Hanging: 0.31"

2. A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at http://tennessee.gov/health/topic/hcf-provider); Formatted: Indent: Hanging: 0.31"

3. Education of all employees about the following: Formatted: Indent: Hanging: 0.31"

   (i) Flu vaccination,

   (ii) Non-vaccine control measures, and

   (iii) The diagnosis, transmission, and potential impact of influenza;

4. An annual evaluation of the influenza vaccination program and reasons for non-participation; and Formatted: Indent: Hanging: 0.31"

5. A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee. Formatted: Indent: Hanging: 0.31"

(e)~~(d)~~ The agency shall develop policies and procedures for testing a patient's blood for the presence of the hepatitis B virus and the HIV (AIDS) virus in the event that an employee of the agency, a student studying at the agency or other health care provider rendering services at the agency is exposed to a patient's blood or other body fluid. The testing shall be performed at no charge to the patient, and the test results shall be confidential.

(f)~~(e)~~ The agency and its employees shall adopt and utilize standard precautions (per CDC) for preventing transmission of infections, HIV and communicable diseases.

(g)~~(f)~~ Precautions shall be taken to prevent the contamination of sterile and clean supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents.

(11) Home Health Aide/Hospice Aide Services. Home Health Aide Services must be available and adequate in frequency to meet the needs of the patients.

(a) The home health aide shall be assigned to a particular patient by a registered nurse. Written instructions for patient care shall be prepared by a registered nurse or therapist as appropriate. Duties may include the performance of simple procedures as an extension of therapy services, personal care, ambulation and exercises, household services essential to health care at home, assistance with medications that are ordinarily self-administered, reporting changes in the patient's condition and needs, and completing appropriate records.

(b) The registered nurse, or appropriate professional staff member if other home health services are provided, shall make a supervisory visit to the patient's residence at least monthly, either when the aide is present to observe and assist or when the aide is

(Rule 1200-08-27-.06, continued)

absent (preferably alternating visits), to assess the aide's competence in providing care and determine whether goals are being met.

(c) There shall be continuing in-service programs on a regularly scheduled basis with on-the-job training during supervisor visits as issues are identified.

(12) Physical Therapy, Occupational Therapy and Speech Language Pathology Services. Physical therapy services, occupational therapy services, and speech language pathology services must be available and when provided, offered in a manner consistent with accepted standards of practice.

(13) Speech therapy services shall be provided only by or under supervision of a qualified speech language pathologist in good standing, or by a person qualified as a Clinical Fellow subject to Tennessee Board of Communications Disorders and Sciences Rule 1370-01-.10.

(14) Medical Supplies. Medical supplies and appliances, including drugs and biologicals, must be provided as needed for the palliation and management of the terminal illness or conditions directly attributable to the terminal diagnosis.

(a) Administration. All drugs and biologicals must be administered in accordance with accepted standards of practice and only by appropriately licensed employees of the hospice.

(b) The hospice must have a policy for the disposal of controlled drugs maintained in the patient's home or temporary place of residence when those drugs are no longer needed by the patient.

(c) Drugs and biologicals may be administered by the patient or his/her family member if the patient's attending physician has approved.

(15) Medical Records.

(a) A medical record containing past and current findings in accordance with accepted professional standards shall be maintained for every patient receiving hospice services. In addition to the plan of care, the record shall contain: appropriate identifying information; name of physician; all medications and treatments; and signed and dated clinical notes. Clinical notes shall be written the day on which service is rendered and incorporated no less often than weekly; copies of summary reports shall be sent to the physician; and a discharge summary shall be dated and signed within 7 days of discharge.

(b) A home care organization providing hospice services is authorized to receive and appropriately act on a written order for a plan of care for a patient concerning a home health service signed by a physician that is transmitted to the agency by electronically signed electronic mail. Such order that is transmitted by electronic mail shall be deemed to meet any requirement for written documentation imposed by this regulation.

(c) All medical records, either written, electronic, graphic or otherwise acceptable form, must be retained in their original or legally reproduced form for a minimum period of at least ten (10) years after which such records may be destroyed. However, in cases of patients under mental disability or minority, their complete agency records shall be retained for the period of minority or known mental disability, plus one (1) year, or ten (10) years following the discharge of the patient, whichever is longer. Records destruction shall be accomplished by burning, shredding or other effective method in keeping with the confidential nature of the contents. The destruction of records must

(Rule 1200-08-27-.06, continued)

be made in the ordinary course of business, must be documented and in accordance with the agency's policies and procedures, and no record may be destroyed on an individual basis.

(d) Even if the agency discontinues operations, records shall be maintained as mandated by this Chapter and the Tennessee Medical Records Act (T.C.A. §§ 68-11-308). If a patient is transferred to another health care facility or agency, a copy of the record or an abstract shall accompany the patient when the agency is directly involved in the transfer.

(e) Medical records information shall be safeguarded against loss or unauthorized use. Written procedures govern use and removal of records and conditions for release of information. The patient's written consent shall be required for release of information when the release is not otherwise authorized by law.

(f) For purposes of this rule, the requirements for signature or countersignature by a physician or other person responsible for signing, countersigning or authenticating an entry may be satisfied by the electronic entry by such person of a unique code assigned exclusively to him or her, or by entry of other unique electronic or mechanical symbols, provided that such person has adopted same as his or her signature in accordance with established protocol or rules.

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-3-511, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-260, and 68-11-304.* ***Administrative History:*** *Original rule filed April 17, 2000; effective July 1, 2000. Amendment filed September 13, 2002; effective November 27, 2002 Amendment filed February 23, 2007; effective May 9, 2007. Amendments filed March 27, 2015; effective June 25, 2015. Amendment filed September 15, 2015; effective December 14, 2015.*

**1200-08-27-.07 RESERVED.**

**1200-08-27-.08 RESERVED.**

**1200-08-27-.09 RESERVED.**

**1200-08-27-.10 INFECTIOUS AND HAZARDOUS WASTE.**

(1) Each agency must develop, maintain and implement written policies and procedures for the definition and handling of its infectious and hazardous waste. These policies and procedures must comply with the standards of this rule and all other applicable state and federal regulations.

(2) The following waste shall be considered to be infectious waste:

(a) Waste human blood and blood products such as serum, plasma, and other blood components;

(b) All discarded sharps (including but not limited to, hypodermic needles, syringes, pasteur pipettes, broken glass and scalpel blades) used in patient care; and

(c) Other waste determined to be infectious by the agency in its written policy.

(3) Waste must be packaged in a manner that will protect waste handlers and the public from possible injury and disease that may result from exposure to the waste. Such packaging must provide for containment of the waste from the point of generation up to the point of proper

(Rule 1200-08-28-.05, continued)

3. Identifying and alleviating safety risks to the resident;

4. Providing assistance in the activities of daily living for the resident; and,

5. Communicating with families and other persons interested in the resident.

(18) Any residential facility licensed by the board of licensing health care facilities shall upon admission provide to each resident the division of adult protective services' statewide toll-free number: 888-277-8366.

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 71-6-121.* ***Administrative History:*** *Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 20, 2006; effective July 4, 2006.*

**1200-08-28-.06 BASIC HIV SUPPORTIVE LIVING FACILITY FUNCTIONS.**

(1) A HIV supportive living facility must ensure that substantially all core services are routinely provided directly by HIV supportive living facility employees. A HIV supportive living facility may use contracted staff if necessary to supplement HIV supportive living facility employees in order to meet the needs of residents.

(a) Nursing services. The HIV supportive living facility must provide nursing care and services by, or under the supervision of, a registered nurse (R.N.) at all times.

1. Nursing services must be directed and staffed to assure the nursing needs of residents are met.

2. Resident care responsibilities of nursing personnel must be specified.

3. HIV care services must be provided in accordance with recognized standards of practice.

(b) Medical Social Services. Medical Social Services must be provided by a qualified social worker under the direction of a physician.

(c) Physician Services. In addition to palliation and management of HIV care, physician employees of the HIV supportive living facility including the physician member(s) of the interdisciplinary group, must also meet the general medical needs of the residents to the extent these needs are not met by the attending physician.

(d) Counseling Services. Counseling services must be made available to the individual, the individual's family and/or significant other, and staff. Counseling includes bereavement counseling, provided both prior to and after the resident's death, as well as dietary, therapeutic, spiritual and any other counseling services identified in the plan of care for the individual and family and/or significant other while the individual is a resident of the HIV supportive living facility.

1. Bereavement counseling. There must be an organized program for the provision of bereavement services under the supervision of a qualified professional. The plan of care for these services should reflect family/significant other needs, services to be provided, and the frequency of services.

2. Dietary counseling. Dietary counseling, when required, must be provided by a qualified individual.

(Rule 1200-08-28-.06, continued)

3. Spiritual counseling. Spiritual counseling must include notice to residents as to the availability of clergy.

4. Additional counseling. Counseling may be provided by other members of the interdisciplinary group as well as by other qualified professionals as determined by the HIV supportive living facility.

(2) Plan of Care. A written plan of care must be established and maintained for each individual admitted to a HIV supportive living facility, and the care provided to an individual must be in accordance with the plan.

(a) Establishment of plan. The plan must be established by the attending physician, the medical director or the physician's designee and the interdisciplinary group prior to providing care.

(b) Review of plan. The plan must be reviewed and updated as the resident's condition changes, but at intervals of no more than (14) days, by the attending physician, the medical director or the physician's designee and the interdisciplinary group. These reviews must be documented.

(c) Content of plan. The plan must include an assessment of the individual's needs and identification of the HIV care services required including the management of discomfort and symptom relief It must state in detail the scope and frequency of services needed to meet the resident's and family's/significant other's needs.

(d) Coordinator. The HIV supportive living facility must designate a licensed professional nurse to coordinate the implementation of the plan of care of each resident.

(e) Volunteers. The HIV supportive living facility may use volunteers, in defined roles, under the supervision of a designated HIV supportive living facility employee.

1. Training. The HIV supportive living facility must provide appropriate orientation and training that is consistent with acceptable standards of HIV supportive living facility practice.

2. Role. Volunteers shall be used in administrative or direct resident care roles.

3. Recruiting and retaining. The HIV supportive living facility must document active and ongoing efforts to recruit and train volunteers.

4. Availability of clergy. The HIV supportive living facility must make reasonable efforts to arrange for visits of clergy and other members of religious organizations in the community to residents who request such visits and must advise residents of this opportunity.

(3) Continuation of Care. A HIV supportive living facility must assist in coordinating continued care should the resident be transferred or discharged from the HIV supportive living facility.

(4) Drugs and treatments shall be administered by appropriately licensed facility personnel acting within the scope of their license. Oral orders for drugs and treatments shall be given to appropriately licensed personnel acting within the scope of their licenses, immediately recorded, signed and dated, and countersigned and dated by the physician within ten (10) days of issuance of the oral order.

(5) Performance Improvement Program. The HIV supportive living facility must ensure that there is an effective facility-wide performance improvement program to evaluate resident care and

(Rule 1200-08-28-.06, continued)

performance of the organization. The administrator shall assure that a Performance Improvement Committee, composed of a physician, a licensed professional nurse, a social worker and a pastoral or other counselor, is in place to ensure that the facility has adequate policies and procedures in place, to review performance monitoring and activities, and to provide oversight and address identified care issues within the facility. The performance improvement program must be ongoing and have a written plan of implementation which assures that:

(a) All organized services related to resident care, including services furnished by a contractor, are evaluated;

(b) Nosocomial infections and medication therapy are evaluated;

(c) All services performed in the facility are evaluated as to the appropriateness of diagnosis and treatment;

(d) The HIV supportive living facility must have an ongoing plan, consistent with available community and facility resources, to provide or make available services that meet the medically-related needs of its HIV care residents;

(e) The facility must develop and implement plans for improvement to address deficiencies identified by the performance improvement program and must document the outcome of the remedial action;

(f) Performance Improvement Program records are not disclosable except when such disclosure is required to demonstrate compliance with this section;

(g) Good faith attempts by the Performance Improvement Program Committee to identify and correct deficiencies will not be used as a basis for sanctions.

(6) Infection Control.

(a) The HIV supportive living facility must provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There must be an active program for the prevention, control, and investigation of infections and communicable diseases.

(b) The administrator shall assure that an Infection Control Committee, including the medical director and members of the nursing staff and administrative staff, develops guidelines and techniques for the prevention, surveillance, control and reporting of facility infections. Duties of the committee shall include the establishment of:

1. Written infection control policies;

2. Techniques and systems for identifying, reporting, investigating and controlling infections in the facility;

3. Written procedures governing the use of aseptic techniques and procedures in the facility;

4. Written procedures concerning food handling, laundry practices, disposal of environmental and resident wastes, traffic control and visiting rules, sources of air pollution, and routine culturing of autoclaves and sterilizers;

5. A log of incidents related to infectious and communicable diseases;

(Rule 1200-08-28-.06, continued)

6. Formal provisions to educate and orient all appropriate personnel in the practice of aseptic techniques such as handwashing, proper grooming, masking and dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of resident equipment and supplies; and

7. Continuing education for all facility personnel on the cause, effect, transmission, prevention, and elimination of infections.

(c) A HIV Supportive Living Center shall have an annual influenza vaccination program which shall include at least: **Formatted:** Indent: Left: 0.75", Hanging: 0.38"

1. The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The HIV Supportive Living Center will encourage all staff and independent practitioners to obtain an influenza vaccination; **Formatted:** Indent: Hanging: 0.31"

2. A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at http://tennessee.gov/health/topic/hcf-provider); **Formatted:** Indent: Hanging: 0.31"

3. Education of all employees about the following: **Formatted:** Indent: Hanging: 0.31"

(i) Flu vaccination,

(ii) Non-vaccine control measures, and

(iii) The diagnosis, transmission, and potential impact of influenza;

4. An annual evaluation of the influenza vaccination program and reasons for non-participation; and **Formatted:** Indent: Hanging: 0.31"

5. A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee. **Formatted:** Indent: Hanging: 0.31"

(d)~~(c)~~ The administrator, the medical director and a licensed professional nurse must ensure that the facility-wide performance improvement program and training programs address problems identified by the infection control program and must be responsible for the implementation of successful corrective action plans in affected problem areas.

(e)~~(d)~~ The facility shall develop policies and procedures for testing a resident's blood for the presence of blood borne infections in the event that an employee of the facility, a student studying at the facility, or other health care provider rendering services at the facility is exposed to a resident's blood or other body fluid. The testing shall be performed at no charge to the resident, and the test results shall be confidential.

(f)~~(e)~~ The facility and its employees shall adopt appropriate policies to evaluate staff for exposure to blood-borne pathogens, and utilize standard or universal precautions for preventing transmission of infections, HIV, and communicable diseases.

(g)~~(f)~~ Precautions shall be taken to prevent the contamination of sterile supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents, decontamination and preparation areas shall be separated.

(Rule 1200-08-28-.06, continued)

(h)~~(g)~~ Space and facilities for housekeeping equipment and supply storage shall be provided in each service area. Storage for bulk supplies and equipment shall be located away from resident care areas. The building shall be kept in good repair, clean, sanitary and safe at all times.

(i)~~(h)~~ The facility shall appoint a housekeeping supervisor who shall be responsible for:

1. Organizing and coordinating the facility's housekeeping service;

2. Acquiring and storing sufficient housekeeping supplies and equipment for facility maintenance; and,

3. Assuring the clean and sanitary condition of the facility to provide a safe hygienic environment for residents and staff. Cleaning shall be accomplished in accordance with the infection control rules and regulations herein and facility policy.

(j)~~(i)~~ Laundry facilities located in the HIV supportive living facility shall:

1. Be equipped with an area for receiving, processing, storing and distributing clean linen;

2. Be located in an area that does not require transportation for storage of soiled or contaminated linen through food preparation, storage or dining areas;

3. Provide space for storage of clean linen and for bulk storage within clean areas of the facility; and

4. Provide carts, bags or other acceptable containers appropriately marked to identify those used for soiled linen and those used for clean linen to prevent dual utilization of the equipment and cross contamination.

(k)~~(j)~~ The facility shall name an individual who is responsible for laundry service. This individual shall be responsible for:

1. Establishing a laundry service, either within the HIV supportive living facility or by contract, that provides the facility with sufficient clean, sanitary linen at all times;

2. Knowing and enforcing infection control rules and regulations for the laundry service;

3. Assuring the collection, packaging, transportation and storage of soiled, contaminated, and clean linen is in accordance with all applicable infection control rules, regulations and procedures; and,

4. Assuring that a contract laundry service complies with all applicable infection control rules, regulations and procedures.

(7) Personal Care Services. Aide services must be available and adequate in frequency to meet the needs of the residents.

(a) The personal care aide shall be assigned to a particular resident by a licensed professional nurse. Written instructions for resident care shall be prepared by a registered nurse or therapist as appropriate. Duties may include the performance of simple procedures to assist residents with basic care services, including simple procedures such as feeding, personal grooming, ambulating, socializing, medication

(Rule 1200-08-28-.06, continued)

prompting, reporting changes in the resident's condition and needs, completing appropriate records, exercising and other household services essential to health care.

(b) The registered nurse shall monitor and assess the aide's competence in providing care and determine whether goals are being met.

(c) There shall be regularly scheduled continuing in-service programs which include on-the-job training as needed.

(8) Physical therapy, occupational therapy, respiratory therapy and speech language pathology. Physical therapy services, occupational therapy services, respiratory therapy services and speech-language pathology services must be available, and when provided, offered in a manner consistent with accepted standards of practice.

(9) Speech therapy services shall be provided only by or under supervision of a qualified speech language pathologist in good standing, or by a person qualified as a Clinical Fellow subject to Tennessee Board of Communications Disorders and Sciences Rule 1370-01-.10.

(10) Medical supplies. Medical supplies and appliances including drugs and biologicals, must be provided as needed for the palliation and management of HIV or conditions directly attributable to the HIV diagnosis.

(a) Administration. All drugs and biologicals must be administered in accordance with accepted standards of practice and only by appropriately licensed employees of the HIV supportive living facility.

(b) The HIV supportive living facility must have a policy for the disposal of controlled drugs when those drugs are no longer needed by the resident.

(c) Drugs and biologicals may be administered by the resident or a family member or significant other if the resident's attending physician has approved.

(11) Resident File.

(a) A resident file containing past and current findings in accordance with accepted professional standards shall be maintained for every HIV care resident. The record must be complete, promptly and accurately documented, readily accessible and systematically organized to facilitate retrieval. Each file is a comprehensive compilation of information. Entries are made for all services provided. Entries are made and signed by the person providing the services. The record includes all services whether furnished directly or under arrangements made by the HIV supportive living facility. Each individual's record must contain:

1. The initial and subsequent assessments;

2. The plan of care;

3. Identification data;

4. Consent and authorization and election forms;

5. Pertinent medical history; and

6. Complete documentation of all services, volunteers and events (including evaluations, treatments, progress notes, etc.).

(Rule 1200-08-28-.06, continued)

(b) All resident records, either written, electronic, graphic or otherwise acceptable form, must be retained in their original or legally reproduced form for a minimum period of at least (10) years after which such records may be destroyed. However, in cases of residents under mental disability or minority, their complete HIV supportive living facility records shall be retained for the period of minority or known mental disability, plus one (1) year, or ten (10) years following the discharge of the resident, whichever is longer. Records destruction shall be accomplished by burning, shredding or other effective method in keeping with the confidential nature of the contents. The destruction of records must be made in the ordinary course of business, must be documented and in accordance with the HIV supportive living facility's policies and procedures, and no record may be destroyed on an individual basis.

(c) Even if the HIV supportive living facility discontinues operations, records shall be maintained as mandated by these rules and the Tennessee Medical Records Act (see T.C.A. §§ 68-11-308). If a resident is transferred to another health care facility or agency, a copy of the record or an abstract shall accompany the resident when the HIV supportive living facility is directly involved in the transfer.

(d) The HIV supportive living facility must have a procedure for ensuring the confidentiality of resident records. Information from, or copies of, records may be released only to authorized individuals, and the facility must ensure that unauthorized, individuals cannot gain access to, or alter, resident records. Original resident records must be released by the facility only in accordance with federal and state laws.

(e) For purposes of this rule, the requirements for signature or countersignature by a physician or other person responsible for signing, countersigning and entry may be satisfied by the electronic entry by such person of a unique code assigned exclusively to him or her, or by entry of other unique electronic or mechanical symbols, provided that such person has adopted same as his or her signature in accordance with established protocol or rules.

(f) All entries must be legible, complete, dated and authenticated according to facility policy.

(12) Pharmaceutical Services.

(a) The HIV supportive living facility shall have pharmaceutical services that meet the needs of the residents and are in accordance with the Tennessee Board of Pharmacy statutes and regulations. The facility is responsible for developing policies and procedures that minimize drug errors.

(b) All internal and external medications and preparations intended for human use shall be stored separately. They shall be properly stored in medicine compartments, including cabinets on wheels, or drug rooms. Such cabinets or drug rooms shall be kept securely locked when not in use and the key must be in the possession of the supervising nurse or other authorized persons. Poisons or external medications shall not be stored in the same compartment and shall be labeled as such.

(c) Schedule II drugs must be stored behind two (2) separately locked doors at all times and accessible only to persons in charge of administering medication.

(d) Every HIV supportive living facility shall comply with all state and federal regulations governing Schedule II drugs.

(e) A notation shall be made in a Schedule II drug book and in the resident's nursing notes each time a Schedule II drug is given. The notation shall include the name of the

(Rule 1200-08-28-.06, continued)

resident receiving the drug, name of the drug, the dosage given, the method of administration, the date and time given and the name of the physician prescribing the drug.

(f) All oral orders shall be immediately recorded, designated as such and signed by the person receiving them and countersigned by the physician within ten (10) days.

(g) All orders for drugs, devices and related materials must be in writing and signed by the practitioner or practitioners responsible for the care of the resident. Electronic and computer-generated records and signature entries are acceptable. When telephone or oral orders must be used, they shall be:

1. Accepted only by personnel that are authorized to do so by the medical staff policies and procedures, consistent with federal and state law; and,

2. Signed or initialed by the prescribing practitioner according to HIV supportive living facility policy.

(h) Medications not specifically limited as to time or number of doses when ordered are controlled by automatic stop orders or other methods in accordance with written policies. No Schedule II drug shall be given or continued beyond seventy-two (72) hours without a written order by the physician.

(i) Medication administration records (MAR) shall be checked against the physician's orders. Each dose shall be properly recorded in the clinical record after it has been administered.

(j) Preparation of doses for more than one scheduled administration time shall not be permitted.

(k) Medication shall be administered only by licensed medical or licensed nursing personnel or other licensed health professionals acting within the scope of their license.

(l) Unless the unit dose package system is used, individual prescriptions of drugs shall be kept in the original container with the original label intact showing the name of the resident, the drug, the physician, the prescription number and the date dispensed.

(m) Legend drugs shall be dispensed by a licensed pharmacist.

(n) Any unused portions of prescriptions shall be turned over to the resident only on a written order by the physician. A notation of drugs released to the resident shall be entered into the medical record. All unused prescriptions left in a HIV supportive living facility must by destroyed on the premises and recorded by a pharmacist. Such record shall be kept in the HIV supportive living facility.

(13) Laboratory Services. The HIV supportive living facility must maintain or have available, either directly or through a contractual agreement, adequate laboratory services to meet the needs of the residents. The HIV supportive living facility must ensure that all laboratory services provided to its residents are performed in a facility licensed in accordance with the Tennessee Medical Laboratory Act (TMLA). All technical laboratory staff shall be licensed in accordance with the TMLA and shall be qualified by education, training and experience for the type of services rendered.

(14) Food and Dietetic Services.

(Rule 1200-08-28-.06, continued)

(a) The HIV supportive living facility must designate a person, either directly or by contractual agreement, to serve as the food and dietetic services director with responsibility for the daily management of the dietary services.

(b) There must be a qualified dietitian, full time, part-time, or on a consultant basis who is responsible for the development and implementation of a nutrition care process to meet the needs of residents for health maintenance, disease prevention and, when necessary, medical nutrition therapy to treat an illness, injury or condition.

(c) Menus must meet the needs of the residents.

1. Therapeutic diets must be prescribed by the practitioner or practitioners responsible for the care of the residents and must be prepared and served as prescribed.

2. Special diets shall be prepared and served as ordered.

3. Nutritional needs must be met in accordance with recognized dietary practices and in accordance with orders of the practitioner or practitioners responsible for the care of the residents.

4. A current therapeutic diet manual approved by the dietitian and medical director must be readily available to all medical, nursing, and food service personnel.

(d) Education programs, including orientation, on-the-job training, inservice education, and continuing education shall be offered to dietetic services personnel on a regular basis. Programs shall include instruction in the use of equipment, personal hygiene, proper inspection, and the handling, preparing and serving of food.

(e) A minimum of three (3) meals in each twenty-four (24) hour period shall be offered. A supplemental night meal shall be offered if more than fourteen (14) hours lapse between supper and breakfast. Additional nourishment shall be provided to residents with special dietary needs. A minimum of three (3) days supply of food shall be on hand.

(f) Food shall be protected from dust, flies, rodents, unnecessary handling, droplet infection, overhead leakage and other sources of contamination0 whether in storage or while being prepared and served and/or transported through hallways.

(g) Perishable food shall not be allowed to stand at room temperature except during necessary periods of preparation or serving. Prepared foods shall be kept hot (140°F or above) or cold (45°F or less). Appropriate equipment for temperature maintenance, such as hot and cold serving units or insulated containers, shall be used.

(h) Dishwashing machines shall be used according to manufacturer specifications.

(i) All dishes, glassware and utensils used in the preparation and serving of food and drink shall be cleaned and sanitized after each use.

(j) The cleaning and sanitizing of handwashed dishes shall be accomplished by using a three-compartment sink according to the current U.S. Public Health Service Sanitation Manual.

(k) The kitchen shall contain sufficient refrigeration equipment and space for the storage of perishable foods.

(Rule 1200-08-28-.06, continued)

(l) All refrigerators and freezers shall have thermometers. Refrigerators shall be kept at a temperature not to exceed 45°F. Freezers shall be kept at a temperature not to exceed 0°F.

(m) Written policies and procedures shall be followed concerning the scope of food services in accordance with the current edition of the "U.S. Public Health Service Recommended Ordinance and Code Regulating Eating and Drinking Establishments" and the current U.S. Public Health Service Sanitation Manual should be used as a guide to food sanitation.

***Authority:*** *T.C.A. §§ 4-5-202, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.* ***Administrative History:*** *Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed September 15, 2015; effective December 14, 2015.*

**1200-08-28-.07 RESERVED.**

**1200-08-28-.08 BUILDING STANDARDS.**

(1) An HIV supportive living facility shall construct, arrange, and maintain the condition of the physical plant and the overall HIV supportive living facility environment in such a manner that the safety and well-being of the residents are assured.

(2) After the applicant has submitted an application and licensure fees, the applicant must submit the building construction plans to the department. All facilities shall conform to the current edition of the following applicable codes as approved by the Board for Licensing Health Care Facilities: International Building Code (excluding Chapters 1 and 11) including referenced International Fuel Gas Code, International Mechanical Code, and International Plumbing Code; National Fire Protection Association (NFPA) NFPA 101 Life Safety Code excluding referenced NFPA 5000; Guidelines for Design and Construction of Health Care Facilities (FGI) including referenced Codes and Standards; U.S. Public Health Service Food Code; and Americans with Disabilities Act (ADA) Standards for Accessible Design. When referring to height, area or construction type, the International Building Code shall prevail. Where there are conflicts between requirements in local codes, the above listed codes, regulations and provisions of this chapter, the most stringent requirements shall apply.

(3) The codes in effect at the time of submittal of plans and specifications, as defined by these rules, shall be the codes to be used throughout the project.

(4) The licensed contractor shall perform all new construction and renovations to HIV supportive living facilities, other than minor alterations not affecting fire and life safety or functional issues, in accordance with the specific requirements of these regulations governing new construction in HIV supportive living facilities, including the submission of phased construction plans and the final drawings and the specifications to each.

(5) No new HIV supportive living facility shall be constructed, nor shall major alterations be made to an existing HIV supportive living facility without prior written approval of the department, and unless in accordance with plans and specifications approved in advance by the department. Before any new HIV supportive living facility is licensed or before any alteration or expansion of a licensed HIV supportive living facility can be approved, the applicant must furnish two (2) complete sets of plans and specifications to the department, together with fees and other information as required. Plans and specifications for new construction and major renovations, other than minor alterations not affecting fire and life safety or functional issues, shall be prepared by or under the direction of a licensed architect and/or a licensed engineer and in accordance with the rules of the Board of Architectural and Engineering Examiners.

(Rule 1200-08-29-.04, continued)

(c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

(8) "No smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted at every entrance.

(9) The facility shall develop a concise statement of its charity care policies and shall post such statement in a place accessible to the public.

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 39-17-1803, 39-17-1805, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-1-222, 68-11-226, 68-11-268, and 71-6-121.* ***Administrative History:*** *Original rule filed August 24, 2000; effective November 7, 2000. Amendment filed April 20, 2006; effective July 4, 2006. Amendment filed June 25, 2007; effective September 8, 2007. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed February 22, 2010; effective May 23, 2010. Amendment filed March 27, 2015; effective June 25, 2015.*

**1200-08-29-.05 ADMISSIONS, DISCHARGE AND TRANSFERS.**

(1) The agency only admits patients whose needs can be met by the services the agency provides.

(a) There shall be written policies and procedures and an organizational process that indicates employees with the necessary skill and training are assigned to assess the level and type of care/service required by patients referred to the agency, and to determine whether the patient is eligible for admission based on the agency's criteria and availability of services to meet the patient's needs. There shall also be a reasonable time frame in which the patient's eligibility for admission is assessed which takes into account the patient's service needs.

(b) There shall be a written policy that addresses the agency's compliance with federal, state, and local anti-discrimination laws in the selection of patients.

(2) Patients shall be transferred or referred to other organizations/agencies in the community when service needs are identified by staff or patients which cannot be met by the agency.

(3) The agency shall ensure that no person, on the grounds of race, color, national origin or handicap, will be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination in the provision of any care or service of the agency. The agency shall protect the civil rights of patients under the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

***Authority:*** *T.C.A. §§4-5-202, 4-5-204, 68-11-202, and 68-11-209.* ***Administrative History:*** *Original rule filed August 24, 2000; effective November 7, 2000. Amendment filed June 25, 2007; effective September 8, 2007.*

**1200-08-29-.06 BASIC AGENCY FUNCTIONS.**

(1) Patient Instruction. The agency shall have written guidelines relating to patient and/or caregiver training and education that includes at a minimum:

(Rule 1200-08-29-.06, continued)

(a) Financial responsibilities;

(b) Equipment use and maintenance;

(c) Patient rights and responsibilities;

(d) Emergency/back-up systems and trouble shooting procedures, if applicable; and

(e) How to contact the agency during regular business hours and after hours, if applicable.

(2) Infection Control. The agency shall have written policies and procedures relating to infection control. Employees shall consistently follow infection control procedures in the provision of care to the agency's patients. The written policies and procedures at a minimum must address standards and education of staff about:

(a) Infection control measures;

(b) Handwashing;

(c) Use of universal precautions and personal protective equipment;

(d) Appropriate cleaning and disinfection of reusable equipment and supplies; and,

(e) Disposal of regulated waste.

(f) A Home Care Organization Providing Home Medical Equipment shall have an annual influenza vaccination program which shall include at least:

1. The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The Home Care Organization Providing Home Medical Equipment will encourage all staff and independent practitioners to obtain an influenza vaccination;

2. A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at http://tennessee.gov/health/topic/hcf-provider);

3. Education of all employees about the following:

   (i) Flu vaccination,

   (ii) Non-vaccine control measures, and

   (iii) The diagnosis, transmission, and potential impact of influenza;

4. An annual evaluation of the influenza vaccination program and reasons for non-participation; and

5. A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee.

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(Rule 1200-08-29-.06, continued)

(3) In-Home Safety. The agency shall educate staff, patients, and caregivers about basic home safety related to the use of equipment delivered to the home. There shall be a procedure for reporting and documenting all incidents. There shall be an incident report form and identification of the types of situations that should be reported and documented.

(4) Equipment Management.

(a) Client-ready equipment shall be durable in nature, sanitized, and in proper working order. The agencyzation shall have clearly defined guidelines for the cleaning, storage, and transportation of client-ready equipment. These guidelines shall include, but are not limited to:

1. Separation of clean and unclean equipment;

2. Appropriate warehousing and tagging of equipment;

3. Use of appropriate cleaning agents, as directed by the manufacturer;

4. Routine maintenance of equipment; and

5. Separation of inoperative equipment.

(b) Agency employees shall be qualified to deliver, perform environmental assessments, set up, and demonstrate safe and proper use of all home medical equipment according to manufacturer's guidelines.

(c) Agency guidelines shall clearly define training, qualifications, and skills validation required by employees to perform routine maintenance and repairs of all home medical equipment. Routine maintenance, preventive maintenance, and repairs shall be performed according to manufacturer's guidelines. Agency employees shall only perform repair services within their respective areas of documented training and expertise. There shall be guidelines that define appropriate use of outside repair sources.

(d) The agency shall have written guidelines for accurate performance quality tracking of equipment in compliance with the FDA's Medical Device Tracking program and facilitate any recall notices sent by the manufacturer. These guidelines shall address the:

1. Immediate removal from equipment inventory;

2. Notification to the client; and

3. Exchange of equipment in the field.

(e) Disposition of recalled inventory shall be handled according to manufacturer's guidelines.

(f) Only durable medical equipment shall be returned to the company for processing. The agency shall have written policies and procedures for processing contaminated or soiled durable medical equipment and shall be in compliance with universal precautions. Guidelines shall specify the separation of dirty equipment from client ready equipment in the warehouse and delivery vehicles.

(5) Physical Location. Each parent and/or branch shall:

(Rule 1200-08-29-.06, continued)

(a) Be located in Tennessee;

(b) Be staffed during normal business hours and have a working telephone;

(c) Be used for the dispensing, servicing, and storage of home medical equipment or be used to provide home medical equipment services;

(d) Meet all local zoning requirements; and

(e) Have all required current licenses and/or permits conspicuously posted in the agency.

(6) Additional Compliance Requirements. The agency shall comply with all federal, state, and local laws and regulations.

(a) Written policies and procedures shall be established and implemented by the agency regarding compliance with all applicable federal, state, and local laws and regulations.

(b) An agency providing prescribed wheeled mobility devices shall obtain a complete face-to-face written evaluation and recommendation by a qualified rehabilitation professional for consumers of prescribed wheeled mobility devices.

(c) The agency must have on staff, or contract with, a qualified rehabilitation professional.

(d) As of July 1, 2007, a one hundred eighty (180) day grace period shall be provided to agencies that provide prescribed wheeled mobility devices if the qualified rehabilitation professional on staff ceases to be employed and the agency has no other qualified rehabilitation professional on staff.

(e) All agencies making available prescribed wheeled mobility devices to consumers in Tennessee shall have a repair service department or a contract with a repair service department located in the state. The agency shall have a qualified technician with knowledge and capability of servicing the product provided to the consumer. As used in this section, "consumer" means an individual for whom a wheeled mobility device, manual or powered, has been prescribed by a physician, and required for use for a period of six (6) months or more.

(f) Delivery and final fitting of a wheeled mobility device shall be determined by a qualified rehabilitation professional. Exempt are wheeled mobility devices under category Group 1 Medicare codes.

(g) The agency shall comply with the following supplier standards:

1. Fill orders from its own inventory or inventory of other companies with which it has contracts to fill such orders, or fabricates or fits items for sale from supplies it buys under a contract;

2. Oversee delivery of items that the supplier ordered for the patient. The supplier is also responsible to assure delivery of large items to the patient;

3. Honor all warranties, express or implied, under applicable state law;

4. Answer questions or complaints about an item or use of an item that is sold or rented to the patient. If the patient has questions, the supplier will refer the patient to the appropriate carrier;

(Rule 1200-08-29-.06, continued)

5. Maintain and repair directly, or through a service contract with another company, items it rents to a patient;

6. Accept returns for substantial medical equipment;

7. Provide the following disclosure information to the department:

   (i) The identity of each person having a five percent (5%) or more ownership or controlling interest in the agency.

   (ii) The identity of subcontractors in which the agency has a five percent (5%) or more ownership interest;

   (iii) At the time such information is disclosed or at any time during the three (3) year period preceding the date such information is supplied, managing employees of the agency, persons having five percent (5%) or more ownership or controlling interest, and subcontractors in which the agency has five percent (5%) or more ownership interest must disclose any other entity providing items or services that receives payment under title XVIII; and

   (iv) Managing employees of the agency, persons having five percent (5%) or more ownership or controlling interest, and subcontractors in which the agency has five percent (5%) or more ownership interest must disclose any penalties, assessments, or exclusions assessed against such person under Section 1128, 1128A, or 1128B of the Social Security Act;

8. Maintain general and product liability insurance; and

9. Disclose consumer information to each patient. This consists of a copy of the supplies standards to which it must conform.

***Authority:*** *T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-209, 68-11-226 and 68-11-304.* ***Administrative History:*** *Original rule filed August 24, 2000; effective November 7, 2000. Amendment filed October 11, 2007; effective December 25, 2007. Amendment filed December 23, 2009; effective March 16, 2010. Amendment filed December 16, 2013; effective March 16, 2014.*

**1200-08-29-.07 RESERVED.**

**1200-08-29-.08 RESERVED.**

**1200-08-29-.09 RESERVED.**

**1200-08-29-.10 INFECTIOUS AND HAZARDOUS WASTE.**

(1) Each agency must develop, maintain and implement written policies and procedures for the definition and handling of its infectious and hazardous waste. These policies and procedures must comply with the standards of this rule and all other applicable state and federal regulations.

(2) The following waste shall be considered to be infectious waste:

   (a) Waste human blood and blood products such as serum, plasma, and other blood components;

(Rule 1200-08-30-.04, continued)

(b) Promote a regional network of direct medical control by lower-level hospitals within the region by working closely with the regional Emergency Medical Services medical director to assure:

1. standards for pre-hospital care;

2. triage and transfer guidelines; and

3. quality indicators for pre-hospital care.

(c) Accept all patients from a defined region who require specialized care not available at lower-level hospitals within the region through:

1. prearranged transfer agreements that network hospitals within a region to assure appropriate inter-emergency department triage and transfer to assure optimum care for seriously and critically ill or injured pediatric patients; and

2. prearranged transfer agreements for pediatric patients needing specialized care not available at the Comprehensive Regional Pediatric Center (e.g., burn specialty unit, spinal cord injury unit, specialized trauma care or rehabilitation facility).

(d) Assure a pediatric transport service that:

1. is available to all regional participating hospitals;

2. provides a network for transport of appropriate patients from all regional hospitals to the Comprehensive Regional Pediatric Center or to an alternative facility when necessary; and

3. transports children to the most appropriate facility in their region for trauma care. Local destination guidelines for emergency medical services should assure that in regions with 2 Comprehensive Regional Pediatric Centers, or 1 Comprehensive Regional Pediatric Center and another facility with Level 1 Adult Trauma capability, that seriously injured children are cared for in the facility most appropriate for their injuries.

(e) Provide 24-hour consultation to all lower-level facilities for issues regarding:

1. emergency care and stabilization;

2. triage and transfer; and

3. transport.

(f) Develop policies that describe mechanisms to achieve smooth and timely exchange of patients between emergency department, operating room, imaging facilities, special procedure areas, regular inpatient care areas, and the pediatric intensive care unit.

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-209 and 68-11-251.* ***Administrative History:*** *Original rule filed November 30, 1999; effective February 6, 2000.*

**1200-08-30-.05 BASIC FUNCTIONS.**

(1) Medical Services.

(Rule 1200-08-30-.05, continued)

(a) In a Basic Pediatric Emergency Facility an on-call physician shall be promptly available and provide direction for the in-house nursing staff. The physician shall be competent in the care of pediatric emergencies including the recognition and management of shock and respiratory failure, the stabilization of pediatric trauma patients, advanced airway skills (intubation, needle thoracostomy), vascular access skills (including intraosseous needle insertion), and be able to perform a thorough screening neurologic assessment and to interpret physical signs and laboratory values in an age-appropriate manner. For physicians not board-certified/prepared by the American Board of Emergency Medicine, successful completion of courses such as Pediatric Advanced Life Support (PALS) or the American Academy of Pediatrics and American College of Emergency Physician's Advanced Pediatric Life Support (APLS) can be utilized to demonstrate this clinical capability. An on-call system shall be developed for access to physicians who have advanced airway and vascular access skills as well as for general surgery and pediatric specialty consultation. A back-up system must be in place for additional registered nurse staffing for emergencies.

(b) A Primary or General Pediatric Emergency Facility shall have an emergency physician in-house 24 hours per day, 7 days per week. The emergency department physician shall be competent in the care of pediatric emergencies including the recognition and management of shock and respiratory failure, the stabilization of pediatric trauma patients, advanced airway skills (intubation, needle thoracostomy), vascular access skills (including intraosseous needle insertion), and be able to perform a thorough screening neurologic assessment and to interpret physical signs and laboratory values in an age-appropriate manner. For physicians not board-certified board prepared by the American Board of Emergency Medicine, successful completion of courses such as Pediatric Advanced Life Support (PALS) or the American Academy of Pediatrics and American College of Emergency Physician's Advanced Pediatric Life Support (APLS) can be utilized to demonstrate this clinical capability. A pediatrician or family practitioner, general surgeon with trauma experience, anesthetist/anesthesiologist, and radiologist shall be promptly available 24 hours per day.

(c) A General Pediatric Emergency Facility shall have a physician director who is board certified/admissible in an appropriate primary care board. A record of the appointment and acceptance shall be in writing. The physician director shall work with administration to assure physician coverage that is highly skilled in pediatric emergencies.

(d) In a Comprehensive Regional Pediatric Center, the emergency department medical director shall be board certified in pediatric emergency medicine or board admissible. A record of the appointment and acceptance shall be in writing.

(e) A Comprehensive Regional Pediatric Center shall have 24 hours ED coverage by physicians who are board certified in pediatrics or emergency medicine, and preferably board certified, board admissible, or fellows (second year level or above) in pediatric emergency medicine. The medical director shall work with administration to assure highly skilled pediatric emergency physician coverage. All physicians in pediatric emergency medicine shall participate on at least an annual basis, in continuing medical education activities relevant to pediatric emergency care.

(f) In a Comprehensive Regional Pediatric Center the pediatric intensive care unit shall have an appointed medical director. A record of the appointment and acceptance shall be in writing. Medical directors of the pediatric intensive care center shall meet one of the following criteria: (1) board-certified in pediatrics and board-certified or in the process of certification in pediatric critical care medicine; (2) board-certified in anesthesiology with practice limited to infants and children and with special qualifications (as defined by the American Board of Anesthesiology) in critical care medicine; or (3) board-certified in pediatric surgery with added qualifications (as defined

(Rule 1200-08-30-.05, continued)

by the American Board of Surgery) in surgical critical care medicine. The pediatric intensive care unit medical director shall achieve certification within five years of their initial acceptance into the certification process for critical care medicine.

(g) The pediatric intensive care unit and ED medical director shall participate in developing and reviewing their respective unit policies, promote policy implementation, participate in budget preparation, help coordinate staff education, maintain a database which describe unit experience and performance, supervise resuscitation techniques, lead quality improvement activities and coordinate research.

(h) The pediatric intensive care unit medical director shall name qualified substitutes to fulfill his or her duties during absences. The pediatric intensive care unit medical director or designated substitute shall have the institutional authority to consult on the care of all pediatric intensive care unit patients when indicated. He or she may serve as the attending physician on all, some or none of the patients in the unit.

(i) The pediatric intensive care unit shall have at least one physician of at least the postgraduate year 2 level available to the pediatric intensive care units in-house 24 hours per day. All physicians in pediatric critical care shall participate on at least an annual basis, in continuing medical education activities relevant to pediatric intensive care medicine.

(j) Specialist consultants shall be board certified or board prepared and actively seeking certification in disciplines in which a specialty exists. A Comprehensive Regional Pediatric Center shall be staffed with specialist consultants with pediatric subspecialty training.

(2) Nursing Services.

(a) Emergency staff in all facilities shall be able to provide information on patient encounters to the patient's medical home through telephone contact with the primary care provider at the time of encounter, by faxing or mailing the medical record to the primary care provider, or by providing the patient with a copy of the medical record to take to the physician. Follow-up visits shall be arranged or recommended with the primary care provider whenever necessary.

(b) In Basic Pediatric Emergency Facilities at least one RN or physician's assistant shall be physically present 24 hours per day, 7 days per week, and capable of recognizing and managing shock and respiratory failure and stabilizing pediatric trauma patients, including early recognition and stabilization of problems that may lead to shock and respiratory failure. At least one emergency room registered nurse or physician's assistant per shift shall have successfully completed courses such as the Emergency Medical Services for Children/American Heart Association Pediatric Advanced Life Support (EMSC/PALS) course, or the Emergency Nurses Association Emergency Nursing Pediatric Course (ENPC) and can demonstrate this clinical capability. Documentation of current expiration date for the above courses shall be maintained by the facility and available upon request.

(c) In Primary or General Pediatric Emergency Facilities at least one RN shall be physically present 24 hours per day, 7 days per week, and capable of recognizing and managing shock and respiratory failure and stabilizing pediatric trauma patients, including early recognition and stabilization of problems that may lead to shock and respiratory failure. At least one emergency room nurse per shift shall have successfully completed courses such as the PALS or ENPC and can demonstrate this clinical capability.

(Rule 1200-08-30-.05, continued)

(d) A Pediatric General Emergency Facility shall have an emergency department nursing director/manager and at least one nurse per shift with pediatric emergency nursing experience. Nursing administration shall assure adequate staffing for data collection and performance monitoring.

(e) A Comprehensive Regional Pediatric Center shall have a pediatric emergency department director/manager and a registered nurse responsible for ongoing staff education.

(f) In a Comprehensive Regional Pediatric Center nursing administration shall provide nursing staff experienced in pediatric emergency and trauma nursing care.

(g) In a Comprehensive Regional Pediatric Center nursing administration shall provide a nurse manager dedicated to the pediatric intensive care unit. The nurse manager shall have specific training and experience in pediatric critical care and shall participate in the development of written policies and procedures for the pediatric intensive care unit, coordination of staff education, coordination or research, family-centered care and budget preparation, with the medical director, in collaboration with the pediatric intensive care unit. The nurse manager shall name qualified substitutes to fulfill his or her duties during absences.

(h) In a Comprehensive Regional Pediatric Center nursing administration shall provide a nurse educator for pediatric emergency care and critical care education.

(i) In a Comprehensive Regional Pediatric Center nursing administration shall provide an orientation to the pediatric emergency department and the pediatric intensive care unit staff and specialized nursing staff shall be Pediatric Advanced Life Support certified. Nursing administration shall assure staff competency in pediatric emergency care and intensive care.

(3) Other Comprehensive Regional Pediatric Center Personnel.

(a) The respiratory therapy department shall have a supervisor responsible for performance and training of staff, maintaining equipment and monitoring quality improvement and review. Under the supervisor's direction, respiratory therapy staff assigned primarily to the pediatric intensive care unit shall be in-house 24 hours per day.

(b) Biomedical technicians shall be either in-house or available within 1 hour, 24 hours per day. Unit secretaries (clerks) shall be available to the pediatric intensive care unit and emergency department 24 hours per day. A radiology technician and pharmacist must be in-house 24 hours per day. In addition, social workers, physical therapists, occupational therapists and nutritionists must be available. The availability of child life specialists and clergy is strongly encouraged.

(4) Facility Structure and Equipment.

(a) A General Pediatric Emergency Facility shall have access to a pediatric intensive care unit. This requirement may be fulfilled by having transfer and transport agreements available for moving critically ill or injured patients to a Comprehensive Regional Pediatric Center.

(b) A Comprehensive Regional Pediatric Center shall have a pediatric intensive care unit.

(c) A Comprehensive Regional Pediatric Center shall be qualified and competent as a pediatric trauma center, and satisfy the requirements in Table 1. A CRPC may fulfill

(Rule 1200-08-30-.05, continued)

this requirement by having written agreements with another CRPC that meets the State's criteria for level I trauma or an Adult Level I trauma center within the same region.

(d) Equipment for communication with Emergency Medical Services mobile units is essential if there is no higher-level facility capable of receiving ambulances or there are no resources for providing medical control to the pre-hospital system.

(e) An emergency cart or other systems to organize supplies including resuscitation equipment, drugs, printed pediatric drug doses and pediatric reference materials must be readily available. Equipment, supplies, trays, and medications shall be easily accessible, labeled and logically organized. Antidotes necessary for a specific geographic area should be determined through consultation with a poison control center. If the listed medications are not kept in the emergency department, they should be kept well organized and together in a location easily accessible and proximate to the emergency department.

(f) A Comprehensive Regional Pediatric Center emergency department must have geographically separate and distinct pediatric medical/trauma areas that have all the staff, equipment and skills necessary for comprehensive pediatric emergency care. Separate fully equipped pediatric resuscitation rooms must be available and capable of supporting at least two simultaneous resuscitations. A pediatric intensive care unit must be available within the institution.

(5) Infection Control. A Pediatric Emergency Care Facility shall have an annual influenza vaccination program which shall include at least: — **Formatted:** Indent: Left: 0.25", Hanging: 0.5"

(a) The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The Pediatric Emergency Care Facility will encourage all staff and independent practitioners to obtain an influenza vaccination; — **Formatted:** Indent: Left: 0.75", Hanging: 0.38", Tab stops: Not at 0.75"

(b) A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at http://tennessee.gov/health/topic/hcf-provider); — **Formatted:** Indent: Left: 0", Hanging: 1.13"

(c) Education of all employees about the following: — **Formatted:** Indent: First line: 0.75"

1. Flu vaccination,

2. Non-vaccine control measures, and

3. The diagnosis, transmission, and potential impact of influenza;

(d) An annual evaluation of the influenza vaccination program and reasons for non-participation; and — **Formatted:** Indent: Left: 0.75", Hanging: 0.38", Tab stops: Not at 0.75" + 1.5"

(e) A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee. — **Formatted:** Indent: Left: 0.75", Hanging: 0.38"

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-209, and 68-11-251.* ***Administrative History:*** *Original rule filed November 30, 1999; effective February 6, 2000. Amendment filed October 15, 2002; effective December 29, 2002. Amendment filed December 4, 2007; effective February 17, 2008.*

(Rule 1200-08-32-.03, continued)

(5) Any licensee or applicant for a license, aggrieved by a decision or action of the department or board, pursuant to this chapter, may request a hearing before the board. The proceedings and judicial review of the board's decision shall be in accordance with the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101, et seq.

(6) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-04-01-.18 regarding petitions for reconsiderations and stays in that case.

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-208, and 68-11-209.* ***Administrative History:*** *Original rule filed April 22, 2003; effective July 6, 2003. Amendment filed March 1, 2007; effective May 15, 2007.*

**1200-08-32-.04 ADMINISTRATION.**

(1) Renal dialysis clinics must have a governing body which is legally responsible for:

(a) The overall operation and maintenance of the facility;

(b) The provision of personnel, facilities, equipment, supplies, and services to patients and families;

(c) Adopting administrative policies regarding patient care;

(d) Appointing an administrator or director responsible for implementing the adopted policies;

(e) Establishing and maintaining a written organizational plan;

(f) Appointing a clinical staff and assuring its competence;

(g) Adopting medical staff bylaws; and

(h) Documenting all of the above.

(2) When licensure is applicable for a particular job, a copy of the current license must be included as a part of the personnel file. Each personnel file shall contain accurate information as to the education, training, experience and personnel background of the employee. Adequate medical screenings to exclude communicable disease shall be required of each employee.

(3) Whenever the rules and regulations of this chapter require that a licensee develop a written policy, plan, procedure, technique, or system concerning a subject, the licensee shall develop the required policy, maintain it and adhere to its provisions. A renal dialysis clinic which violates a required policy also violates the rule and regulation establishing the requirement.

(4) Policies and procedures shall be consistent with professionally recognized standards of practice.

(5) All renal dialysis clinics shall adopt appropriate policies that meet state and federal rules and regulations regarding the testing of patients and staff for human immunodeficiency virus (HIV) and other communicable diseases.

(6) Each renal dialysis clinic utilizing students shall establish policies and procedures for their supervision.

(Rule 1200-08-32-.04, continued)

(7) No renal dialysis clinic shall retaliate against or, in any manner, discriminate against any person because of a complaint made in good faith and without malice to the board, the regional ESRD network, the department, the Adult Protective Services, or the Comptroller of the State Treasury. A renal dialysis clinic shall neither retaliate, nor discriminate, because of information lawfully provided to these authorities, because of a person's cooperation with them, or because a person is subpoenaed to testify at a hearing involving one of these authorities.

(8) Infection Control.

(a) The renal dialysis clinic must provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There must be an active program for the prevention, control, and investigation of infections and communicable diseases.

(b) The renal dialysis clinic must have an infection control program. Members of the medical staff, nursing staff and administrative staff shall develop guidelines and techniques for the prevention, surveillance, control and reporting of facility infections. Duties of the program shall include the establishment of:

1. Written infection control policies;

2. Techniques and systems for identifying, reporting, investigating and controlling infections in the facility;

3. Written procedures governing the use of aseptic techniques and procedures in the facility;

4. Written procedures concerning laundry practices, disposal of environmental and patient wastes, traffic control and visiting rules, sources of air pollution, and routine culturing of autoclaves and sterilizers;

5. A mechanism for tracking incidents related to infectious and communicable diseases;

6. Formal provisions to educate and orient all appropriate personnel in the practice of aseptic techniques such as handwashing, proper grooming, masking, dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of patient care equipment and supplies; and

7. Continuing education for all facility personnel on the cause, effect, transmission, prevention, and elimination of infections.

(c) An End Stage Renal Dialysis Clinic shall have an annual influenza vaccination program which shall include at least: **Formatted:** Indent: Left: 0.75", Hanging: 0.38"

1. The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The End Stage Renal Dialysis Clinic will encourage all staff and independent practitioners to obtain an influenza vaccination; **Formatted:** Indent: Hanging: 0.31"

2. A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at http://tennessee.gov/health/topic/hcf-provider). **Formatted:** Indent: Hanging: 0.31"

(Rule 1200-08-32-.04, continued)

3. Education of all employees about the following: — Formatted: Indent: Hanging: 0.31"

(i) Flu vaccination,

(ii) Non-vaccine control measures, and

(iii) The diagnosis, transmission, and potential impact of influenza;

4. An annual evaluation of the influenza vaccination program and reasons for non-participation; and — Formatted: Indent: Hanging: 0.31"

5. A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee. — Formatted: Indent: Hanging: 0.31"

(d)~~(c)~~ The administrator, the medical staff and Nurse Manager must ensure that the facility-wide performance improvement program and training programs address problems identified by the infection control program and must be responsible for the implementation of successful corrective action plans in affected problem areas.

(e)~~(d)~~ The facility shall develop policies and procedures for testing a patient's blood for the presence of the hepatitis B and C virus and the HIV virus in the event that an employee of the facility, a student studying at the facility, or health care provider rendering services at the facility is exposed to a patient's blood or other body fluid. The testing shall be performed at no charge to the patient, and the test results shall be confidential.

(f)~~(e)~~ The facility and its employees shall adopt and utilize universal precautions of the Centers for Disease Control and Prevention (CDC) for preventing transmission of infections and communicable diseases.

(g)~~(f)~~ Precautions shall be taken to prevent the contamination of sterile supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents. Decontamination and preparation areas shall be separated.

(9) Each renal dialysis clinic shall adopt safety policies for the protection of patients from accident and injury.

(10) Documentation pertaining to the payment agreement between the renal dialysis clinic and the patient shall be completed prior to admission. A copy of the documentation shall be given to the patient and the original shall be maintained in the renal dialysis clinic records.

(11) Dialysis Technicians and Trainees.

(a) All dialysis technicians and renal dialysis clinics shall comply with federal laws and rules relative to patient care dialysis technician certification pursuant to 42 C.F.R. § 494.140(e).

(b) An individual may not act as a dialysis technician unless that individual is trained and competent under these rules.

(c) Trainees shall be identified as such during any time spent in the patient treatment areas.

(Rule 1200-08-32-.04, continued)

(d) Until the successful completion of the competency evaluation, the trainee may provide patient care only as part of the training program and under the immediate supervision of a registered nurse or an assigned preceptor. A preceptor shall be a licensed nurse. If a dialysis technician is deemed competent in one or more of the components outlined in 1200-08-32-.04(12), he/she may perform those duties prior to being deemed competent in all components of the training curriculum. A dialysis technician who has one year of experience in hemodialysis obtained within the last twenty-four (24) months, a recommendation by the supervising nurse to be a preceptor and a current competency skills checklist on file in the facility may be utilized in training as defined in the facility's policies and procedures.

(12) Each training program for dialysis technicians shall develop a written curriculum with objectives and include at a minimum, the following components:

(a) Introduction to dialysis therapies to include history and major issues;

(b) Principles of hemodialysis;

(c) Understanding the individual with kidney failure;

(d) Dialysis procedures;

(e) Hemodialysis devices;

(f) Water treatment following current AAMI guidelines;

(g) Reprocessing, utilizing current AAMI guidelines if the facility practices reuse;

(h) Patient teaching;

(i) Infection Control and safety

1. Universal precautions, aseptic technique, sterile technique, specimen handling;

2. Risks to employees of blood and chemical exposure.

(j) Principles of Quality Improvement and Role of the technician or nurse in QI activities;

(k) Principles of peritoneal dialysis to include:

1. Periotoneal dialysis delivery systems;

2. Symptoms of peritonitis;

3. Other complications of peritoneal dialysis.

(l) If a dialysis technician is to cannulate access or administer normal saline or lidocaine during initiation or termination of dialysis, the following content must be included:

1. Access to the circulation to include:

(i) fistula creation, development, needle placement, and prevention of complications;

(ii) grafts; materials used, creation, needle placement, and prevention of complications; and

(Rule 1200-08-32-.04, continued)

(iii) symptoms to report.

2. Safe administration of medications listed above to include:

(i) identifying the right patient;

(ii) assuring the right medication;

(iii) measuring the right dose;

(iv) ascertaining the right route;

(v) checking the right time for administration;

(vi) reasons for administration;

(vii) potential complications;

(viii) administration limits; and

(ix) information to report and record.

(13) The supervising nurse or registered nurse acting as training instructor shall complete a skills competency checklist to document each dialysis technician trainee's knowledge and skills listed in 1200-08-32-.04(11-12).

(14) Performance Improvement.

(a) The renal dialysis clinic must ensure that there is an effective, facility-wide performance improvement program to evaluate patient care and performance of the organization.

(b) The facility must develop and implement plans for improvement to address deficiencies identified by the performance improvement program and must document the outcome of the remedial action.

(c) The performance improvement program shall be ongoing and have a written plan of implementation which assures that:

1. All organized services related to patient care, including services furnished by a contractor, are evaluated;

2. Nosocomial infections and medication therapy are evaluated; and

3. All services performed in the facility are evaluated as to the appropriateness of diagnosis and treatment.

(d) Performance improvement program records are not disclosable, except when such disclosure is required to demonstrate compliance with this section.

(e) Good faith attempts by the performance improvement program committed to identify and correct deficiencies will not be used as a basis for sanctions.

(f) Written policies, procedures and practice guidelines for management of emergencies and discharge must be developed and implemented.

(Rule 1200-08-32-.04, continued)

(15) Personnel records.

(a) A personnel record for each staff member of a facility shall include an application for employment and a record of any disciplinary action taken.

(b) Wage and salary information, time records, an authorization and record of leave shall be maintained but may be kept in a separate location.

(c) A job description shall be maintained which includes the employment requirements and the job responsibilities for each facility staff position.

(d) A personnel record shall be maintained which verifies that each employee meets the respective employment requirements for the staff position held, including annual verification of basic skills and annual evaluation of personnel performance. This evaluation shall be in writing. There shall be documentation to verify that the employee has reviewed the evaluation and has had an opportunity to comment on it.

(e) Training and development activities which are appropriate in assisting the staff in meeting the needs of the patients being served shall be provided for each staff member including HIV and other communicable disease education. The provision of such activities shall be evidenced by documentation in the facility records.

(f) Direct-services staff members shall be competent persons aged eighteen (18) years of age or older.

(g) All new employees, including volunteers, who have routine contact with patients shall have a current tuberculosis test prior to employment or service.

(h) Employees shall have a tuberculin skin test annually and at the time of exposure to active TB and three months after exposure.

(i) Employee records shall include date and type of tuberculin skin test used and date of tuberculin skin test results, date and results of chest x-ray, and any drug treatment for tuberculosis.

(16) Water Treatment and Reuse.

Compliance Required. A facility shall meet the requirements of this section. A facility may follow more stringent requirements for water treatment and reuse of hemodialyzers than the minimum standards required by this section.

(a) The physical space in which water treatment is located must be adequate to allow for maintenance, testing, and repair of equipment. If mixing of dialysate is performed in the same area, the physical space must also be adequate to house and allow for the maintenance, testing and repair of the mixing equipment and for performing the mixing procedures.

(b) The water treatment system components shall be arranged and maintained so that bacterial and chemical contaminant levels in the product water do not exceed the standards for hemodialysis water quality as described in the current Association for the Advancement of Medical Instrumentation (AAMI) standards.

(c) Facility records must include all test results and evidence that the medical director has reviewed the result of water quality testing and directed corrective action when indicated.

(Rule 1200-08-32-.04, continued)

(d) Only persons qualified by education or experience may repair or replace components of the water treatment system. Documentation of education or training which qualifies these persons must be maintained on file in the facility.

(e) A facility that reuses hemodialyzers and other dialysis supplies shall meet current AAMI standards.

(17) All health care facilities licensed pursuant to T.C.A. § 68-11-201, *et seq.* shall post the following in the main public entrance:

(a) Contact information including statewide toll-free number of the division of adult protective services, and the number for the local district attorney's office;

(b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and

(c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

(18) "No smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted at every entrance.

(19) The facility shall develop a concise statement of its charity care policies and shall post such statement in a place accessible to the public.

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 39-17-1803, 39-17-1805, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-268 and 71-6-121.* ***Administrative History:*** *Original rule filed April 22, 2003; effective July 6, 2003. Amendment filed April 20, 2006; effective July 4, 2006. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed December 9, 2010 to have been effective March 9, 2011 was stayed for 28 days by the Government Operations Committee; new effective date March 29, 2011.*

**1200-08-32-.05 ADMISSIONS, DISCHARGES, AND TRANSFERS.**

(1) Every person admitted for treatment shall be under the supervision of a physician who holds a license in good standing to practice in Tennessee. The name of the patient's treating physician shall be recorded in the patient's medical record. The renal dialysis clinic shall not admit or continue to treat the following types of patients:

(a) Persons who pose a clearly documented danger to themselves or to other patients or staff in the renal dialysis clinic;

(b) Persons for whom the renal dialysis clinic is not capable of providing the care ordered by the treating physician. Documentation of the reason(s) for refusal of treatment shall be maintained.

(2) The facility shall ensure that no person on the grounds of race, color, national origin, or handicap, will be excluded from participation in, be denied benefits of, or otherwise subjected to discrimination in the provision of any care or service of the facility. The facility shall protect

(Rule 1200-08-34-.05, continued)

(11) The agency shall ensure that no person on the grounds of race, color, national origin or handicap, will be excluded from participation in, be denied benefits of, or otherwise subjected to discrimination in the provision of any care or service of the agency. The agency shall protect the civil rights of residents under the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, and 68-11-209.* ***Administrative History:*** *Original rule filed January 24, 2003; effective April 9, 2003.*

**1200-08-34-.06 BASIC AGENCY FUNCTIONS.**

(1) All personnel providing professional support services shall assure that their efforts effectively complement other services provided to the consumer, are functionally integrated into the individual daily routine and support the outcome outlined in the individual support plan. A written report of progress shall be provided to the consumer's support coordinator/case manager monthly. A written summary report for each consumer shall be sent to the attending physician at least annually.

(2) Plan of Care.

(a) The written plan of care, developed in consultation with the agency staff, shall cover all pertinent diagnoses, including mental status, types of services and equipment required, frequency of services, prognosis, rehabilitation potential, functional limitations, activities permitted, nutritional requirements, medications and treatments, any safety measures to protect against injury, instructions for timely discharge or referral, and any other appropriate items. If a physician refers a consumer under a plan of care which cannot be completed until after an evaluation visit, the physician shall be consulted to approve additions or modifications to the original plan. Orders for professional support services shall include the specific treatment or modalities to be used and their amount, frequency and duration. The therapist and other agency personnel shall participate in developing the plan of care.

(b) The plan(s) of care for acute or episodic illness shall be reviewed by the attending physician and agency personnel involved in the consumer's care as often as the severity of the consumer's condition requires, but at least annually. Plans of care resulting from Comprehensive Nursing Assessment will be reviewed in accordance with the physical status review schedule. Evidence of review by the physician must include the physician's signature and date of the review on the plan of care. A facsimile of the physician's signature is acceptable. Professional staff shall promptly alert the physician to any changes that suggest a need to alter the plan of care.

(3) Drugs and treatments shall be administered by appropriately licensed agency personnel, acting within the scope of their licenses. Orders for drugs and treatments shall be signed and dated by the physician.

(4) Skilled Nursing Services.

(a) When skilled nursing is provided, the services shall be provided by or under the supervision of a registered nurse who has no current disciplinary action against his/her license, in accordance with the plan of care. This person shall be available at all times during operating hours and participate in all activities relevant to the professional support services provided, including the development of qualifications and assignment of personnel.

(Rule 1200-08-34-.06, continued)

(b) The registered nurse's duties shall include but are not limited to the following: make the initial evaluation visit, except in those circumstances where the physician has ordered therapy services as the only skilled service; regularly evaluate the consumer's nursing needs; initiate the plan of care and necessary revisions; provide those services requiring substantial specialized nursing skill; initiate appropriate preventive and rehabilitative nursing procedures; prepare clinical and progress notes; coordinate services; inform the physician and other personnel of changes in the consumer's condition and needs; counsel the consumer and family in meeting nursing and related needs; participate in in-service programs; supervise and teach other nursing personnel. The registered nurse or appropriate agency staff shall initially and periodically evaluate drug interactions, duplicative drug therapy and non-compliance to drug therapy.

(c) The licensed practical nurse shall provide services in accordance with agency policies, which may include but are not limited to the following: prepare clinical and progress notes; assist the physician and/or registered nurse in performing specialized procedures; prepare equipment and materials for treatments; observe aseptic technique as required; and assist the consumer in learning appropriate self-care techniques.

(5) Therapy Services.

(a) All therapy services offered by the agency directly or under arrangement shall be planned, delegated, supervised or provided by a qualified therapist in accordance with the plan of care. A qualified therapist assistant may provide therapy services under the supervision of a qualified therapist in accordance with the plan of care. The therapist shall assist the physician in evaluating the level of function, helping develop the plan of care (revising as necessary), preparing clinical and progress notes, advising and consulting with the family and other agency personnel, and participating in in-service programs.

(b) Speech therapy services shall be provided only by or under supervision of a qualified speech language pathologist in good standing, or by a person qualified as a Clinical Fellow subject to Tennessee Board of Communications Disorders and Sciences Rule 1370-01-.10.

(6) Performance Improvement.

(a) An agency shall have a committee or mechanism in place to review, at least annually, past and present professional support services including contract services, in accordance with a written plan, to determine their appropriateness and effectiveness and to ascertain that professional policies are followed in providing these services.

(b) The objectives of the review committee shall be:

1. To assist the agency in using its personnel and facilities to meet individual and community needs;

2. To identify and correct deficiencies which undermine quality of care and lead to waste of agency and personnel resources;

3. To help the agency make critical judgments regarding the quality and quantity of its services through self-examination;

4. To provide opportunities to evaluate the effectiveness of agency policies and when necessary make recommendations to the administration as to controls or changes needed to assure high standards of consumer care;

5. To augment in-service staff education, when applicable;

6. To provide data needed to satisfy state licensure and certification requirements;

7. To establish criteria to measure the effectiveness and efficiency of the professional support services provided to consumers; and

8. To develop a record review system for the agency to evaluate the necessity or appropriateness of the professional support services provided and their effectiveness and efficiency.

(7) Infection Control.

(a) There must be an active performance improvement program for developing guidelines, policies, procedures and techniques for the prevention, control and investigation of infections and communicable diseases.

(b) Formal provisions must be developed to educate and orient all appropriate personnel and/or family members in the practice of aseptic techniques such as handwashing and scrubbing practices, proper hygiene, use of personal protective equipment, dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of consumer care equipment and supplies.

(c) A Home Care Organization Providing Professional Support Services shall have an annual influenza vaccination program which shall include at least: — **Formatted:** Indent: Left: 0.75", Hanging: 0.38"

1. The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The Home Care Organization Providing Professional Support Services will encourage all staff and independent practitioners to obtain an influenza vaccination; — **Formatted:** Indent: Hanging: 0.31"

2. A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at http://tennessee.gov/health/topic/hcf-provider); — **Formatted:** Indent: Hanging: 0.31"

3. Education of all employees about the following: — **Formatted:** Indent: Hanging: 0.31"

(i) Flu vaccination,

(ii) Non-vaccine control measures, and

(iii) The diagnosis, transmission, and potential impact of influenza;

4. An annual evaluation of the influenza vaccination program and reasons for non-participation; and — **Formatted:** Indent: Hanging: 0.31"

5. A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee. — **Formatted:** Indent: Hanging: 0.31"

(d)~~(c)~~ Continuing education shall be provided for all agency consumer care providers on the cause, effect, transmission, prevention and elimination of infections, as evidenced by the ability to verbalize/or demonstrate an understanding of basic techniques.

(Rule 1200-08-34-.06, continued)

(e)~~(d)~~ The agency shall develop policies and procedures for testing a consumer's blood for the presence of the hepatitis B virus and the HIV (AIDS) virus in the event that an employee of the agency, a student studying at the agency or other health care provider rendering services at the agency is exposed to a consumer's blood or other body fluid. The testing shall be performed at no charge to the consumer, and the test results shall be confidential.

(f)~~(e)~~ The agency and its employees shall adopt and utilize standard precautions (per CDC) for preventing transmission of infections, HIV and communicable diseases.

(g)(f) Precautions shall be taken to prevent the contamination of sterile and clean supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents.

(8) Medical Records.

(a) A medical record containing past and current findings in accordance with accepted professional standards shall be maintained for every consumer receiving professional support services. In addition to the plan of care, the record shall contain: appropriate identifying information; name of physician; all medications and treatments; signed and dated clinical notes. Clinical notes shall be written the day on which service is rendered and incorporated no less often than weekly; copies of summary reports shall be sent to the physician; and a discharge summary shall be dated and signed within 7 days of discharge.

(b) All medical records, either in written, electronic, graphic or other acceptable form, must be retained in their original or legally reproduced form for a minimum period of at least ten (10) years after which such records may be destroyed. However, in cases of consumers under mental disability or minority, their complete agency records shall be retained for the period of minority or known mental disability, plus one (1) year, or ten (10) years following the discharge of the consumer, whichever is longer. Records destruction shall be accomplished by burning, shredding or other effective method in keeping with the confidential nature of the contents. The destruction of records must be made in the ordinary course of business, must be documented and in accordance with the agency's policies and procedures, and no record may be destroyed on an individual basis.

(c) Even if the agency discontinues operations, records shall be maintained as mandated by this chapter and the Tennessee Medical Records Act (T.C.A. §§ 68-11-308). If a consumer is transferred to another health care facility or agency, a copy of the record or an abstract shall accompany the consumer when the agency is directly involved in the transfer.

(d) Medical records information shall be safeguarded against loss or unauthorized use. Written procedures shall govern use and removal of records and conditions for release of information. The consumer's written consent shall be required for release of information when the release is not otherwise authorized by law.

(e) For purposes of this rule, the requirements for signature or countersignature by a physician or other person responsible for signing, countersigning or authenticating an entry may be satisfied by the electronic entry by such person of a unique code assigned exclusively to him or her, or by entry of other unique electronic or mechanical symbols, provided that such person has adopted same as his or her signature in accordance with established protocol or rules.

(Rule 1200-08-34-.06, continued)
***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-209, and 68-11-304.* ***Administrative History:*** *Original rule filed January 24, 2003; effective April 9, 2003. Amendment filed September 15, 2015; effective December 14, 2015.*

**1200-08-34-.07 RESERVED.**

**1200-08-34-.08 RESERVED.**

**1200-08-34-.09 RESERVED.**

**1200-08-34-.10 INFECTIOUS AND HAZARDOUS WASTE.**

(1) Each agency must develop, maintain and implement written policies and procedures for the definition and handling of its infectious and hazardous waste. These policies and procedures must comply with the standards of this rule and all other applicable state and federal regulations.

(2) The following waste shall be considered to be infectious waste:

(a) Waste human blood and blood products such as serum, plasma, and other blood components;

(b) All discarded sharps (including but not limited to, hypodermic needles, syringes, pasteur pipettes, broken glass, scalpel blades) used in consumer care; and

(c) Other waste determined to be infectious by the agency in its written policy.

(3) Waste must be packaged in a manner that will protect waste handlers and the public from possible injury and disease that may result from exposure to the waste. Such packaging must provide for containment of the waste from the point of generation up to the point of proper treatment or disposal. Packaging must be selected and utilized for the type of waste the package will contain, how the waste will be treated and disposed, and how it will be handled and transported prior to treatment and disposal.

(a) Contaminated sharps must be directly placed in leakproof, rigid and puncture-resistant containers which must then be tightly sealed.

(b) Infectious and hazardous waste must be secured in fastened plastic bags before placement in a garbage can with other household waste.

(c) Reusable containers for infectious waste must be thoroughly sanitized each time they are emptied, unless the surfaces of the containers have been completely protected from contamination by disposable liners or other devices removed with the waste.

(4) After packaging, waste must be handled, transported and stored by methods ensuring containment and preserving of the integrity of the packaging, including the use of secondary containment where necessary.

(5) Waste must be stored in a manner which preserves the integrity of the packaging, inhibits rapid microbial growth and putrefaction, and minimizes the potential of exposure or access by unknowing persons. Waste must be stored in a manner and location which affords protection from animals, precipitation, wind and direct sunlight, does not present a safety hazard, does not provide a breeding place or food source for insects or rodents and does not create a nuisance.

(Rule 1200-08-35-.05, continued)

(c) Any duly licensed out of state health care professional who is authorized by his or her state board to order outpatient diagnostic testing in hospitals for individuals with whom that practitioner has an existing face-to-face patient relationship as outlined in rule 0880-02-.14(7)(a)1., 2., and 3.

(3) The facility shall ensure that no person on the grounds of race, color, national origin, or handicap, will be excluded from participation in, be denied benefits of, or otherwise subjected to discrimination in the provision of any care or service of the facility. The facility shall protect the civil rights of residents under the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

(4) For purposes of this chapter, and when applicable, the requirements for signature or countersignature by a physician responsible for signing, countersigning or authenticating an entry may be satisfied by the electronic entry by such person of a unique code assigned exclusively to him or her, or by entry of other unique electronic or mechanical symbols, provided that such person has adopted same as his or her signature in accordance with established Outpatient Diagnostic Center protocol or rules.

(5) The Outpatient Diagnostic Center shall have available a plan for emergency transportation to a licensed local hospital.

(6) As needed, the patient and family members or interested persons must be taught and/or counseled to prepare them for post procedural care.

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.* ***Administrative History:*** *Original rule filed October 26, 2005; effective January 9, 2006.*

**1200-08-35-.06 BASIC SERVICES.**

(1) Radiological services. If laboratory tests are performed in the nuclear medicine services, they shall meet applicable requirements for laboratory services as specified in T.C.A. § 68-29-101 *et seq.*

(a) Radiological services provided shall be maintained free of hazards for patients and personnel.

(b) Personnel monitoring shall be maintained for each individual working in the area of radiation. Readings shall be on at least a monthly basis and reports kept on file and available for review.

(c) Patients, employees and the general public shall be provided protection from radiation in accordance with "State Regulations for Protection Against Radiation". All radiation producing equipment shall be registered and all radioactive material shall be licensed by the Division of Radiological Health of the Tennessee Department of Environment and Conservation.

(d) Periodic inspections of equipment must be made and hazards identified must be promptly corrected.

(e) Radiology personnel shall be qualified by education, training and experience for the type of service rendered.

(f) X-rays shall be retained for four (4) years and may be retired thereafter provided that a signed interpretation by a radiologist is maintained in the patient's record under T.C.A. § 68-11-305.

(Rule 1200-08-35-.06, continued)

(g) Patient safety shall be ensured in all areas of the facility.

(h) Radioactive materials must be prepared, labeled, used, transported, stored, and disposed of in accordance with acceptable standards of practice.

(i) In-house preparation of radiopharmaceuticals shall be accomplished by, or under the direct supervision of, an appropriately trained registered pharmacist or a doctor of medicine or osteopathy.

(j) The Outpatient Diagnostic Center shall maintain records of the receipt and disposition of radiopharmaceuticals.

(2) Invasive Procedures.

(a) If the facility provides invasive diagnostic procedures eg. cardiac catheterization, percutaneous transluminal coronary angioplasty, vascular embolization or stereotactic procedures using anesthesia, the services must be well organized and provided in accordance with acceptable standards of practice.

(b) A qualified registered nurse shall be present during invasive diagnostic procedures, as listed in subparagraph (2)(a), where anything greater than local anesthesia is used during a procedure.

(c) Properly executed informed consent forms shall be in the patient's chart before procedure is performed, except in emergencies.

(d) Adequate equipment and supplies shall be available to the invasive diagnostic room and to the post procedure care area. The following equipment and supplies shall be provided for cardiac catheterization or angioplasty:

1. Call-in system
2. Cardiac monitor
3. Pulse Oximeter
4. Resuscitator
5. Defibrillator
6. Aspirator
7. Tracheotomy set

(e) A crash cart must be available with appropriate medications.

(f) A qualified registered nurse shall be in the post procedure area during the patient's recovery period during invasive diagnostic procedures, as listed in subparagraph (2)(a), where anything greater than local anesthesia is used during a procedure.

(g) A report describing techniques, findings, and tissues removed or altered must be written or dictated immediately following the procedure and signed by the physician.

(h) The Outpatient Diagnostic Center shall provide one or more procedure rooms which shall be constructed, equipped, and maintained to assure the safety of patients and personnel.

(Rule 1200-08-35-.06, continued)

(3) Anesthesia. General anesthesia shall not be administered in Outpatient Diagnostic Centers.

(a) Written policies and procedures relative to the administration of anesthesia shall be developed and approved by the governing body, or responsible individual.

(b) After the completion of anesthesia, patients shall be constantly attended by competent personnel until responsive and able to summon aid. Each center shall maintain a log of the inspections made prior to each day's use of the anesthesia equipment. A record of all service and maintenance performed on all anesthesia machines shall also be on file.

(c) Any patient receiving conscious sedation shall receive:

1. continuous EKG monitoring;

2. continuous oxygen saturations;

3. serial BP monitoring at intervals no less than every 5 minutes; and

4. supplemental oxygen therapy and immediately available:

(i) ambubag;

(ii) suction;

(iii) endotracheal tube; and

(iv) crash cart.

(4) Pharmaceutical Services. The Outpatient Diagnostic Center must provide drugs and biologicals in a safe and effective manner in accordance with accepted federal and state standards of practice. Such drugs and biologicals must be stored in a separate room or cabinet which shall be kept locked at all times.

(5) Environmental Services.

(a) The facility shall provide a safe, accessible, effective and efficient environment of care consistent with its mission, service, law and regulation.

(b) The facility shall develop policies and procedures that address:

1. Safety;

2. Security;

3. Control of hazardous materials and waste;

4. Emergency preparedness;

5. Life safety;

6. Medical equipment; and,

7. Utility systems.

(Rule 1200-08-35-.06, continued)

(c) Staff shall have been oriented to and educated about the environment of care and possess knowledge and skills to perform responsibilities under the environment of care policies and procedures.

(d) Utility systems, medical equipment, life safety elements, and safety elements of the environment of care shall be maintained, tested and inspected.

(e) Safety issues shall be addressed and resolved.

(f) Appropriate staff shall participate in implementing safety recommendations and monitoring their effectiveness.

(g) The building and grounds shall be suitable to services provided and patients served.

(6) Medical Records.

(a) The Outpatient Diagnostic Center shall comply with the Medical Records Act of 1974, T.C.A. § 68-11-301, *et seq.*

(b) A medical record shall be maintained for each person receiving services provided by the Outpatient Diagnostic Center and shall include:

1. Patient identification;

2. Name of nearest relative or other responsible agent;

3. Identification of primary source of medical care;

4. Dates and times of visits;

5. Signed informed consent;

6. Operative report;

7. Reports of all laboratory and diagnostic procedures along with tests performed and the results authenticated by the appropriate personnel; and,

8. Radiology reports.

(c) Medical records shall be current and confidential. Medical records and copies thereof shall be made available when requested by an authorized representative of the board or the department.

(7) Infection Control.

(a) The Outpatient Diagnostic Center must provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There must be an active performance improvement program for the prevention, control, and investigation of infections and communicable diseases.

(b) The facility shall develop policies and procedures for testing a patient's blood for the presence of the hepatitis B virus and the HIV (AIDS) virus in the event that an employee of the facility, a student studying at the facility, or other health care provider rendering services at the facility is exposed to a patient's blood or other body fluid. The testing shall be performed at no charge to the patient, and the test results shall be confidential.

(Rule 1200-08-35-.06, continued)

(c) The facility and its employees shall adopt and utilize standard precautions (per CDC) for preventing transmission of infections, HIV, and communicable diseases.

(d) All Outpatient Diagnostic Center's shall adopt appropriate policies regarding the testing of patients and staff for human immunodeficiency virus (HIV) and any other identified causative agent of acquired immune deficiency syndrome.

(e) An Outpatient Diagnostic Center shall have an annual influenza vaccination program which shall include at least: — Formatted: Indent: Left: 0.75", Hanging: 0.38"

1. The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The Outpatient Diagnostic Center will encourage all staff and independent practitioners to obtain an influenza vaccination; — Formatted: Indent: Hanging: 0.31"

2. A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at http://tennessee.gov/health/topic/hcf-provider); — Formatted: Indent: Hanging: 0.31"

3. Education of all employees about the following: — Formatted: Indent: Hanging: 0.31"

(i) Flu vaccination,

(ii) Non-vaccine control measures, and

(iii) The diagnosis, transmission, and potential impact of influenza;

4. An annual evaluation of the influenza vaccination program and reasons for non-participation; and — Formatted: Indent: Hanging: 0.31"

5. A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee. — Formatted: Indent: Hanging: 0.31"

(f)~~(e)~~ The physical environment of the facility shall be maintained in a safe, clean and sanitary manner.

(g)~~(f)~~ Any condition on the facility site conducive to the harboring or breeding of insects, rodents or other vermin shall be prohibited. Chemical substances of a poisonous nature used to control or eliminate vermin shall be properly identified. Such substances shall not be stored with or near food or medications.

(8) Performance Improvement. The Outpatient Diagnostic Center shall have a planned, systematic, organization-wide approach to process design and redesign, performance measurement, assessment and improvement which is approved by the designated governing body or responsible individual. This plan shall address and/or include, but is not limited to:

(a) Infection control, including post-operative surveillance;

(b) Complications of procedures;

(c) Documentation of periodic review of the data collected and follow-up actions;

(Rule 1200-08-35-.06, continued)

(d) A system which identifies appropriate plans of action to correct identified quality deficiencies;

(e) Documentation that the above policies are being followed and that appropriate action is taken whenever indicated.

(9) Ancillary Services. All ancillary or supportive health or medical services, including but not limited to, dietary, environmental, nursing, or medical laboratory services shall be provided in accordance with all applicable state and federal laws and regulations.

(10) Laboratory Services.

(a) The Outpatient Diagnostic Center shall provide on the premises or by written agreement with a laboratory licensed under T.C.A. § 68-29-105, a clinical laboratory to provide those services commensurate with the needs and services of the Outpatient Diagnostic Center.

(b) Any patient terminating pregnancy in an Outpatient Diagnostic Center shall have an Rh type, documented prior to the procedure, performed on her blood. In addition, she shall be given the opportunity to receive Rh immune globulin after an appropriate crossmatch procedure is performed within a licensed laboratory.

(11) Food and Dietetic Services. If a patient will be in the facility for more than four (4) hours post-op, an appropriate diet shall be provided.

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.* ***Administrative History:*** *Original rule filed October 26, 2005; effective January 9, 2006. Amendment filed October 20, 2015; effective January 18, 2016.*

**1200-08-35-.07 RESERVED.**

***Authority:*** *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.* ***Administrative History:*** *Original rule filed October 26, 2005; effective January 9, 2006.*

**1200-08-35-.08 BUILDING STANDARDS.**

(1) An ODC shall construct, arrange, and maintain the condition of the physical plant and the overall ODC environment in such a manner that the safety and well-being of the patients are assured.

(2) After the applicant has submitted an application and licensure fees, the applicant must submit the building construction plans to the department. All facilities shall conform to the current edition of the following applicable codes as approved by the Board for Licensing Health Care Facilities: International Building Code (excluding Chapters 1 and 11) including referenced International Fuel Gas Code, International Mechanical Code, and International Plumbing Code; National Fire Protection Association (NFPA) NFPA 101 Life Safety Code excluding referenced NFPA 5000; Guidelines for Design and Construction of Health Care Facilities (FGI) including referenced Codes and Standards; U.S. Public Health Service Food Code; and Americans with Disabilities Act (ADA) Standards for Accessible Design. When referring to height, area or construction type, the International Building Code shall prevail. Where there are conflicts between requirements in local codes, the above listed codes, regulations and provisions of this chapter, the most stringent requirements shall apply.

(3) The codes in effect at the time of submittal of plans and specifications, as defined by these rules, shall be the codes to be used throughout the project.

**1200-08-36-.05 ADMINISTRATION.**

(1) Each ACH shall meet the following staffing standards:

(a) The adult care home provider shall reside in the ACH or employ a resident manager to reside in the ACH.

(b) Each ACH provider may employ a resident manager who shall meet the education, experience and training requirements of a Level 2 ACH provider required by the Board.

(c) Each ACH shall designate in writing a substitute caregiver who shall meet the education, experience and training requirements required by the Board. The substitute caregiver shall reside in the ACH during such time the substitute caregiver oversees the day-to-day operation of the ACH.

(d) The ACH shall provide staffing coverage that is adequate to meet the needs of residents, both medical, and non-medical assistance with activities of daily living. Such staffing may include certified nurse assistants.

(e) ACH staff shall:

1. Be awake and available to meet the routine and emergency service needs of the residents twenty-four (24) hours a day;

2. Demonstrate documented competency in providing care for residents requiring specialized services;

3. Evacuate all residents within five (5) minutes or less;

4. Know how to operate the generator without assistance and be able to demonstrate its operation upon request.

5. Coordinate with primary care physicians, specialists, and other health care professionals as appropriate.

(f) In addition to meeting the requirements found in Rule 1200-08-36-.05(1)(e), Level 2 ACHs serving ventilator dependent patients shall have a physician, nurse practitioner, registered nurse, respiratory therapist or licensed practical nurse awake and on duty at all times.

(g) An ACH shall employ a qualified dietitian, full time, part-time, or on a consultant basis.

(h) An ACH shall not employ an individual listed on the Abuse Registry maintained by the Department of Health.

(2) Each ACH shall meet the following procedural standards:

(a) Policies and Procedures:

1. An ACH shall have a written statement of policies and procedures outlining the ACH's responsibilities to its residents, any obligations residents have to the facility, and methods by which residents may file grievances and complaints.

(Rule 1200-08-36-.05, continued)

2. An ACH shall develop and implement an effective facility-wide performance improvement plan that addresses plans for improvement for self-identified deficiencies and documents the outcome of remedial action.

3. An ACH shall develop a written policy, plan or procedure concerning a subject and adhere to its provisions whenever required to do so by these rules. An ACH that violates its own policy established as required by these rules and regulations also violates the rules and regulations establishing the requirement.

4. An ACH shall develop a written policy and procedure governing smoking practices of residents.

   (i) Residents of the facility are exempt from the smoking prohibition, with the exception of residents of Level 2 ACHs providing care to ventilator dependent residents.

   (ii) Smoke from permissible smoking areas shall not infiltrate into areas where smoking is prohibited.

5. An ACH shall develop a concise statement of its charity care policies and shall post such statement in a place accessible to the public.

(b) Resident grievances:

1. The ACH provider shall inform each resident verbally and in writing of the resident's right to file a complaint with the state at any time, the process for filing a complaint, and contact information for filing a complaint. Verbal and written communication to the resident shall indicate, at a minimum that:

   (i) Complaints regarding suspected abuse, neglect or exploitation shall be reported to Adult Protective Services;

   (ii) Complaints regarding licensure shall be reported to the Board; and

   (iii) All other complaints shall be reported to the appropriate state designated oversight entity.

2. The ACH provider shall advise residents of the availability of a long-term care ombudsman, and how to contact such ombudsman for assistance.

3. The ACH shall forward all complaints to the appropriate state oversight entity.

4. The ACH provider shall not prohibit or discourage the filing of complaints or use intimidation against any person for filing a complaint.

5. The ACH provider shall not retaliate against the resident or the person acting on behalf of the resident in any way.

6. Persons acting in good faith in filing a complaint are immune from any liability, civil or criminal.

(c) Allegations of abuse, neglect, misappropriation or exploitation: An ACH provider shall place a resident manager, substitute caregiver, or employee against whom an allegation of abuse, neglect, misappropriation or exploitation has been made on administrative leave of absence until the investigation conducted by the appropriate state entity is complete.

(Rule 1200-08-36-.05, continued)

(d) An ACH shall keep a written up-to-date log of all residents that can be produced in the event of an emergency.

(e) An ACH shall allow pets in the ACH only when they are not a nuisance and do not pose a health hazard. Plans for pet management must be approved by the Department. Proof of rabies vaccinations and any other vaccinations that are required for the pet by a licensed veterinarian must be maintained on the premises.

(f) No person associated with the licensee or ACH shall act as a court-appointed guardian, trustee, or conservator for any resident of the ACH or any of such resident's property or funds, except as provided by rule 1200-08-36-.15(1)(i).

(3) An ACH shall post the following at the main public entrance or other equally prominent place in the ACH:

(a) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the Division of Adult Protective Services. The statement shall include the statewide toll-free number for the Division and the telephone number for the local district attorney's office. The posting shall be on a sign no smaller than eleven inches by seventeen inches (11" x 17"). (This same information shall be provided to each resident in writing upon admission to any facility);

(b) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline for immediate assistance, with that number printed in boldface type, and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height;

(c) A statement that the ACH has liability insurance, the identity of the primary insurance carrier, and if self-insured, the corporate entity responsible for payment of any claims. It shall be posted on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height;

(d) "No Smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted at every entrance;

(e) A statement that any person who has experienced a problem with a specific licensed ACH may file a complaint with the Division of Health Care Facilities. The posting shall include the statewide toll-free telephone number for the Division's centralized complaint intake unit; and

(f) A copy of the resident's rights.

(4) Infection Control.

(a) An ACH shall ensure that neither a resident nor an employee of the ACH with a reportable communicable disease shall reside or work in the ACH unless the ACH has a written protocol approved by the Board's administrative office.

~~(b) An ACH shall have an annual influenza vaccination program which shall include at least:~~

~~1. The offer of influenza vaccination to all staff and independent practitioners or accept documented evidence of vaccination from another vaccine source or facility;~~

(Rule 1200-08-36-.05, continued)

~~2. A signed declination statement on record from all who refuse the influenza vaccination for other than medical contraindications;~~

~~3. Education of all direct care personnel about the following:~~

~~(i) Flu vaccination;~~

~~(ii) Non-vaccine control measures; and~~

~~(iii) The diagnosis, transmission, and potential impact of influenza;~~

~~4. An annual evaluation of the influenza vaccination program and reasons for non-participation; and~~

~~5. A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage.~~

(b) An Adult Care Home shall have an annual influenza vaccination program which shall include at least: — **Formatted:** Indent: Left: 0.75", Hanging: 0.38"

1. The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The Adult Care Home will encourage all staff and independent practitioners to obtain an influenza vaccination; — **Formatted:** Indent: Left: 1.13", Hanging: 0.38"

2. A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at http://tennessee.gov/health/topic/hcf-provider); — **Formatted:** Indent: Left: 1.13", Hanging: 0.38"

3. Education of all employees about the following: — **Formatted:** Indent: Left: 1.13", Hanging: 0.38"

(i) Flu vaccination; — **Formatted:** Indent: Hanging: 0.38"

(ii) Non-vaccine control measures; and — **Formatted:** Indent: Hanging: 0.38"

(iii) The diagnosis, transmission, and potential impact of influenza; — **Formatted:** Indent: Hanging: 0.38"

4. An annual evaluation of the influenza vaccination program and reasons for non-participation; and — **Formatted:** Indent: Left: 1.13", Hanging: 0.38"

5. A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee. — **Formatted:** Indent: Left: 1.13", Hanging: 0.38"

(c) An ACH and its employees shall adopt and utilize standard precautions in accordance with guidelines established by the Centers for Disease Control and Prevention (CDC) for preventing transmission of infections, HIV, and communicable diseases, including adherence to a hand hygiene program which shall include:

1. Use of alcohol-based hand rubs or use of non-antimicrobial or antimicrobial soap and water before and after each resident contact if hands are not visibly soiled;

(Rule 1200-08-36-.05, continued)

2. Use of gloves during each resident contact with blood or where other potentially infectious materials, mucous membranes, and non-intact skin could occur and gloves shall be changed before and after each resident contact;

3. Use of either a non-antimicrobial soap and water or an antimicrobial soap and water for visibly soiled hands; and

4. Health care worker education programs which may include:

(i) Types of resident care activities that can result in hand contamination;

(ii) Advantages and disadvantages of various methods used to clean hands;

(iii) Potential risks of health care workers' colonization or infection caused by organisms acquired from residents; and

(iv) Morbidity, mortality, and costs associated with health care associated infections.

(d) An ACH shall develop and implement a system for measuring improvements in adherence to the hand hygiene program and influenza vaccination program.

(5) An ACH shall ensure that no person will be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the provision of any care or service of the ACH on the grounds of race, color, national origin, or handicap. An ACH shall protect the civil rights of residents under the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

***Authority:*** *T.C.A. §§ 39-17-1804, 68-11-207, 68-11-209, 68-11-268, 68-11-270 and 71-6-121.* ***Administrative History:*** *Emergency rule filed November 2, 2010; effective through May 1, 2011. New rule filed January 28, 2011; effective April 28, 2011.*

**1200-08-36-.06 SERVICES PROVIDED.**

(1) Medical Services. Each ACH shall provide twenty-four (24) hour nursing services furnished or supervised by the adult care home provider, resident manager or substitute caregiver. Licensed registered nurses and licensed practical nurses may provide all prescribed medical services that are within the scope of the nurse's professional license.

(2) Medical services in an ACH shall be provided by:

(a) Appropriately licensed staff of an ACH;

(b) Appropriately licensed or qualified contractors of an ACH;

(c) A licensed home care organization; or

(d) Another appropriately licensed entity.

(3) Standards for Medication Administration. An ACH shall:

(a) Ensure that all drugs and biologicals shall be administered by a licensed professional operating within the scope of the professional license and according to the resident's plan of care; and

* 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) |
|---|---|---|---|---|---|
| Carissa S. Lynch, Pharm.D. | X | | | | |
| Michael R. Miller | X | | | | |
| Renee Saunders, M.D. | | | | X | |
| Thomas Gee | X | | | | |
| John A. Marshall | X | | | | |
| Jennifer Gordon-Maloney, DDS | X | | | | |
| Kenneth R. Robertson, M.D. | X | | | | |
| Sherry Robbins, M.D. | X | | | | |
| Annette Marlar | | | | X | |
| Robert C. Breeden | X | | | | |
| Roger L. Mynatt | X | | | | |
| Janet Williford | X | | | | |
| David Rhodes | X | | | | |
| Joshua A. Crisp | X | | | | |
| Paul Boyd | X | | | | |
| Bobby Wood | X | | | | |
| Jim Shulman | X | | | | |
| Vacant | | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board for Licensing Health Care Facilities (board/commission/ other authority) on 01/14/2016 (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: *08/25/15 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *01/14/16 (mm/dd/yy)*

Date: 1-28-16

Signature: Kyonzté Hughes-Toombs

Name of Officer: Kyonzté Hughes-Toombs

Title of Officer: Assistant General Counsel
Department of Health

Subscribed and sworn to before me on: 1-28

Notary Public Signature: Suzanne Mechkowski

My commission expires on: MY COMMISSION EXPIRES APRIL 19, 2017

SUZANNE MECHKOWSKI NOTARY PUBLIC STATE OF TENNESSEE SUMNER COUNTY

Board for Licensing Health Care Facilities Rules
Rules 1200-08-01. et. seq.
Rules for Various Health Care Facilities
Influenza Vaccination Language

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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

7/6/2016
Date

**Department of State Use Only**

Filed with the Department of State on: 7/18/16

Effective on: 10/16/16

Tre Hargett
Secretary of State

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PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Intellectual and Developmental Disabilities |
| DIVISION: | Office of Licensure |
| SUBJECT: | Transfer Licensing Authority for Intellectual Disabilities and Developmental Disabilities from Department of Mental Health and Substance Abuse Services to Department of Intellectual and Developmental Disabilities |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Section 33-2-403 |
| EFFECTIVE DATES: | October 4, 2016 through June 30, 2017 |
| FISCAL IMPACT: | Minimal |
| STAFF RULE ABSTRACT: | These rulemaking hearing rules are being promulgated to move the licensing authority for intellectual disabilities and developmental disabilities from the Department of Mental Health and Substance Abuse Services to the Department of Intellectual and Developmental Disabilities. |

**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

# Comments/Responses from March 28, 2016, Rulemaking Hearing for Licensure Rules

| | Rule | Comment Submitted By | Comment | Response |
|---|---|---|---|---|
| 1.) | 0465-02-02-.14 GROUNDS FOR DENIAL, REVOCATION, OR SUSPENSION.<br><br>(1) The maintenance and renewal of a license is contingent upon evidence of continued compliance with rules and regulations. The Department may deny, suspend, or revoke a license on any of the following grounds:<br><br>(a) Violation of licensure law or rules;<br><br>(b) Permitting, aiding, or abetting the commission of any illegal act in a licensed facility or service;<br><br>(c) Conduct or practice detrimental to the welfare of a person supported by a licensed facility or service;<br><br>(d) The submission of false information to the Department; or<br><br>(e) The use of subterfuge (e.g., filing through a second party after an individual has been denied a license).<br><br>(2) Unless the Department finds that summary suspension of a license is necessary, all license revocations, suspensions, and denials shall be conducted in accordance with the applicable sections of the Uniform Administrative Procedures Act, T.C.A., Title 4, Part 5. Summary suspension | William Hubbard, TNCO | The proposed rules fail to provide for the review panel which is adapted by statute. T.C.A. § 33-2-407 states, "If the Department determines that a license should be suspended or revoked, a civil penalty imposed, or both, it shall notify the licensee. Within 15 days of notification, the licensee may file a written request for review by the panel appointed under Section 33-2-403(d). The review shall meet at the earliest possible date and the panel shall report the recommendation to the Commissioner. The Commissioner shall determine whether the original action shall remain effective and shall notify the licensee. Within 15 days of notification of the licensee may file a written request for a hearing before the Department. The hearing shall be conducted under the Uniform Administrative Procedures Act compiled in Title 4, Chapter 5."<br><br>Proposed Rule 0465-02-02-.14 provides for suspension, revocation, and denial of a license. The rule fails to give the licensee an opportunity to have the review panel review the proposed sanction and report the recommendation to the commission. Proposed Rule 0465-02-02-.14(2) provides for the summary suspension of a license. The rule provides that the suspension, revocation, or denial shall be conducted in accordance with the Administrative Procedures Act, APA, unless a summary suspension is necessary. However, T.C.A. § 33-2-416 requires the summary suspension | *Concur. Language regarding Licensure Review Panel and the UAPA has been added.* |

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| Rule | Comment Submitted By | Comment | Response |
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| may only occur when the Department determines that continued operation of a licensed facility or service presents an immediate threat to the health, safety, and welfare of persons supported. When a summary suspension occurs, proceedings for revocation or other action against the licensee shall be promptly instituted and determined in accordance with the Uniform Administrative Procedures Act. | | to occur in accordance with the APA. It states, "Nothing in this part takes away from the right of the Department to issue an order of summary suspension of the license pursuant to Section 4-5-320(c)(d)." These sections of the APA provision related to summary suspensions. The rule needs to reflect the summary suspensions are to be imposed pursuant to the APA. These provisions should be referenced in the proposed rules related to summary suspensions. Furthermore, the proposed rules need to reflect that summary suspensions are subject to review by the Review Panel before the issuance of the notice of hearing. | |
| 0465-02-02-.24 CIVIL PENALTIES FOR LICENSEES.<br><br>(1) The Department may, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a licensure law or rule.<br><br>(2) The procedure for imposing a civil penalty shall be as follows:<br><br>(a) Department staff shall verbally notify a licensee that a civil penalty may be imposed due to the licensee's violation of a licensure law or rule.<br><br>(b) Within six (6) business days of the | | Proposed Rule 0465-02-02-.24 provides for the imposition of civil penalties. This rule also fails to give the licensee an opportunity to have the review panel review the proposed sanction and report its recommendation to the commission. | |

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| verbal notification, the licensee shall be notified in writing of the basis for the civil penalty and the amount imposed.<br><br>(c) The civil penalty shall be effective beginning on the date the written notification of the decision is issued.<br><br>(d) The Department may impose a penalty for each day a licensee remains in violation of a licensure rule, regulation, ordinance or law. Each licensure law, rule, regulation or ordinance violated shall constitute a separate offense.<br><br>(3) In determining the amount of the daily penalty, the commissioner may consider the following:<br><br>(a) The severity of the violation and the harm or risk of harm to a person supported;<br><br>(b) The willfulness of the violation;<br><br>(c) The circumstances leading to the violation;<br><br>(d) The efforts made by the facility to attain compliance;<br><br>(e) Any extraordinary enforcement cost incurred by the Department; | | | |

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| (f) The interest of the public; and<br><br>(g) Whether the civil penalty imposed will be an economic deterrent to the non-compliant activity.<br><br>(4) The Department may impose a civil penalty in accordance with the following schedule:<br><br>(a) First Offense<br><br>1. Priority 1/Critical Offenses - $500.00<br><br>2. All other offenses - $250.00<br><br>(b) Second or subsequent offense of same type within a twelve (12) month period:<br><br>1. Priority 1/Critical Offense - $2,500.00 to $5,000.00<br><br>2. All other offenses - $500.00 to $2,500.00<br><br>(5) The Department may continue to work with a licensee to seek compliance with any licensure law or rule. The Department may waive any penalty determined by the Department to impose a hardship. A hardship waiver of a civil penalty may be granted only when strict enforcement of a particular | | | |

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| | requirement would not be in the best interest of persons supported.<br><br>(6) A "Priority 1 offense," for the purposes of these rules is defined as a substantiated investigation involving the death of a person supported; neglect, physical or sexual abuse of the person supported by the licensee or staff; and/or a serious injury to a person supported. A "critical offense," for purposes of these rules, is defined as those Department-designated administrative rules whose violation could result in serious harm to the person supported. | | | |
| 525 | **2.)** All | Donna Destefano, Tennessee Disability Coalition | According to Title 33-2-404, Rules for licensure - Amendment of the rules "Rules adopted by the department under this subsection (b) shall be developed with input from stakeholders and promulgated in accordance with the Uniform Administrative Procedures Act." We ask for confirmation that this has happened. | *Do not concur. Receiving comments from the public/stakeholders and holding the hearing is the forum that meets this requirement. In addition, input was solicited from DIDD providers three times through Open Line articles.* |
| | **3.)** 0465-02-01-.02 DEFINITION OF DISTINCT CATEGORIES OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES FACILITIES.<br><br>(7) "Developmental Disabilities Preschool Facility" means a non-residential facility which offers a program of training, habilitation, or care for developmentally minors with developmental disabilities, or minors at risk of developmental disabilities, | Donna Destefano, Tennessee Disability Coalition | a.) Word "developmentally" is out of place in the following - "Developmental Disabilities Preschool Facility" means a non-residential facility which offers a program of training, habilitation, or care for developmentally minors . . .<br><br>b.) The definition distinguishes between center-based and community-based environments. However, neither term is clarified. A center based environment, by definition, would be in a community. | *Concur. Language corrected.*<br><br>*Concur. Definitions have been added for center and community/home based environments. A center based facility environment is subject to required life safety inspections and a community based environment is not. Required life* |

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| | not of the chronological mandatory age to be enrolled in services of the Department of Education, and which is designed to teach self-help, socialization, communication, or school readiness skills, or designed to train parents or surrogates in methods and techniques of habilitation. This category of facility is provided in either a center based or community based environment. Each setting requires a separate license. | | | *safety inspections are specified in Ch. 4 of the Rules.* |
| **4.)** | n/a | Donna Destefano, Tennessee Disability Coalition | Prior to this year, microboards have not been required to be licensed. They are an innovative service developed in order to provide more choice and independence for people with intellectual disabilities to be integrated within their communities. Licensure costs have proved to be prohibitive for some microboards. We do not think that people being well supported within this more community-oriented service model for over 15 years should be unnecessarily penalized by being required to obtain a license. | *Do not concur. This change has been made to come into compliance with T.C.A. 33-2-403.* |
| **5.)** | 0465-02-19.06 PERSONNEL AND STAFFING.<br><br>(1)(f) The facility must ensure staff caseloads do not exceed more than thirty (30) persons supported, except in cases due to staff illness, staff vacation, or attrition. In these cases, the situation is temporary and there is sufficient staff to ensure that support coordination responsibilities are met | Donna Destefano, Tennessee Disability Coalition | We noted in the review of the support coordination rules 0465-02-19-.06 PERSONNEL AND STAFFING. (f) that these apply to all entities that provide support coordination. We think those rules are appropriately crafted. | *Concur. The positive feedback is appreciated.* |

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| | and each person's needs in regard to support coordination services are satisfactory. | | | |
| 6.) | n/a | Cindy Graves and Jonathan Chapman, TNCO | Providers were not involved in the initial development of the licensure rules as required by Title 33 | *Do not concur. Please see response to comment 2.* |
| 7.) | n/a | Cindy Graves and Jonathan Chapman, TNCO | ID and DD sections should be combined. It is unclear why these sections are separated. | *Do not concur. Not all organizations will serve both populations, and by request of providers, DD services were drafted separately.* |
| 8.) | n/a | Cindy Graves and Jonathan Chapman, TNCO | Person-centered language must be used throughout. | *Concur.* |
| 9.) | 0465-02-02-.14 GROUNDS FOR DENIAL, REVOCATION, OR SUSPENSION.<br><br>(2) Unless the Department finds that summary suspension of a license is necessary, all license revocations, suspensions, and denials shall be conducted in accordance with the applicable sections of the Uniform Administrative Procedures Act, T.C.A., Title 4, Part 5. Summary suspension may only occur when the Department determines that continued operation of a licensed facility or service presents an immediate threat to the health, safety, and welfare of persons | Cindy Graves and Jonathan Chapman, TNCO | The sanction provisions of the Licensure Rules are deficient in several respects. The Rules fail to provide for the Review Panel which is mandated by statute. These provisions should therefore be referenced in Rule related to summary suspensions. Furthermore, .14(2) states that the APA must be followed except for summary suspensions. Summary suspensions are required to be implemented pursuant to the APA. See T.C.A. § 33-2-416.<br><br>Reference Rule Sections:<br>0465-02-02-.03<br>0465-02-02-.21 | *Concur. Please see response to Comment 1.* |

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| 528 | supported. When a summary suspension occurs, proceedings for revocation or other action against the licensee shall be promptly instituted and determined in accordance with the Uniform Administrative Procedures Act.<br><br>0465-02-02-.03 UNLAWFUL OPERATION.<br><br>No organization may begin the provision of service delivery until the Department issues a license. Providing intellectual and developmental disability, or personal support services without a license is unlawful and may result in civil and/or criminal sanctions pursuant to T.C.A. §§ 33-2-405 and 33-2-412.<br><br>0465-02-02-.21 NOTICE OF NON-COMPLIANCE AND PLAN OF COMPLIANCE.<br><br>(1) The Department will give a Notice of Non-Compliance to the licensee on a form prepared and provided by the Department when an inspection or investigation of a facility/service reveals non-compliance with licensure law or rules.<br><br>(2) The licensee must submit, by the date specified on the Notice of Non-Compliance, a written Plan of | | | |

| | Rule | Comment Submitted By | Comment | Response |
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| 529 | Compliance in response to the Notice of Non-Compliance.<br><br>(3) The licensee's written Plan of Compliance shall include a description of the action taken or to be taken in correcting deficiencies, and the date by which each corrective action is completed or to be completed.<br><br>(4) The Department will notify the licensee in writing whether the Plan of Compliance is acceptable and the basis for the decision. When the Plan of Compliance is not acceptable, the Department and licensee may continue to seek agreement. If agreement cannot be reached in a reasonable time, as determined by the Department, the Department may institute sanctions against the license.<br><br>(5) The licensee shall maintain copies of the most recent compliance plans in a central location. | | | |
| **10.)** | 0465-02-01-.02 DEFINITION OF DISTINCT CATEGORIES OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES FACILITIES.<br><br>(1) "Intellectual Disabilities Adult Habilitation Day Facility" means a non-residential facility which offers a variety of habilitative activities to adults with intellectual disabilities. Such habilitative activities may range | Cindy Graves and Jonathan Chapman, TNCO | The Day Facility category definition states, "This category of facility is provided in either a center based or a community/home based environment. Each setting requires a separate license." It is clear that each "center" (i.e., each facility) requires a separate license.<br><br>We require clarification as to the definition of a "community/home based" setting. This also applies to the preschool licensing. | *Concur. We have changed the title from Intellectual Disabilities Adult Habilitation Day Facility to Intellectual Disabilities Adult Habilitation Day Facility/Services.*<br><br>*Regarding clarification of "community/home based," please see response to comment 3.* |

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| | from training activities in independent living to vocational skills depending on the needs of the person supported. This includes adult developmental training, work activity, and sheltered workshop programs, but does not include job placement and supported employment programs. This category of facility is provided in either a center based or a community/home based environment. Each setting requires a separate license. | | | |
| 11.) | *A rule was not given in the comments that were submitted, nor in the transcript, however, the following are the only places I could find where "monthly reviews" were mentioned.<br><br>0465-02-19-.05 PROFESSIONAL SERVICES.<br><br>(8) The ISC/CM Monthly Documentation form must be completed at least monthly to document review of ISP implementation status, including progress in completing action steps and achieving outcomes. Information is gathered from the monthly face-to-face visit, interviews with the person supported, his/her family members, conservators or guardians, and provider staff, and other information and documentation relevant to the implementation of the ISP that is | Cindy Graves and Jonathan Chapman, TNCO | The monthly service reviews should be required on a quarterly basis. (from submitted comments)<br><br>We have advocated a long time from quarterly reviews by the provider since the ISCs do monthly reviews. We've been told all along that that can't be done because of licensure. And licensure rules are difficult to change. It's been a long time coming and we're glad it's finally coming, but I would recommend, we would recommend that you change the requirement for monthly reviews to at least quarterly to allow for an adjustment in the future if DIDD should deem that advisable. (from transcript) | *Do not concur. Monthly reviews will continue to be a requirement for ISCs. However, Licensure Rules have been modified to state that written progress notes from the residential, day, or personal assistance providers must be maintained which include at least quarterly reviews of progress or changes occurring in the ISP. We will continue to expect that changes relative to health, safety and implementation of outcome based services are assessed by the residential, day, or personal assistance providers on an ongoing basis and reflected within the quarterly reviews.* |

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| | received during the month.<br><br>0465-02-19-.07 PERSON SUPPORTED RECORDS.<br><br>(1) The record of a person supported must contain the following:<br><br>(p) Support coordination monthly reviews;<br><br>(u) Provider periodic reviews and other monthly reports as applicable to the needs of the person supported. | | | |
| **12.)** | 0465-02-01-.01 DEFINITION OF TERMS USED IN ALL RULES.<br><br>(9) "Case Management" means support provided for obtaining eligibility for service, assessment, development and evaluation and revision of the plan of care and the assistance with the selection of service providers for persons who are supported in the Self-Determination Waiver or on the waiting list for services. | Cindy Graves and Jonathan Chapman, TNCO | Remove the qualification ". . . in the Self-Determination Waiver or on the waiting list for services." | *Concur in part. Language revised by removing reference to the waiting list for services.* |
| **13.)** | 0465-02-01-.01 DEFINITION OF TERMS USED IN ALL RULES.<br><br>(42) "Medication Administration" means giving the person supported injections or any form of medication, or medication administration that would only be appropriate and acceptable for individuals who are | Cindy Graves and Jonathan Chapman, TNCO | Add "and TN DIDD Rules" | *Concur. Language revised to add "...and in a manner prescribed under Departmental Rules."* |

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| | authorized to do so by T.C.A., Title 63 or rules and regulations of the Tennessee Board of Medical Examiners or the Tennessee Board of Nursing. | | | |
| **14.)** | 0465-02-01-.01 DEFINITION OF TERMS USED IN ALL RULES.<br><br>(70) "Person Supported" means a service recipient defined under T.C.A. § 33-1-101(23). | Cindy Graves and Jonathan Chapman, TNCO | Place definition in alphabetical order | *Concur. Definitions have been placed in alphabetical order.* |
| **15.)** | 0465-02-01-.02 DEFINITION OF DISTINCT CATEGORIES OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES FACILITIES.<br><br>(1) "Intellectual Disabilities Adult Habilitation Day Facility" means a non-residential facility which offers a variety of habilitative activities to adults with intellectual disabilities. Such habilitative activities may range from training activities in independent living to vocational skills depending on the needs of the person supported. This includes adult developmental training, work activity, and sheltered workshop programs, but does not include job placement and supported employment programs. This category of facility is provided in either a center based or a community/home based environment. Each setting requires a separate license. | Cindy Graves and Jonathan Chapman, TNCO | Remove "but does not include job placement and supported employment programs." | *Do not concur. Job placement and supported employment are the purview of Voc. Rehab., not DIDD.* |
| **16.)** | 0465-02-01-.02 DEFINITION OF | Cindy Graves | It is unclear if there are or will be any | *Do not concur. This is a long standing* |

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| | DISTINCT CATEGORIES OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES FACILITIES.<br><br>(3) "Intellectual and Developmental Disabilities Boarding Home Facility" means a residential facility that offers personal care services to persons with intellectual and/or developmental disabilities, including room, board, and supervision to two (2) or more persons supported unrelated by blood or marriage to the owner or operator of the facility. People living in such facilities are capable of self-preservation, able to care for basic self-help needs with minimal assistance, able to care for personal possessions, able to maintain personal living areas in a state of orderliness, able to recognize danger or threat to personal safety, able to maintain behavior which is generally tolerable to the community, and able to attend to minor health care needs. | and Jonathan Chapman, TNCO | licenses associated with the definition. | *type of service. There are currently 14 Boarding Home facilities with active licenses.* |
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| **17.)** | 0465-02-01-.02 DEFINITION OF DISTINCT CATEGORIES OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES FACILITIES.<br><br>(4) "Intellectual and Developmental Disabilities Diagnosis and Evaluation Facility" means a non-residential facility, which provides personnel and testing resources to perform diagnosis and evaluation of persons supported | Cindy Graves and Jonathan Chapman, TNCO | It is unclear if there are or will be any licenses associated with the definition. | *Do not concur. This is a long standing type of service. There are currently 2 Diagnosis and Evaluation facilities with active licenses.* |

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| | having, or suspected of having, intellectual and/or developmental disabilities. | | | |
| 18.) | 0465-02-01-.02 DEFINITION OF DISTINCT CATEGORIES OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES FACILITIES.<br><br>(10) "Intellectual Disabilities Semi-Independent Living Facility" means a facility program which provides services for persons supported with intellectual disabilities, who are able to reside in a housing situation without program staff residing on site. The services of program staff support the home life style of the person supported in order to reside in such housing situations. The facility program offers and provides regular, and as needed, support services in procuring or monitoring adequate housing for persons supported, supervising home life styles, and assisting in development of higher-order independent living skills. The entity licensed is the program delivering the services rather than the individual dwellings for persons supported.<br><br>(11) "Developmental Disabilities Semi-Independent Living Facility" means a facility program which provides services for persons supported with developmental | Cindy Graves and Jonathan Chapman, TNCO | It is unclear why ID Semi-Independent Living Facility and DD Semi-Independent Living Facility are separated. | *Do not concur. See response to Comment 7.* |

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| | disabilities, who are able to reside in a housing situation without program staff residing on site. The services of program staff support the home life style of the person supported in order to reside in such housing situations. The facility program offers and provides regular, and as needed, support services in procuring or monitoring adequate housing for persons supported, supervising home life styles, and assisting in development of higher-order independent living skills. The entity licensed is the program delivering the services rather than the individual dwellings for persons supported. | | | |
| 535 **19.)** | 0465-02-04-.01 through 0465-02-04-.11 | Cindy Graves and Jonathan Chapman, TNCO | It is recommended that a stakeholders workgroup be created to review the rule and make recommendations on alternative solutions. The workgroup should include representatives of DIDD Licensure and legal staff, the State Fire Marshall's office, TennCare, advocacy organizations, self-advocates, and residential service providers. | *Do not concur. See response to Comment 2.* |
| **20.)** | 0465-02-04-.03 EDUCATIONAL OCCUPANCIES.<br><br>(1) Definition - Educational Occupancies include all buildings used for gathering of groups of persons supported for purposes of instruction. An example of a facility required to meet educational occupancy standards is a Pre-School Facility-Center Based. | Cindy Graves and Jonathan Chapman, TNCO | "all buildings" is too comprehensive and needs to be circumscribed | *Do not concur "...all buildings" is qualified in the definition as ..."those used for...."* |

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| 21.) | 0465-02-04-.05 INDUSTRIAL OCCUPANCIES.<br><br>(1) Definition - Industrial Occupancies include factories making products of all kinds and properties devoted to operations such as processing, assembling, mixing, packaging, finishing or decorating, and repairing. An example of facilities required to meet industrial occupancy standards is an Adult Habilitation Facility-Center Based.<br><br>(2) Criteria - For the purpose of Life Safety, facilities required to meet industrial occupancies must comply with the following:<br><br>(a) The applicable standards of the Life Safety Code of the National Fire Protection Association, Industrial Occupancies, or equivalent standards hereafter adopted by the Office of the State Fire Marshal; and<br><br>1. Document fire-safety drills which shall be conducted:<br><br>(i) Monthly at unexpected times and under varying conditions, and<br><br>(ii) Under direct staff supervision.<br><br>2. Document that all smoke-detection devices are tested monthly and that | Cindy Graves and Jonathan Chapman, TNCO | Remove example that uniformly characterizes Adult Habilitation Facility-Center Based as industrial occupancies. | *Do not concur. The example given is just that, an example. Some Adult Habilitation Facility-Center Based programs do classify as industrial occupancy.* |

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| | the batteries are changed when no longer functional.<br><br>3. Document that all fire extinguishers are properly maintained and serviced.<br><br>4. Document instruction to staff upon employment and to persons supported upon admission in fire evacuation procedures.<br><br>5. Adopt and post a policy on smoking in specified areas. | | | |
| **22.)** | 0465-02-04-.06 RESIDENTIAL OCCUPANCIES - BOARD AND CARE.<br><br>(2)(a)7. Use portable electric space heaters only in emergency situations with advance special permission and under conditions specified by the Office of Licensure of the Department. | Cindy Graves and Jonathan Chapman, TNCO | Clarification is needed as to what is meant by "advance special permission" | *Concur. The phrase "advance special permission" was deleted.* |
| **23.)** | 0465-02-04-.06 RESIDENTIAL OCCUPANCIES - BOARD AND CARE.<br><br>(2)(a)14. Adopt and post a policy on smoking in specified areas. | Cindy Graves and Jonathan Chapman, TNCO | A "No Smoking" sign should be sufficient. (from written comments)<br><br>We recommend that instead of placing policies, posting policies in a person's home, we go with a simple no-smoking sign. We put policies in notebooks that are not actually posted, but we don't need to be posting things in a person's home. That's not very person-centered. (from transcript) | *Concur. Revised language to state "Adopt a policy on smoking and ensure designated areas are posted".* |
| **24.)** | 0465-02-04-.06 RESIDENTIAL OCCUPANCIES - BOARD AND CARE.<br><br>(2)(b) Provide services only for | Cindy Graves and Jonathan Chapman, | Remove or clarify placement here. | *Concur. The definition of Personal Care has been moved to 0465-02-01-.01 (51).* |

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| | persons who require no greater level of care than personal care as defined at 0465-02-04-.08. | TNCO | | |
| **25.)** | 0465-02-04-.07 MOBILE NON-AMBULATORY.<br><br>(1) For the purpose of Life Safety, facilities required to meet the Mobile Non-Ambulatory Rule must comply with the following:<br><br>(e) Provide bathrooms approved by the Office of Licensure of the Department. | Cindy Graves and Jonathan Chapman, TNCO | Should be revised to ". . . approved by the Office of Licensure." | *Concur. Language has been revised to state "...approved by the Office of Licensure."* |
| **26.)** | 0465-02-04-.08 CAPABLE OF SELF-PRESERVATION.<br><br>All residential facilities serving four (4) or more persons supported who are not capable of self-preservation and all non-residential facilities serving four (4) or more persons supported six (6) years of age or older who are not capable of self-preservation are required to meet the criteria for Health Care Occupancies. | Cindy Graves and Jonathan Chapman, TNCO | Definition of "Personal Care" not defined in the section as eluded to in 0465-02-04-.06(2)(b). | *Concur. Correction has been made above.* |
| **27.)** | 0465-02-06-.05 PERSON SUPPORTED RECORDS.<br><br>(1) The governing body must ensure that an individual record for each person supported is maintained which, at a minimum, includes the following information:<br><br>(e) The date of birth of the person | Cindy Graves and Jonathan Chapman, TNCO | Delete this language because this is often unknown. | *Do not concur. If the data is unknown, simply record "unknown".* |

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| | supported;<br><br>(f) The date of admission to the facility of the person supported;<br><br>(g) The source of referral to the facility of the person supported. | | | |
| **28.)** | 0465-02-06-.06 PERSON SUPPORTED RECORDS.<br><br>(3)<br>(e) If residential services are provided, persons supported have the right to be given privacy and freedom for the use of bathrooms at all hours;<br><br>(f) If residential services are provided, persons supported have the right to be given privacy and freedom in the use of their bedroom/sleeping area. If residential services are provided and if married persons reside in the facility, privacy for visits by spouses must be ensured, and if both spouses reside in the facility, they must be permitted to share a room; and<br><br>(g) If residential services are provided, persons supported have the right to associate and communicate privately with persons of their choice including receiving visitors at any time. | Cindy Graves and Jonathan Chapman, TNCO | Add "within reasonable hours and/or with the respect to the rights of others."<br><br>All three of these above, e, f, and g should have some provision that states, "unless approved restrictions are needed to keep the person supported and/or others safe." | *Do Not Concur. Limitations and restrictions are specifically addressed in subsequent sections.* |
| **29.)** | 0465-02-06-.08 MODIFICATION OR LIMITATION OF PERSON SUPPORTED RIGHTS. | Cindy Graves and Jonathan Chapman, | The modification of a right is never necessary because of the physical or intellectual disability of a person. This statement must be reworded or deleted. | *Concur. The wording has been changed to: It is demonstrated and documented that such modification or limitation is necessary to achieve a legitimate goal in* |

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| | (1) The rights of a person supported in a facility may only be modified or limited under the following conditions:<br><br>(a) It is demonstrated and documented that such modification or limitation is necessary because of the physical or intellectual disability of the person supported. | TNCO | This is offensive. | *the ISP of the person supported."* |
| **30.)** | 0465-02-06-.08 MODIFICATION OR LIMITATION OF PERSON SUPPORTED RIGHTS.<br><br>(1) The rights of a person supported in a facility may only be modified or limited under the following conditions:<br><br>(e) Any modifications or limitations must be documented in the ISP of the person supported in accordance with the following requirements:<br><br>1. Identify a specific and individualized assessed need;<br><br>2. Document the positive interventions and supports used prior to any modifications to the person-centered service plan;<br><br>3. Document less intrusive methods of meeting the need that have been tried but did not work; | Cindy Graves and Jonathan Chapman, TNCO | Modifications are not going to be documented in the ISP at this level.<br><br>State that this information will be provided to the HR committee, but not placed in the ISP. | *Do not concur. This information must be in the ISP for staff awareness.* |

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| 541 | 4. Include a clear description of the condition that is directly proportionate to the specific assessed need;<br><br>5. Include regular collection and review of data to measure the ongoing effectiveness of the modification;<br><br>6. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;<br><br>7. Include the informed consent of the person supported; and<br><br>8. Include an assurance that interventions and supports will cause no harm to the person supported. | | | |
| **31.)** | All of 0465-02-07 (.01 through .12) | Cindy Graves and Jonathan Chapman, TNCO | Older language than that provided in 0465-02-08.<br><br>Delete this section and replace with 0465-02-08 (.01 through .12). | *Do Not Concur the language is different. However -.07 addresses ID, and -.08 addresses DD. Both need to remain unchanged.* |
| **32.)** | 0465-02-07-.09 INDIVIDUAL SUPPORT PLAN (ISP) TEAM.<br><br>(1) The facility must ensure that an ISP team is identified and provided for each person supported. The team must, at a minimum, include the following:<br><br>(e) An intellectual and developmental | Cindy Graves and Jonathan Chapman, TNCO | Term "intellectual and developmental disabilities specialist." This term must be clarified or removed if no longer applicable. | *Concur. The term was clarified in the definition of intellectual and developmental disabilities professional. Also, the term has been removed from the section cited.* |

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| | disabilities specialist. | | | |
| 33.) | 0465-02-08-.04 PERSONNEL AND STAFFING.<br><br>(1) The licensee shall provide one (1) Direct Support Staff member for the first ten (10) persons supported. One (1) additional Direct Support Staff member shall be provided for the next increment of eleven (11) to fifteen (15) persons supported. One (1) additional Direct Support Staff member shall be provided for the next increment of sixteen (16) to nineteen (19) persons supported. When more than twenty (20) persons are supported, one (1) additional Direct Support Staff member shall be provided for each additional twenty (20) persons supported present. | Cindy Graves and Jonathan Chapman, TNCO | Combine ID and DD chapters, keep newer language. Exception: We request that we retain the current staffing ratios now in place apply to both ID and DD. | *Do not concur. See response to Comment 7.* |
| 34.) | 0465-02-08-.04 PERSONNEL AND STAFFING.<br><br>(3) Employees shall be screened for tuberculosis according to the procedures of the Tennessee Department of Health or receive a tuberculosis skin test or chest X-ray before working directly with persons supported. Documentation of such screening or testing shall be maintained in the employee's personnel file. | Cindy Graves and Jonathan Chapman, TNCO | New requirement permits TB screening in addition to the old requirement of TB testing.<br><br>Agrees with the permissibility of screening instead of strict testing requirement. | *Concur. The Rule was updated to permit tuberculosis screening or testing.* |
| 35.) | 0465-02-08-.05 PERSON SUPPORTED RECORDS. | Cindy Graves and Jonathan | Client records requirement reduced from 11 items to 3. Items b-g and i-j removed. | *Concur. We appreciate the positive feedback.* |

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| | (1) Each record of the person supported shall contain the following:<br><br>(a) A recent photograph and a description of the person supported;<br><br>(b) Report of the use of restrictive behavior management techniques, as defined under Rule 0465-02-08-.13, if used; and<br><br>(c) A discharge summary of the person supported, which states the date of discharge, reasons for discharge, and referral for other services, if appropriate. | Chapman, TNCO | We affirmatively support the proposed changes. | |
| 543 **36.)** | Not Specified | Cindy Graves and Jonathan Chapman, TNCO | Throughout the ID and the DD section should be combined. It is unclear as to why these sections were separated. | *Do not concur. See response to Comment 7.* |
| **37.)** | 0465-02-09-.06 PERSONNEL AND STAFFING.<br><br>(4) Each employee must have a tuberculosis test or screening at the time of employment and thereafter as required by the current guidelines of the Tennessee Department of Health. | Cindy Graves and Jonathan Chapman, TNCO | "Employees may receive TB screening according to the procedures of the Tennessee Department of Health."<br><br>This language should be utilized in all of the comparable sections of the rules. | *Concur.* |
| **38.)** | 0465-02-09 | Cindy Graves and Jonathan Chapman, TNCO | Do D&E programs still exist? If D&E programs do not still exist then delete the section in its entirety. | *Do not concur. See response to Comment 17.* |
| **39.)** | 0465-02-10-.10 DAY ACTIVITIES. | Cindy Graves | Added that person supported should | *Concur. We appreciate the positive* |

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| | (3) The facility must ensure the participation of the person supported and direct support staff in developing and implementing daily activity schedules for each person supported. | and Jonathan Chapman, TNCO | participate in developing their activity schedule.<br><br>We affirmatively support the proposed changes. | *feedback.* |
| **40.)** | 0465-02-10-.10 DAY ACTIVITIES.<br><br>(5) The facility must ensure that each person supported who has significant disabilities and uses a wheelchair:<br><br>(b) Is assisted by a direct support staff member in spending a portion of their waking day out of his/her bedroom area. | Cindy Graves and Jonathan Chapman, TNCO | Person with significant disabilities or in wheelchair is assisted in spending portion of waking day out of bedroom area.<br><br>Something should be added similar to what is listed in item right above it in a) such as "unless contraindicated by physician's order or person is ill" | *Concur. Revised language to address (a)-(d).* |
| **41.)** | 0465-02-10-.13 INDIVIDUAL SUPPORT PLAN (ISP) DEVELOPMENT AND IMPLEMENTATION.<br><br>(1) The facility must ensure that a written ISP is provided and implemented for each person supported. The ISP must meet the following requirements:<br><br>(d) Includes signatures of the person supported, appropriate staff, and, if applicable, the legal representative (conservator, parent, guardian, or legal custodian) of the person supported. | Cindy Graves and Jonathan Chapman, TNCO | Should include signatures of both the person supported AND the legal rep along with appropriate staff.<br><br>Add specification "unless person is not physically able to make his/her mark" | *Do not concur. No change is needed. If a person is not able to sign, this will be adequately specified elsewhere in the record.* |
| **42.)** | 0465-02-10-.16 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT. | Cindy Graves and Jonathan | We request a clarification of the definition of Emotional Harm. | *Concur. Emotional Harm has been added to the definitions in 0465-02-01.* |

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| | (1) No procedures should be used for behavior management which results in physical or emotional harm to the person supported. | Chapman, TNCO | | |
| **43.)** | 0465-02-10-.16 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT.<br><br>(2) Corporal punishment, seclusion, aversive stimuli, chemical restraint, and denial of a nutritionally adequate diet must not be used. | Cindy Graves and Jonathan Chapman, TNCO | Added that seclusion, aversive stimuli and chemical restraint cannot be used (along with corporal punishment & denial of nutritional diet).<br><br>We request a clarification of the definition of Seclusion. | *Concur. See definition for "seclusion".* |
| **44.)** | 0465-02-10-.16 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT.<br><br>(6) Procedures such as personal holding, mechanical restraint, and time-out, which are used in emergency situations to prevent the person supported from inflicting bodily harm, may not be repeated more than three (3) times within six (6) months without being incorporated into a written behavior management program that is part of his/her ISP. | Cindy Graves and Jonathan Chapman, TNCO | For personal holding, there is no time frame given for this any longer so it could include a hold lasting one minute. Does the behavior management plan have to be a part of a formal BSP? If so, it will be difficult to remain within compliance given the continued increased difficulty of securing BA services. There is some confusion with the definition of physical holding in Definitions section. It seems contradictory. See below for a piece of the definition that states what Physical holding is NOT.<br><br>Physical Intervention Definition: Physical intervention for the temporary holding of the hand(s), wrist(s), arm(s), shoulder(s), or leg(s), which does not otherwise restrict freedom of movement or access to the body of the person supported, for the purpose of terminating unsafe behavior. | *Concur. The reference to personal holding has been changed to "physical holding". .06 has been redrafted to be clear that behavior management plan does not have to be a part of the BSP.* |
| **45.)** | 0465-02-11-.03 PERSONNEL AND STAFFING.<br><br>(2) All employees must be screened for tuberculosis according to the | Cindy Graves and Jonathan Chapman, TNCO | Employees "must be screened for tuberculosis according to the procedures of the Tennessee Department of Health<br><br>This language for TB screenings should be | *Concur. See response to Comment 34.* |

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| | procedures of the Tennessee Department of Health or receive a tuberculosis skin test or chest x-ray before working directly with persons supported. Documentation of such must be maintained in the employee's personnel file. | | utilized in all of the comparable sections of the rules. | |
| **46.)** | Various<br><br>*as mentioned in the comments:<br><br>0465-02-11-.03 PERSONNEL AND STAFFING.<br><br>(2) All employees must be screened for tuberculosis according to the procedures of the Tennessee Department of Health or receive a tuberculosis skin test or chest x-ray before working directly with persons supported. Documentation of such must be maintained in the employee's personnel file. | Cindy Graves and Jonathan Chapman, TNCO | Throughout the proposed rules there are instances where a TB skin test is required and instances where a screen is permitted, and we ask that all sections are consistent with Rule -- Section 0465-02-11-.03(2) where they allow for screenings instead of requiring just a test initially.<br><br>(The above comment was from the transcript. The TB skin test was mentioned 3 different times in TNCO's written comments. See #s 34, 37, and 45 of this spreadsheet.) | *Concur. See response to Comment 34.* |
| **47.)** | 0465-02-11-.08 RECREATIONAL ACTIVITIES.<br><br>The facility must ensure that opportunities are provided for recreational activities, which are appropriate and adapted to the needs, interests, and age of the persons supported. | Cindy Graves and Jonathan Chapman, TNCO | Unclear why this stipulation was removed as it ensures a person-centered focus. | *Do not concur. Part of the stipulation was removed as "Meaningful" was subject to interpretation.* |
| **48.)** | 0465-02-07(11)-.11 | Cindy Graves and Jonathan | Appears to be incorrectly numbered. Should be 0465-02-11-.11. | *Concur. Change was made.* |

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| | | Chapman, TNCO | | |
| **49.)** | 0465-02-12-.12 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT.<br><br>(1) No procedures should be used for behavior management which results in physical or emotional harm to the person supported. | Cindy Graves and Jonathan Chapman, TNCO | We request a clarification of the definition of Emotional Harm. | *Concur. See response to Comment 42.* |
| **50.)** | 0465-02-12-.12 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT.<br><br>2) Corporal punishment, seclusion, aversive stimuli, chemical restraint, and denial of a nutritionally adequate diet must not be used. | Cindy Graves and Jonathan Chapman, TNCO | We affirmatively support the proposed changes. | *Concur. We appreciate the positive feedback.* |
| **51.)** | 0465-02-13-.08 CLOTHING FOR PERSONS SUPPORTED.<br><br>(1) The facility must assist ach person supported must be provided the least restrictive level of support and assistance needed in the selection and purchase of clothing. | Cindy Graves and Jonathan Chapman, TNCO | Correct typo. ("ach person") | *Concur. Change has been made.* |
| **52.)** | 0465-02-13-.08 CLOTHING FOR PERSONS SUPPORTED.<br><br>(3) The facility must assist each person supported in securing an adequate allowance of personally owned, individualized, normal, clean, and seasonal clothes. | Cindy Graves and Jonathan Chapman, TNCO | Delete "normal" | *Concur. Change has been made.* |
| **53.)** | Various<br><br>*Other than above in #50, the | Cindy Graves and Jonathan | There were a few instances where "normal" still showed its ugly head, the word, normal, in one instance of mental retardation, and | *Concur. The terms "customary" or "typical" will be substituted for "normal" where needed.* |

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| following is all the places in the rules where I found the word "normal" used:<br><br>0465-02-01-.01 DEFINITION OF TERMS USED IN ALL RULES.<br><br>(b) "Mechanical Restraint" - the application of a mechanical devise, material, or equipment attached or adjacent to the body of the person supported, including ambulatory restraints, which he/she cannot easily remove and that restricts freedom of movement or **normal to customary** access to his/her body. Mechanical restraint does not include the use of:<br><br>(c) "Physical Holding" - the use of bodily contact by staff with a person supported in order to restrict his/her freedom of movement or **normal to customary** access to his/her body to prevent the behavior of the person supported from becoming dangerous to him/herself, others, or property. Physical holding does not include the use of:<br><br>1. Physical touch associated with prompting, comforting, or assisting that does not prevent freedom of movement or **normal to customary** access to the body of the person supported; | Chapman, TNCO | we've got that on here for you. I know you want to be person-centered so I'm sure you'll change those. | |

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| 0465-02-05-.05 FACILITIES PROVIDING FOOD SERVICES AND NUTRITION.<br><br>(1) Food and nutrition must be provided in as **normal to customary** a fashion as possible.<br><br>(3) Food must be served in appropriate quantity, at appropriate temperatures, and in a form consistent with **normal to customary** situations.<br><br>0465-02-10-.04 PERSONNEL AND STAFFING.<br><br>(6) Persons supported must never be left unattended during **normal to customary** sleeping hours.<br><br>0465-02-10-.08 CLOTHING FOR PERSONS SUPPORTED.<br><br>(3) The facility must assist each person supported in securing an adequate allowance of personally owned, individualized, **normal to customary**, clean, and seasonal clothes.<br><br>0465-02-11-.14 USE OF RESTRICTED BEHAVIOR INTERVENTIONS.<br><br>(9) The facility does not employ the following devices or practices in the provision of behavior services: | | | |

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| | (e) Protective equipment that restricts or prevents movement or the **normal to customary l** use/functioning of the body or body part to which it is applied;<br><br>0465-02-12-.08 CLOTHING FOR PERSONS SUPPORTED.<br><br>(3) The facility must assist each person supported in securing an adequate allowance of personally-owned, individualized, **normal to customary**, clean, and seasonal clothes.<br><br>0465-02-13-.04 PERSONNEL AND STAFFING.<br><br>(5) Persons supported must never be left unattended during **normal to customary** sleeping hours.<br><br>0465-02-14-.03 PERSONNEL AND STAFFING.<br><br>(2) Persons supported are never to be left unattended during **normal to customary** sleeping hours. | | | |
| **54.)** | 0465-02-15 and 16 | Cindy Graves and Jonathan Chapman, TNCO | We recommend that requirements for individuals with intellectual disabilities and requirements for individuals with developmental disabilities be consistent. They do not need to be stated in two separate sections. These two sections are almost exactly alike with only two | *Do not concur. See response to Comment 7.* |

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| | | | differences: old language in 15 vs new language in 16 and the addition in 16 of requirements to practice universal precautions. | |
| **55.)** | 0465-02-15-.04 PERSONNEL AND STAFFING.<br><br>(4) Employees must have a regular tuberculosis skin test within thirty (30) days of employment and as required thereafter by current Tennessee Department of Health guidelines. | Cindy Graves and Jonathan Chapman, TNCO | Use language in 0465-02-16-.04(4) (screening before working with individual) or combine Chapters 15 and 16. | *Concur. As noted in 34, we will be consistent throughout the rules.* |
| **56.)** | 0465-02-15-.09 INDIVIDUAL SUPPORT PLAN (ISP) TEAM.<br><br>(1) The governing body must ensure that an ISP team is identified and provided for each person supported. The team must, at a minimum, include the following:<br><br>(a) The person supported, unless participation is contraindicated by the ISP team;<br><br>(b) The legal representative (conservator, parent, guardian, or legal custodian) of the person supported, if appropriate, unless their inability or unwillingness to participate is documented;<br><br>(c) Direct Support Staff, with input from each shift and weekend staff, as appropriate; | Cindy Graves and Jonathan Chapman, TNCO | Use language in 0465-02-16-.06(1)(a)-(d) or combine Chapters 15 and 16. | *Do not concur. See response to Comment 7.* |

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| | (d) Relevant professionals or individuals, unless their inability to participate is documented. | | | |
| **57.)** | 0465-02-15-.09 and 0465-02-16-.09 | Cindy Graves and Jonathan Chapman, TNCO | The required makeup of the ISP Team may cause conflict with the makeup of the Circle of Support as described in the Provider manual Chapter 3 Section 3.4. Licensure indicates that the ISP team **must** include certain persons while the Provider Manual indicates that the person supported determines who participates in the COS. | *Concur. 'must' was changed to 'may'.* |
| **58.)** | 0465-02-15-.08 ASSESSMENTS.<br><br>(1) The following assessments of the person supported must be completed prior to the development of an ISP:<br><br>(c) A six (6) month history of prescribed medications, frequently used over-the-counter medications, alcohol, and/or other drugs. | Cindy Graves and Jonathan Chapman, TNCO | "A six month history of . . . alcohol, and/or other drugs." How do you get a six month history of alcohol and illicit drug usage?<br><br>Limit requirement to prescribed medications and frequently used over-the-counter drugs. | *Do not concur. Whether alcohol and/or illicit drugs have been used in the past six months is an important assessment question.* |
| **59.)** | 0465-02-15-.10 INDIVIDUAL SUPPORT PLAN (ISP) DEVELOPMENT AND IMPLEMENTATION.<br><br>(1) The governing body must ensure that a written ISP is provided and implemented for each person supported. The ISP must meet the following requirements:<br><br>(e) Specifies the needs identified by assessment of the person supported and addresses those needs within the particular service/program component; | Cindy Graves and Jonathan Chapman, TNCO | Use person centered language to allow ISP to address what the person wants in life instead of just identifying and working on specified needs. | *Do not concur. Basic ISP requirements are applied to a broad array of providers within and outside the DIDD system. DIDD providers are accountable for the requirements for ISP development listed in the Provider Manual, which includes what is important to and for the person.* |

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| | (f) Includes personal goals and objectives of the person supported, which are related to the specific needs identified, and specifies which goals and objectives are to be addressed by a particular service/program component; and<br><br>(g) Includes methods or activities by which the goals and objectives of the person supported are to be implemented. | | | |
| **60.)** | 0465-02-15-.13 SUPPORTIVE SERVICES.<br><br>(1) The governing body must ensure that the following support services are provided for each person supported:<br><br>(f) Counseling, training, and other assistance in procuring and taking prescription and nonprescription drugs. | Cindy Graves and Jonathan Chapman, TNCO | ". . . other assistance in procuring and taking prescription and non-prescription drugs." Is this related to 0465-02-15-08(1)c?<br><br>Limit requirement to prescribed medications and frequently used over-the-counter drugs. | *Do not concur. See response to Comment 58.* |
| **61.)** | 0465-02-18-.02 POLICIES AND PROCEDURES.<br><br>(2) The governing body of the entity providing support and assistance must maintain policies and procedures establishing minimum requirements ensuring reasonable safety to life in the event of fire for all dwellings in which persons supported reside. These policies and procedures must require: | Cindy Graves and Jonathan Chapman, TNCO | "The . . . requirements ensuring reasonable safety to life in the event of fire . . ."<br><br>This section is unclear. Clarification is requested. | *Do not concur. No change is needed. The minimum requirements are specified in "a" and "b".* |

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| | (a) Fire safety features of smoke detection, fire extinguishers, and two (2) alternative means of escape in each dwelling; and<br><br>(b) Training for support staff and persons supported in the proper evacuation from the home and the use of fire safety features. | | | |
| **62.)** | 0465-02-19-.05 PROFESSIONAL SERVICES. (1) - (12) | Cindy Graves and Jonathan Chapman, TNCO | These are more prescriptive than the provider manual. These should be minimal general standards, not repetition of the waivers.<br><br>Reduce the number of items and make them more generic. This could only apply to waivers, not new case management. Most current ISC agencies have deemed status so this would not apply to them. | *Concur. All but one reference to waiver specifics was removed throughout this section.* |
| **63.)** | 0465-02-19-.06 PERSONNEL AND STAFFING. | Cindy Graves and Jonathan Chapman, TNCO | This is a repetition of waiver requirements, not licensure. | *Concur. All but one reference to waiver specifics was removed throughout this section.* |
| **64.)** | 0465-02-19-.07 PERSON SUPPORTED RECORDS. | Cindy Graves and Jonathan Chapman, TNCO | This is a repetition of waiver requirements, not licensure. | *Concur. All but one reference to waiver specifics was removed throughout this section.* |
| **65.)** | 0465-02-20-.05 PERSON SUPPORTED RECORDS.<br><br>(1) The record of each person supported must contain the following | Cindy Graves and Jonathan Chapman, TNCO | "The legal competency of the person supported . . ." These are children - they are minors.<br><br>Only the name of the parent, guardian, or | *Concur. Changes were made.* |

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| | information:<br><br>(c) The legal competency status of the person supported, including the name of his/her legal representative (conservator, parent, guardian, or legal custodian), if applicable. | | legal custodian should be required. | |
| **66.)** | 0465-02-20-.08 PERSON SUPPORTED ASSESSMENTS.<br><br>(1) The following assessments of the person supported must be completed prior to the development of an ISP.<br><br>(c) A six (6) month history of prescribed medications, frequently used over-the-counter medications, alcohol, and/or other drugs. | Cindy Graves and Jonathan Chapman, TNCO | "A six month history of . . . alcohol, and/or other drugs." On a child under 5 years of age?<br><br>Limit requirement to prescribed medications and frequently used over-the-counter drugs. | *Concur. Changes were made.* |
| **67.)** | 0465-02-20-.08 PERSON SUPPORTED ASSESSMENTS.<br><br>(1) The following assessments of the person supported must be completed prior to the development of an ISP:<br><br>(d) An existing psychological assessment on file which is updated as recommended by the ISP team. | Cindy Graves and Jonathan Chapman, TNCO | "An existing psychological . . ." Psychologicals are typically not done with young children. This section should be deleted. | *Concur. "psychological" was changed to "developmental".* |
| **68.)** | 0465-20-.10 INDIVIDUAL SUPPORT PLAN (ISP) DEVELOPMENT AND IMPLEMENTATION.<br><br>(1) The facility must ensure that a written ISP is provided and implemented for each person | Cindy Graves and Jonathan Chapman, TNCO | ISP developed within 30 days. Change to 45 days. TEIS uses 45 days and licensees routinely have to ask for a waiver of this outdated rule. | *Concur. Changed "30" to "45".* |

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| | supported. The ISP must meet the following requirements:<br><br>(a) Developed within thirty (30) days of the admission of the person supported to the facility. | | | |
| **69.)** | 0465-02-20-.12 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT. | Cindy Graves and Jonathan Chapman, TNCO | Restrictive behavior management should not be utilized with preschool aged children.<br><br>Change to restrictive behavior management "shall not" be utilized. | *Concur in part. Changed rule to specify that when a parent, guardian, or legal custodian is present, intervention will be left to them, not facility staff. Facility policy should specify that RBM is used only when a parent, guardian, or legal custodian is not present and only with advanced written permission.* |
| **70.)** | Not Specified | Cindy Graves and Jonathan Chapman, TNCO | We do feel that the regulations on independent support coordination are quite prescriptive and not general enough to allow for the models that are coming. MCOs will have support coordinators and I don't see how these things can be held to with the MCOs. | *Concur. All but one reference to waiver specifics was removed throughout this section. Licensing is not applicable to MCOs.* |
| **71.)** | Not Specified | Cindy Graves and Jonathan Chapman, TNCO | At one point you have old rules related to day facilities. Do you have that citation? And at another point you have new ratios listed. We'd recommend that the person-centered language of the new rules be in place, but we don't understand why the ratios have been changed at a time when funds are getting more scarce, the ratios are being increased and we recommend that you go back to the existing ratios. | *Do not concur. The ID and DD ratios are different and this is based on input from the potential DD licensees. In order to clarify DD ratios, the following change will be made: 1 staff member required for 1-10, 2 staff members required for 11-15, 3 staff members required for 16-20. The ratio has not changed for the ID population.* |
| **72.)** | 0465-02-03-.03 DIAGNOSIS AND EVALUATION FACILITIES.<br><br>(1)The governing body of an | Kathleen Chapman and Anita Teague, Community | There is no specific category for the ISC program/service. This lack of a specific explanation of the ISC service makes the process for ISC agencies difficult since much | *Do not concur. Business Occupancy is specified as the applicable classification for Support Coordination entities. Licensure staff have always offered* |

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| | Intellectual and Developmental Disabilities Diagnosis and Evaluation facility must provide services and facilities, which comply with the following rules:<br><br>(a) Rule 0465-02-04-.04(2) Business Occupancies;<br><br>(b) Chapter 0465-02-05 Adequacy of Facility Environment and Ancillary Services;<br><br>(c) Chapter 0465-02-06 Minimum Program Requirements for All Facilities; and<br><br>(d) Chapter 0465-02-09 Minimum Program Requirements for Intellectual & Developmental Disabilities Diagnosis and Evaluation Facilities. | Development Center | of the licensing requirements do not seem to be a fit for our system. What category does ISC fit into?<br>An example- 0465-02-02-09, Number of Licenses Required, a "license is needed for each site and will indicate what category or categories of facility and/or service is authorized, " this is again unclear because there is no ISC category. | *courtesy pre-inspections to initial licensees to help them prepare for their initial life safety inspection. This will be true for Support Coordination licensees also.* |
| **73.)** | 0465-02-04-.04 BUSINESS OCCUPANCIES.<br><br>(1) Definition - Business Occupancies are used for the transaction of business (other than that covered under Mercantile), for the keeping of accounts and records, and similar purpose. Examples of a facility required to meet business occupancy standards are the following:<br><br>(a) Adult Habilitation Facility-Community/Home Based; | Kathleen Chapman and Anita Teague, Community Development Center | ISC agencies will need to give a 'best guess" at which category in this requirement will fit. Although "0456-02-04-04, Business Occupancies" would seem to the only option, the examples of facilities do not in any way reflect the ISC service or ISC agency business.<br>** Information on the specifics needed to pass the Fire Marshall Life Safety inspection is not available even after extensive research- how can ISC agencies prepare offices for this inspection if we are not able to locate the information on what is needed to pass? | *Do not concur. See response to Comment 72.* |

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| 558 | (b) Pre-School Facility-Community Based;<br><br>(c) Placement Services Facility;<br><br>(d) Respite Care Service Facility;<br><br>(e) Supported Living Service Facility; and<br><br>(f) Semi-Independent Living Facility.<br><br>(2) Criteria - For the purpose of Life Safety, facilities required to meet business occupancies must comply with the applicable standards of the Life Safety Code of the National Fire Protection Association, Business Occupancies, or equivalent standards hereafter adopted by the Office of the State Fire Marshal. | | | |
| **74.)** | 0465-02-19-.04 POLICIES AND PROCEDURES.<br><br>(1) The licensee shall maintain a written policies and procedures manual which includes:<br><br>(g) A policy ensuring that employees practice infection control procedures and standard precautions that will protect the person supported from infectious diseases; and<br><br>(h) Requirements that each employee comply with procedures for detection, | Kathleen Chapman and Anita Teague, Community Development Center | Addressing (g) According to DIDD policy, all ISC agency staff do receive training on blood borne pathogens that includes training to address infection control procedures. This training is documented in employee personnel files.<br>Comment (h); ISC agency staff do not provide any hands on care to the people receiving ISC services so a policy to detect, prevent and report is not a current part of ISC agencies policies. (from written comments)<br><br>The licensee shall maintain a written policies and procedures manual which includes, G, a | *Do not concur. Since support coordinators have direct contact with persons supported, policies regarding standard precautions and infection control are warranted.* |

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| | prevention, and reporting of communicable diseases according to procedures of the Tennessee Department of Health. | | policy ensuring that employees practice infection control procedures and standard precautions that will protect the person supported for infectious diseases and, H, requirements that each employee comply with procedures for detection, prevention and reporting of communicable diseases according to procedures of the Tennessee Department of Health. Addressing G, according to DIDD policy all ISC agency staff do receive training on blood borne pathogens that includes training to address infection control procedures and this training is already addressed in the employee personnel files. Under Comment H, ISC agency staff do not provide any hands-on care to the people receiving ISC services, so a policy to detect, prevent and report is not a current part of ISC agency's policies. (from transcript) | |
| **75.)** | 0465-02-19-.05 PROFESSIONAL SERVICES.<br><br>(7) The facility must ensure that contacts with persons supported include:<br><br>(a) One (1) ~~face-to-face~~ contact ~~visit~~ shall be completed each calendar month. ~~Visits are to occur across all environments in which services are received~~;<br><br>(b) ~~If the person receives residential services, o~~One (1) face-to-face visit | Kathleen Chapman and Anita Teague, Community Development Center | FF contacts for class members needs to be updated to reflect no 21 day visits. (from written comments)<br><br>Professional services, I think we've heard about the change for face-to-face contacts, needs to be updated. (from transcript) | *Concur. Rule has been revised.* |

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| | per quarter shall be conducted in the place of residence;<br><br>(c) ~~If the person is a class member of the Settlement Agreement (Clover Bottom, Greene Valley or Nat T. Winston), then:~~<br><br>1. ~~Face-to-face visits are required on the day of the move, within five (5) days of the move, and within twenty-one (21) days of the move.~~<br><br>~~2. Following these initial three (3) post-transition visits, face-to-face contact is required across all service environments every twenty-one (21) days.~~<br><br>~~3. The Independent Support Coordinator is required to develop a visitation schedule reflective of these requirements when a developmental center to community transition occurs involving a Settlement Agreement class member. The visitation schedule must also reflect unannounced visits for a period of three (3) months following the move, including those performed by DIDD Regional Office staff.~~ | | | |
| **76.)** | 0465-02-19-.06 PERSONNEL AND STAFFING.<br><br>(b) 6. Support Coordinators who do not have a Bachelor's degree in a | Kathleen Chapman and Anita Teague, Community Development | Typo? "Support Coordinators who do not have a Bachelor's Degree in a human services field must be supervised by someone who does '**not**' meet that qualification." | *Concur. The typo was corrected.* |

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| | human services field must be supervised by someone who does not meet that qualification. | Center | | |
| **77.)** | Not Specified | Kathleen Chapman and Anita Teague, Community Development Center | I think it was already asked about the MCOs under the ECF Choices Program, will they be required to adhere to the same rules, specifically caseload sizes. | Concur. See response to Comment 70. |
| **78.)** | 0465-02-20<br><br>0465-02-20-.03 PROFESSIONAL SERVICES.<br><br>(1) The facility must provide or procure assistance for the person supported in locating qualified dental, medical, nursing and pharmaceutical care including care for emergencies during hours of the facility's operation.<br><br>(2) The facility must ensure that an annual physical examination is provided or procured for each person supported (unless less often is indicated by the physician of the person supported). Such examinations should include routine screenings (such as vision and hearing) and laboratory examinations (such as blood work), as deemed necessary by the physician and special studies where the index of suspicion is high. | Anita Teague, Community Development Center | *All from written comments, except anything in { }, which is from the transcript.<br><br>Chapter 0465-02-20 is specifically for DD Preschool Facilities (our license category), however, it does not speak to the current TEIS service model {of home and community based which we provide under the Department of Education, Tennessee Early Intervention Systems, but yet we have a license}. There is not a category for TEIS HCB services. Chapter 0465-02-20 for Preschool Facilities is for the most part relevant for **facilities** maintaining CB {center-based} programming {for early intervention services, however, not for community-based services.}, such as CCA. {I would go back to what I said earlier about the 0465-02-03 (See #72 above), Application Rules for Distinct Categories. It might make sense to add a category separate from preschool facilities to preschool community-based services.} The following comments are from an HCB {community-based provider. No services provided in a facility at all.} prospective: | *Do not concur. The distinction between center based and community based environments is made in the Definitions Chapter. As to procuring assistance (1) the licensee is not required to provide it, just help the family access it in the community. These rules apply to programs serving children beyond those in the TEIS system.* |

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| | (3) The facility must require each person supported to show proof of current immunization status within thirty (30) days after admission.<br><br>(4) The facility must require that each person supported receives immunizations as required by the Tennessee Department of Health unless contraindicated by a doctor's written order. | | (1) Since we do not have children in the facility, we should not be responsible for providing or procuring assistance for dental, medical, nursing, or pharmaceutical care for emergencies during hours of the facilities operation.<br><br>{We provide services in the home with the parents there, so they're not in facilities.}<br><br>(2) We do not coordinate services and should not be responsible for providing or procuring annual physical. | |
| **79.)** | 0465-02-20-.04 PERSONNEL AND STAFFING.<br><br>(1) The facility must provide one (1) direct support staff member for every six (6) children present in the facility unless a more stringent staffing ratio is required by applicable life safety rules.<br><br>(4) Employees must be provided with a basic orientation in the proper management of seizure disorders prior to being assigned to work with children with such disorders.<br><br>(5) A staff member must be on duty in the facility who is trained in First Aid and Infant/Child Cardiopulmonary Resuscitation (CPR). | Anita Teague, Community Development Center | (1)CB staffing requirements are irrelevant {for providers of only community-based services.}<br><br>(4) {the community-based service provider is} never alone with children, so orientation on how to manage seizures is irrelevant.<br><br>(5) Staff person on duty in facility with Infant/Child CPR training is irrelevant {because they're not in the facility. It could be easily changed to just ask that all providers be trained for community-based.} | *Do not concur. When in the community, the ratio is 1:1 for children. This meets the requirement. Training requirements remain the same for both environments. The rule needs to remain to cover center-based programs that continue to require licensure.* |
| **80.)** | 0465-02-20-.06 MEDICATION ADMINISTRATION. | Anita Teague, Community Development | Irrelevant to HCB {community-based services} | *Concur. This section has been removed.* |

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| 563 | (1) When medications are taken by persons supported under the supervision of facility staff, the staff must:<br><br>(a) Ensure that prescription medications are taken only by the person supported for whom they are prescribed and in accordance with the directions of a physician;<br><br>(b) Provide storage for medications in a locked container which ensures proper conditions of security and sanitation and prevents accessibility to any unauthorized person;<br><br>(c) Assure the disposal of discontinued and outdated medications and containers with worn, illegible or missing labels; and<br><br>(d) Report all medication errors, medication reactions or suspected overmedication to the practitioner who prescribed the medication. | Center | | |
| **81.)** | 0465-02-20-.08 PERSON SUPPORTED ASSESSMENTS.<br><br>(1) The following assessments of the person supported must be completed prior to the development of an ISP:<br><br>(a) An assessment of current capabilities in such areas as adaptive behavior and independent living skills; | Anita Teague, Community Development Center | Refers to period prior to ISP (IFSP). NA-currently a TEIS responsibility. {Early intervention community-based providers, preschool providers under this that work under the Department of Education, this is not applicable. We do not, or we no longer are responsible for creating, maintaining the IFSP. That falls to the Department of Education's Tennessee Early Intervention System. They are the ones that manage the | *Concur. When TEIS is involved, this will be non-applicable. However, there are existing licensees which are required to meet this rule.* |

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| | | | IFSP and then we provide the services.} | |
| | (b) A basic medical history, information, and determination of the necessity of a medical evaluation, and a copy, where applicable, of the result of the medical evaluation;<br><br>(c) A six (6) month history of prescribed medications, frequently used over-the-counter medications, alcohol, and/or other drugs; and<br><br>(d) An existing psychological assessment on file which is updated as recommended by the ISP team. | | | |
| 564 **82.)** | 0465-02-20-.09 INDIVIDUAL SUPPORT PLAN (ISP) TEAM.<br><br>0465-20-.10 INDIVIDUAL SUPPORT PLAN (ISP) DEVELOPMENT AND IMPLEMENTATION.<br><br>0465-02-20-.11 INDIVIDUAL SUPPORT PLAN (ISP) MONITORING AND REVIEW. | Anita Teague, Community Development Center | Refers to IFSP development-TEIS's responsibility. {it's not, no longer the community-based provider's responsibility.} | *Do not concur. See response to Comment 81.* |
| **83.)** | 0465-02-20-.12 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT. | Anita Teague, Community Development Center | Addresses restraints, {for the community-based provider} we do not implement behavior management in the home. {Parents are right there beside us, or if we are providing the services in a childcare facility the childcare staff is right there with us.} | *Concur in part. See response to Comment 69.* |
| **84.)** | 0465-02-03-.02 PRESCHOOL FACILITIES.<br><br>0465-02-05-.02 ENVIRONMENTAL | Anita Teague, Community Development Center | We are offices, not preschool facilities. {Community-based programs operate out of offices, they're not facilities, they don't serve children in those facilities.} | *Do not concur. The distinction between center based and community based environments is made in the Definitions Chapter. Community based programs will* |

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| | REQUIREMENTS FOR ALL FACILITIES.<br><br>0465-02-05-.07 FACILITIES SERVING CHILDREN. | | | *be held to the appropriate standard(s). Licensure staff practice is to note "Not Applicable" as needed. This practice will include "N/As" in community based settings.* |
| **85.)** | 0465-02-07-.12 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT. | Anita Teague, Community Development Center | We do not implement behavior management in the home. | *Concur in part. See response to Comment 69.* |
| **86.)** | 0465-02-04-.01 LIFE SAFETY REQUIREMENTS.<br><br>For purposes of life safety, licensees of the Department of Intellectual and Developmental Disabilities are required to meet the appropriate standards of the edition of the National Fire Protection Association Life Safety Code currently in use by the Office of the State Fire Marshal as set forth in Rule 0780-02-02-.01 of the Rules of the Department of Commerce and Insurance. In addition, all residential settings must be physically accessible to persons supported. | Julie Vest, Neighborhood Network | ISC agencies do not provide any direct services to people through DIDD. People that we support do not come to our offices to receive services. ISC's are going to other locations to complete visits, so the setup of an ISC office is irrelevant in supporting people with intellectual disabilities.<br><br>For our agency, we have 6 people in one office and 1 person in another office. Everyone else works in a telecommuting position. Having to go through the life safety inspection seems unnecessary for the work that we do.<br><br>While I know that we fall under the business occupancy, it still creates potential extra expense for the agency and ultimately, it will not have any benefits to the people we support.<br><br>I would ask that ISC agencies have an exception from the life safety inspection requirements due to the fact that people supported are not receiving services in ISC agency offices. | *Do not concur. The fact that a service is being provided in a business environment cannot be escaped. Life safety considerations for the general public, not just people supported, must be accounted for. Business Occupancy is correctly specified as the applicable classification for Support Coordination entities. Licensure staff have always offered courtesy pre-inspections to initial licensees to help them prepare for their initial life safety inspection. This will be true for Support Coordination licensees also.* |

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| | | | Basic environmental requirements as listed in 0465-02-05-02 could be checked by DIDD inspectors at the time of the initial and annual inspections, if necessary. However, again, these seem to be created to protect those we support and people we support are not receiving services in our offices. | |
| **87.)** | 0465-02-06-.02 POLICIES AND PROCEDURES.<br><br>(1) The governing body must ensure that a written policies and procedures manual is maintained. The manual must include the following elements:<br><br>(i) The plans and procedures to be followed in the event of an emergency involving care of persons supported, which will provide for emergency transportation, emergency medical care, and staff coverage in such event;<br><br>(j) A policy which prohibits persons supported from having any of the following responsibilities:<br><br>1. Care of other persons supported;<br><br>2. Supervision of other persons supported, unless on-duty/on-site staff are present; and<br><br>3. Responsibilities requiring access to confidential information. | Julie Vest, Neighborhood Network | 1. i & 1. j - Neither of these items seem applicable to ISC agencies.<br><br>1.i. - ISC agencies are not going to be providing any direct care to people with intellectual disabilities. There should be no reason that an ISC agency would have a policy about caring for people in an emergency situation and "staff coverage in such event."<br><br>1.j. - This item discusses a policy prohibiting people supported from responsibilities for which a direct care provider would be responsible. An ISC agency does not provide supervision or cover staffing needs for anyone supported. | *Do not concur. We agree these are Not Applicable but are part of the minimum requirements, and Licensure staff practice is to note "N/A" as needed. This practice will include "N/As" for Support Coordination licensees.* |
| **88.)** | 0465-02-19-.01 APPLICATION OF RULES. | Julie Vest, Neighborhood | 1.b. - indicates compliance with life safety licensure rules, but it seems that an | *Do not concur. See response to comment 72.* |

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| | | Network | exception should be made considering ISC agencies do not provide direct care services | |
| | (1) The licensee providing support coordination shall comply with and provide services that comply with the following rules:<br><br>(a) Chapter 0465-02-02 Licensure Administration and Procedures;<br><br>(b) Chapter 0465-02-04-.04 Life Safety Licensure Rules, Business Occupancy;<br><br>(c) Chapter 0465-02-05 Adequacy of Facility Environment and Ancillary Services;<br><br>(d) Chapter 0465-02-06 Minimum Program Requirements for All Facilities; and<br><br>(e) Chapter 0465-02-19 Minimum Program Requirements for Support Coordination Agencies. | | | |
| **89.)** | 0465-02-19-.05 PROFESSIONAL SERVICES.<br><br>(3) Assessment information to be compiled by the independent support coordinator/case manager in preparation of the ISP for the Planning Meeting consists of the following:<br><br>(a) Information about the services a person supported is receiving through resources outside DIDD programs, such as the Managed Care | Julie Vest, Neighborhood Network | This section is very prescriptive and seems to be based entirely on information from the provider manual.<br><br>For example, in 3. a-g., it not only indicates that assessment information is to be gathered for preplanning, it also indicates exactly what those assessments are. Preplanning and assessment gathering are important pieces in helping a person with person centered planning. However, the licensure rules should not prescribe exactly what the procedures and assessment | *Concur. See response to Comment 70.* |

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| | Organization, Medicare, or other organizations;<br><br>(b) Ideas and suggestions about what things the person supported can and cannot do, what things are important to the person supported, and what things are liked and disliked by the person supported;<br><br>(c) Uniform Assessments (e.g. ICAP or SIS) - Information about the capabilities and support needs of the person supported. Assists in identifying needed services and supports and the activities for which a person may need assistance;<br><br>(d) Risk Assessments (Risk Issues Identification Tool);<br><br>(e) Clinical Assessments;<br><br>(f) Medical Assessments; and<br><br>(g) Vocational Assessments and Desire for Employment. | | information should include. | |
| **90.)** | 0465-02-19-.05 PROFESSIONAL SERVICES.<br><br>(5) The licensee must ensure that an ISP team known as the Circle of Support is identified and provided for each person supported. The team must minimally include the following: | Julie Vest, Neighborhood Network | In 1.5., the rule prescribes who is part of the person's circle of support, as it's explained in the provider manual. The licensure rules should not be prescriptive about who is in a person's circle of support. The way the rules are written, it doesn't allow for the person to have the ultimate decision about who takes part in his/her planning. | *Concur. See response to Comment 57.* |

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| | (a) The person supported, unless contraindicated by the ISP team;<br><br>(b) The legal representative (conservator, parent, guardian, or legal custodian) of the person supported, if applicable, unless their inability or unwillingness to attend is documented;<br><br>(c) Direct Support Staff, with input from each shift and weekend staff, as appropriate;<br><br>(d) Relevant professionals or individuals, unless their inability to attend is documented;<br><br>(e) Friends, advocates and other non-paid supports, if applicable, and<br><br>(f) The Independent Support Coordinator/Case Manager. | | | |
| **91.)** | 0465-02-19-.05 PROFESSIONAL SERVICES.<br><br>(7) The facility must ensure that contacts with persons supported include:<br><br>(a) One (1) face-to-face contact visit shall be completed each calendar month. Visits are to occur across all environments in which services are received; | Julie Vest, Neighborhood Network | In 7, it details visit requirements. Licensure rules should not go into this much detail about visit requirements. As they are written now, they are a repeat of what's in the provider manual. There is a detailed list about visit requirements for those who are part of the Settlement Agreement lawsuit. Those visiting requirements are set to change as that lawsuit ends. If the visit requirements are this detailed in the licensure rules, they will need to be changed soon. | *Concur. Rule has been revised.* |

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| | (b) If the person receives residential services, one (1) face-to-face visit per quarter shall be conducted in the place of residence;<br><br>(c) If the person is a class member of the Settlement Agreement (Clover Bottom, Greene Valley or Nat T. Winston), then:<br><br>1. Face-to-face visits are required on the day of the move, within five (5) days of the move, and within twenty-one (21) days of the move.<br><br>2. Following these initial three (3) post-transition visits, face-to-face contact is required across all service environments every twenty-one (21) days.<br><br>3. The Independent Support Coordinator is required to develop a visitation schedule reflective of these requirements when a developmental center to community transition occurs involving a Settlement Agreement class member. The visitation schedule must also reflect unannounced visits for a period of three (3) months following the move, including those performed by DIDD Regional Office staff. | | | |
| **92.)** | 0465-02-19-.05 PROFESSIONAL SERVICES. | Julie Vest, Neighborhood Network | In 11, it details when the ISP should be amended. What if changes are made to the ISP in the future and it changes the reasons | *Do not concur. All future scenarios cannot be projected.* |

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| | (11) The ISP must be amended when any of the following occur:<br><br>(a) The action steps and outcomes change;<br><br>(b) Services or service providers change;<br><br>(c) There is a significant change in overall service and support needs of the person supported;<br><br>(d) The person supported has made major changes to his/her preferred lifestyle. | | for which an amendment might be needed? | |
| 51 93.) | 0465-02-19-.07 PERSON SUPPORTED RECORDS.<br><br>(1) The record of a person supported must contain the following:<br><br>(a) A Uniform Assessment;<br><br>(b) Reports from medical and other consultants (e.g. therapy consultation reports, specialty physician consult report, psychiatric consult report, etc.);<br><br>(c) Clinical service assessment reports;<br><br>(d) DHS Forms 2350 and 2362 (or such forms as required for eligibility) for a three (3) year period; | Julie Vest, Neighborhood Network | This section includes a detailed list of what is expected to be in a record. This list seems to be repeated from the provider manual. Changes are sometimes made in terms of what goes in an ISC record. Being his prescriptive in the licensure rules can create issues in the future, should change need to be made.<br><br>The list even mention the ITP for those transitioning from developmental centers. There are very few people who would even be affected by that at this point, so it seems unnecessary to have that on this list. | *Concur. Requirements for records were revised.* |

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| (e) Medicaid medical eligibility documentation (the PAE packet);<br><br>(f) The dental examination;<br><br>(g) The Annual Medical and Assessment Plan, (for developmental center transitions, as applicable);<br><br>(h) The annual physical unless otherwise indicated by the physician;<br><br>(i) The Freedom of Choice Form;<br><br>(j) Emergency contact information;<br><br>(k) A current photograph of the person supported;<br><br>(l) The current ISP;<br><br>(m) The current BSP, if applicable;<br><br>(n) The ITP (for developmental center transitions);<br><br>(o) The Individual Education Plan, if applicable;<br><br>(p) Support coordination monthly reviews;<br><br>(q) Correspondence, as applicable;<br><br>(r) Discharge summaries, if applicable; | | | |

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| | (s) Plans of care or treatment for nursing, therapeutic, therapy-related, or dental services;<br><br>(t) Required ISC documentation forms;<br><br>(u) Provider periodic reviews and other monthly reports as applicable to the needs of the person supported; and<br><br>(v) Health Care Surrogates, POA, Guardianships (for minors if applicable), and Orders of Conservatorship. | | | |
| 94.) 573 | 0465-02-19-.09 STANDARDIZED TRAINING AND CONTINUING EDUCATION.<br><br>(1) The licensee shall ensure and document that support coordination workers receive training in the following skill/knowledge areas within one hundred twenty (120) days of employment/contract:<br><br>(a) Protection from Harm, including Abuse and Neglect considerations, and reporting of same, for persons with intellectual and developmental disabilities;<br><br>(b) Relationships and community inclusion for people with disabilities;<br><br>(c) Standard Precautions (Universal | Julie Vest, Neighborhood Network | This section repeats current requirements for ISC's with regards to training. Training requirements have changed many times over the years and this section in the licensure rules is very prescriptive. | *Concur. This section was deleted as requirements for training have to match other licensees.* |

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| | Precautions);<br><br>(d) Confidentiality and **HIPAA**;<br><br>(e) Title VI;<br><br>(f) Person-Centered Thinking;<br><br>(g) Person-Centered Individual Support Plans;<br><br>(h) Appeals Process;<br><br>(i) Information and Training Specific to the person supported;<br><br>(j) Assessments; and<br><br>(k) Waiver Services. | | | |
| **95.)** | 0465-02-04-.01 LIFE SAFETY REQUIREMENTS.<br><br>For purposes of life safety, licensees of the Department of Intellectual and Developmental Disabilities are required to meet the appropriate standards of the edition of the National Fire Protection Association Life Safety Code currently in use by the Office of the State Fire Marshal as set forth in Rule 0780-02-02-.01 of the Rules of the Department of Commerce and Insurance. In addition, all residential settings must be physically accessible to persons supported. | Kristi Lane, The Arc of Davidson County | ISC agencies do not provide any direct services to people through DIDD. People that we support do not come to our offices to receive DIDD services, unless they are coming to participate in a meeting. While we do provide employment services through VR, our agency meets the requirements of that program. ISC's are going to other locations to complete visits, so the setup of an ISC office is irrelevant in supporting people with intellectual disabilities. Our agency rents space in an office building with several other businesses and the owners of the building are required by law to have inspections by the Fire Marshall. Having to go through the life safety inspection seems redundant and unnecessary for ISC | *Do not concur. See response for Comment 86.* |

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| | | | agencies. I suggest that ISC agencies have an exception from the life safety inspection requirements due to the fact that people supported are not receiving services in ISC agency offices.<br><br>The business occupancy, creates potential extra expense for the agency without having any benefits to the people we support.<br><br>Basic environmental requirements listed in 0465-02-05-02 seem to be created to protect those we support; however, people we support are not receiving services in our offices so this does not benefit them. | |
| 96.) | 0465-02-06-.02 POLICIES AND PROCEDURES.<br><br>(1) The governing body must ensure that a written policies and procedures manual is maintained. The manual must include the following elements:<br><br>(i) The plans and procedures to be followed in the event of an emergency involving care of persons supported, which will provide for emergency transportation, emergency medical care, and staff coverage in such event;<br><br>(j) A policy which prohibits persons supported from having any of the following responsibilities:<br><br>1. Care of other persons supported; | Kristi Lane, The Arc of Davidson County | 1. i & 1. j - Neither of these items seem applicable to ISC agencies.<br><br>1.i. – It has always been our understanding that ISC agencies are prohibited providing any direct care to people with intellectual disabilities. If that is the case, there should be no reason that an ISC agency would have a policy about caring for people in an emergency situation and "staff coverage in such event."<br><br>1.j. - This item discusses a policy prohibiting people supported from responsibilities for which a direct care provider would be responsible. An ISC agency does not provide supervision or cover staffing needs for anyone supported. | *Do Not Concur. See response to Comment 87.* |

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| | 2. Supervision of other persons supported, unless on-duty/on-site staff are present; and<br><br>3. Responsibilities requiring access to confidential information. | | | |
| **97.)** | 0465-02-19-.01 APPLICATION OF RULES.<br><br>(1) The licensee providing support coordination shall comply with and provide services that comply with the following rules:<br><br>(b) Chapter 0465-02-04-.04 Life Safety Licensure Rules, Business Occupancy | Kristi Lane, The Arc of Davidson County | 1.b. - indicates compliance with life safety licensure rules, but it seems that an exception should be made considering ISC agencies do not provide direct care services | *Do not concur. See response to Comment 86.* |
| **98.)** | 0465-02-19-.05 PROFESSIONAL SERVICES.<br><br>(3) Assessment information to be compiled by the independent support coordinator/case manager in preparation of the ISP for the Planning Meeting consists of the following:<br><br>(a) Information about the services a person supported is receiving through resources outside DIDD programs, such as the Managed Care Organization, Medicare, or other organizations;<br><br>(b) Ideas and suggestions about what things the person supported can and cannot do, what things are important | Kristi Lane, The Arc of Davidson County | This section is very prescriptive and seems to be based entirely on information from the provider manual. Should any of the specific assessments, forms, procedures, etc. change in the future, then the licensure rules will have different expectations. This level of specificity makes the process of keeping all requirements (i.e. Provider Manual, Waiver Applications, Licensure Rules, etc.) current much more difficult, time consuming and expensive as each has to go through a public review and comment period before changes can be made. We know how difficult it is to keep ISPs current as new information is learned and believe that keeping all of the requirements updated for consistency will be a difficult task, resulting in confusion about expectations and making it hard for ISC providers to comply with differing and | *Concur. See response to Comment 70.* |

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| | to the person supported, and what things are liked and disliked by the person supported;<br><br>(c) Uniform Assessments (e.g. ICAP or SIS) - Information about the capabilities and support needs of the person supported. Assists in identifying needed services and supports and the activities for which a person may need assistance;<br><br>(d) Risk Assessments (Risk Issues Identification Tool);<br><br>(e) Clinical Assessments;<br><br>(f) Medical Assessments; and<br><br>(g) Vocational Assessments and Desire for Employment. | | possibly contradictory regulations. We ask that references to specific forms, assessments, processes, etc. be replaced with broader descriptions that refer to meeting DIDD or CMS regulations. For example, saying that ISCs must meet the requirements outlined in DIDD's Provider Manual. Knowing how DIDD systems and regulations have changed over the years, we believe it is likely that many of the very specific things listed could change in the future and necessitate an update to the licensure rules (i.e. what if the name of a specific form is changed?)<br><br>For example, in 3. a-g., it not only indicates that assessment information is to be gathered for preplanning, it also indicates exactly what those assessments are. Licensure rules should not be this prescriptive. | |
| **99.)** | 0465-02-19-.05 PROFESSIONAL SERVICES.<br><br>(5) The licensee must ensure that an ISP team known as the Circle of Support is identified and provided for each person supported. The team must minimally include the following:<br><br>(a) The person supported, unless contraindicated by the ISP team;<br><br>(b) The legal representative (conservator, parent, guardian, or legal custodian) of the person | Kristi Lane, The Arc of Davidson County | In 1.5., the rule prescribes who is part of the person's circle of support, as it's explained in the provider manual. Again, this is too prescriptive and as written, doesn't allow for the person to have the ultimate decision about who takes part in his/her planning. | *Concur. See response to Comment 57.* |

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| | supported, if applicable, unless their inability or unwillingness to attend is documented;<br><br>(c) Direct Support Staff, with input from each shift and weekend staff, as appropriate;<br><br>(d) Relevant professionals or individuals, unless their inability to attend is documented;<br><br>(e) Friends, advocates and other non-paid supports, if applicable, and<br><br>(f) The Independent Support Coordinator/Case Manager. | | | |
| 578 100.) | 0465-02-19-.05 PROFESSIONAL SERVICES.<br><br>(7) The facility must ensure that contacts with persons supported include:<br><br>(a) One (1) face-to-face contact visit shall be completed each calendar month. Visits are to occur across all environments in which services are received;<br><br>(b) If the person receives residential services, one (1) face-to-face visit per quarter shall be conducted in the place of residence;<br><br>(c) If the person is a class member of | Kristi Lane, The Arc of Davidson County | In 7, it details visit requirements. Licensure rules should not go into this much detail about visit requirements. As they are written now, they are a repeat of what's in the provider manual. There is a detailed list about visit requirements for those who are part of the Settlement Agreement lawsuit. Those visiting requirements have just changed per the 3-22-16 memo from Commissioner Payne so these licensure rules are already in disagreement with the current practice and will need to be changed. | *Concur. See response to Comment 70.* |

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| | the Settlement Agreement (Clover Bottom, Greene Valley or Nat T. Winston), then:<br><br>1. Face-to-face visits are required on the day of the move, within five (5) days of the move, and within twenty-one (21) days of the move.<br><br>2. Following these initial three (3) post-transition visits, face-to-face contact is required across all service environments every twenty-one (21) days.<br><br>3. The Independent Support Coordinator is required to develop a visitation schedule reflective of these requirements when a developmental center to community transition occurs involving a Settlement Agreement class member. The visitation schedule must also reflect unannounced visits for a period of three (3) months following the move, including those performed by DIDD Regional Office staff. | | | |
| **101.)** | 0465-02-19-.05 PROFESSIONAL SERVICES.<br><br>(11) The ISP must be amended when any of the following occur:<br><br>(a) The action steps and outcomes change; | Kristi Lane, The Arc of Davidson County | In 11, it details when the ISP should be amended. What if changes are made to the ISP in the future and it changes the reasons for which an amendment might be needed? | *Do not concur. See response to Comment 92.* |

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| | (b) Services or service providers change;<br><br>(c) There is a significant change in overall service and support needs of the person supported;<br><br>(d) The person supported has made major changes to his/her preferred lifestyle. | | | |
| **102.)** | 0465-02-19-.06 PERSONNEL AND STAFFING.<br><br>(1) The licensee shall maintain a personnel file for each support coordinator with the following:<br><br>(c) The facility must ensure that all staff submit to a criminal background check prior to, but no more than 30 days in advance of, employment or reassignment that includes direct contact with or direct responsibility for persons supported as required by T.C.A. § 33-2-1202. | Kristi Lane, The Arc of Davidson County | This section requires criminal background checks. This is redundant as these are required by law. | *Do not concur. This section has been deleted from this Chapter and the requirements have been added to Chapter 6, Minimum Program Requirements for All Licensees.* |
| **103.)** | 0465-02-19-.07 PERSON SUPPORTED RECORDS.<br><br>(1) The record of a person supported must contain the following:<br><br>(a) A Uniform Assessment;<br><br>(b) Reports from medical and other consultants (e.g. therapy consultation reports, specialty physician consult | Kristi Lane, The Arc of Davidson County | This section includes a detailed list of what is expected to be in a record. This list seems to be repeated from the provider manual. Changes are sometimes made in terms of what goes in an ISC record, with things sometimes being added or removed. Being his prescriptive in the licensure rules can create issues in the future, should changes need to be made. Knowing how DIDD systems and regulations have changed over the years, we believe it is likely that many of | *Concur. See response to Comment 93.* |

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| report, psychiatric consult report, etc.);<br><br>(c) Clinical service assessment reports;<br><br>(d) DHS Forms 2350 and 2362 (or such forms as required for eligibility) for a three (3) year period;<br><br>(e) Medicaid medical eligibility documentation (the PAE packet);<br><br>(f) The dental examination;<br><br>(g) The Annual Medical and Assessment Plan, (for developmental center transitions, as applicable);<br><br>(h) The annual physical unless otherwise indicated by the physician;<br><br>(i) The Freedom of Choice Form;<br><br>(j) Emergency contact information;<br><br>(k) A current photograph of the person supported;<br><br>(l) The current ISP;<br><br>(m) The current BSP, if applicable;<br><br>(n) The ITP (for developmental center transitions);<br><br>(o) The Individual Education Plan, if | | the very specific things listed could change in the future and necessitate an update to the licensure rules (i.e. what if the name of a specific form is changed?) As another example of the difficulty keeping systems updated, we would point out that the DIDD website still includes as if it is still in use, a form called the Plan Implementation Communication Tool (PICT). This tool has not been used since July 1, 2012 when our current forms were implemented.<br><br>The list even mention the ITP for those transitioning from developmental centers. There are very few people who would even be affected by that at this point, so it seems unnecessary to have that on this list. | |

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| | applicable;<br><br>(p) Support coordination monthly reviews;<br><br>(q) Correspondence, as applicable;<br><br>(r) Discharge summaries, if applicable;<br><br>(s) Plans of care or treatment for nursing, therapeutic, therapy-related, or dental services;<br><br>(t) Required ISC documentation forms;<br><br>(u) Provider periodic reviews and other monthly reports as applicable to the needs of the person supported; and<br><br>(v) Health Care Surrogates, POA, Guardianships (for minors if applicable), and Orders of Conservatorship. | | | |
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| **104.)** | 0465-02-19-.09 STANDARDIZED TRAINING AND CONTINUING EDUCATION.<br><br>(1) The licensee shall ensure and document that support coordination workers receive training in the following skill/knowledge areas within one hundred twenty (120) days of employment/contract:<br><br>(a) Protection from Harm, including | Kristi Lane, The Arc of Davidson County | This section repeats current requirements for ISC's with regards to training. Training requirements have changed many times over the years and this section in the licensure rules is very prescriptive. In addition, names of various trainings have also changed over the years. | *Concur. See response to Comment 94.* |

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| 583 | Abuse and Neglect considerations, and reporting of same, for persons with intellectual and developmental disabilities;<br><br>(b) Relationships and community inclusion for people with disabilities;<br><br>(c) Standard Precautions (Universal Precautions);<br><br>(d) Confidentiality and HIPPA;<br><br>(e) Title VI;<br><br>(f) Person-Centered Thinking;<br><br>(g) Person-Centered Individual Support Plans;<br><br>(h) Appeals Process;<br><br>(i) Information and Training Specific to the person supported;<br><br>(j) Assessments; and<br><br>(k) Waiver Services. | | | |
| **105.)** | 0465-02-01 Definitions | Carrie Hobbs Guiden, The Arc of TN | We recommend that "Circle of Support" be defined in the definitions section | *Do not concur, however, "Circle of Support" is defined in all applicable chapters.* |
| **106.)** | 0465-02-01-.01 DEFINITION OF TERMS USED IN ALL RULES.<br><br>(33) "Intellectual and Developmental Disabilities Professional" means an | Carrie Hobbs Guiden, The Arc of TN | We recommend changing "Intellectual and Developmental Disabilities Professional" to "Intellectual and Developmental Disabilities Specialist" and we also recommend changing "mental retardation" to | *Do not concur. "Professional" is the accepted term in the field.*<br><br>*Concur. Change to "intellectual* |

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| | individual with a bachelor's degree in a field related to developmental disabilities or an individual with a bachelor's degree and two (2) years of supervised work in mental retardation. | | "intellectual disability" in that same section. | *disability" has been made.* |
| **107.)** | 0465-02-01-.01 DEFINITION OF TERMS USED IN ALL RULES.<br><br>(66) "Restraint" means measures taken to restrict the freedom of movement of a person supported, including:<br><br>(c) "Physical Holding" - the use of bodily contact by staff with a person supported in order to restrict his/her freedom of movement or normal access to his/her body to prevent the behavior of the person supported from becoming dangerous to him/herself, others, or property. Physical holding does not include the use of:<br><br>1. Physical touch associated with prompting, comforting, or assisting that does not prevent freedom of movement or normal access to the body of the person supported;<br><br>2. Physical escort, which means the temporary touching or holding of the hand(s), wrist(s), arm(s), shoulder, or back for the purpose of inducing the person supported to walk to a safe | Carrie Hobbs Guiden, The Arc of TN | "Physical holding" we recommend mentioning that prone restraints are prohibited – this currently exists in the provider manual but should be in licensure rule as well. | *Do not concur. This is addressed in the Provider Manual.* |

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| | location; or<br><br>3. Physical intervention for the temporary holding of the hand(s), wrist(s), arm(s), shoulders(s), or leg(s), which does not otherwise restrict freedom of movement or access to the body of the person supported, for the purpose of terminating unsafe behavior. | | | |
| **108.)** | 0465-02-02-.04 APPLICATION FORMS.<br><br>(2) Each application for a license must be submitted in writing, legible, and with all the information requested on the application. The information gathered by the Department on the application is needed pursuant to T.C.A. § 33-2-406 to determine the applicant's responsible and reputable character and the applicant's ability to meet the minimum standards for the operation of a facility or service. | Carrie Hobbs Guiden, The Arc of TN | Is it accurate that the application for a license still filled out by hand? | *Concur. Revisions made.* |
| **109.)** | 0465-02-01-.01 DEFINITION OF TERMS USED IN ALL RULES.<br><br>(35) "Isolation" means the confinement of a person supported alone in a room or an area where he/she is prevented from leaving. This definition is not limited to instances in which a person supported is confined by a locked or a closed door. Isolation does not include:<br><br>(a) The segregation of a person | Carrie Hobbs Guiden, The Arc of TN | Should "isolation" be changed to "seclusion"? "isolation" is not used anywhere else in this licensure document, however, "seclusion" is listed in #2 of "Use of Restrictive Behavior Management" throughout. We recommend choosing one word and sticking with it. | *Concur. See response to Comment 43.* |

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| | supported for the purpose of managing biological contagion consistent with the Centers for Disease Control Guidelines;<br><br>(b) Confinement to a locked unit or ward where other persons supported are present. Isolation is not solely confinement of a person supported to an area, but separation of the person supported from other individuals; or<br><br>(c) Time-out, a behavior management procedure in which the opportunity for positive reinforcement is withheld, contingent upon the demonstration of undesired behavior. Time-out may involve the voluntary separation of a person supported from others. | | | |
| **110.)** | 0465-02-06-.05 PERSON SUPPORTED RECORDS.<br><br>(1) The governing body must ensure that an individual record for each person supported is maintained which, at a minimum, includes the following information:<br><br>(f) The date of admission to the facility of the person supported;<br><br>(g) The source of referral to the facility of the person supported. | Carrie Hobbs Guiden, The Arc of TN | We recommend changing (f) to read "date of admission to services of the person supported" since we are moving away from "facility-based" programs; we also recommend deleting (g) as it isn't relevant. | *Concur. Descriptors will include "facility" and "services" as appropriate.*<br><br>*Do not concur. We believe (g) to be relevant.* |
| **111.)** | 0465-02-06-.08 MODIFICATION OR LIMITATION OF PERSON SUPPORTED RIGHTS. | Carrie Hobbs Guiden, The Arc of TN | Why would a person's rights be limited because of a physical or intellectual disability? | *Concur. See response to Comment 30.* |

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| | (1) The rights of a person supported in a facility may only be modified or limited under the following conditions:<br><br>(a) It is demonstrated and documented that such modification or limitation is necessary because of the physical or intellectual disability of the person supported. | | | |
| **112.)** | 0465-02-07-.12 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT.<br><br>(1) No procedures ~~should~~ **shall** be used for behavior management which results in physical or emotional harm to the person supported.<br><br>(2) Corporal punishment, seclusion, aversive stimuli, chemical restraint, and denial of a nutritionally adequate diet must not be used. | Carrie Hobbs Guiden, The Arc of TN | We recommend changing "should" to "shall" in (1) and adding "prone restraint" to (2) that lists tactics that must not be used. | *Concur. Changed "Should" to " Shall".*<br><br>*Do not concur regarding "prone restraint". See response to Comment 107.* |
| **113.)** | CHAPTER 0465-02-07<br>MINIMUM PROGRAM REQUIREMENTS FOR INTELLECTUAL DISABILITIES ADULT HABILITATION DAY FACILITIES.<br><br>CHAPTER 0465-02-08<br>MINIMUM PROGRAM REQUIREMENTS FOR DEVELOPMENTAL DISABILITIES ADULT HABILITATION DAY FACILITIES. | Carrie Hobbs Guiden, The Arc of TN | We recommend that the licensure rules for ID adult day hab and DD adult day hab be the same – it will create unnecessary challenges and burdens for providers to try to operate under two sets of rules for the same service. | *Do not concur. See response to Comment 7.* |
| **114.)** | 0465-02-07(11)-.11 INDIVIDUAL SUPPORT PLAN (ISP) TEAM. | Carrie Hobbs Guiden, The Arc of TN | This is written incorrectly. It should be 0465-02-11.11 | *Concur. Change made.* |

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| **115.)** | 0465-02-16-.09 INDIVIDUAL SUPPORT PLAN (ISP) TEAM.<br><br>(1) The governing body must ensure that an ISP team is identified and provided for each person supported. The team must, at a minimum, include the following:<br><br>(e) An intellectual and developmental disabilities specialist. | Carrie Hobbs Guiden, The Arc of TN | What is an intellectual and developmental disabilities specialist, where is that term defined and what are the requirements? | *Concur. "Specialist" has been changed to "Professional."* |
| **116.)** | 0465-02-17-.08 PERSON SUPPORTED RIGHTS.<br><br>(1) The following rights shall be afforded to all persons supported:<br><br>(a) Persons supported have the right to be fully informed before the initiation of services about their rights and responsibilities and about any limitation on these rights imposed by the rules of the licensee. The licensee shall ensure that the person supported is given oral and/or written rights information that includes at least the following:<br><br>1. A statement of the specific rights guaranteed the person supported by these rules and applicable state laws;<br><br>2. A description of the licensee's grievance procedures; | Carrie Hobbs Guiden, The Arc of TN | The last sentence should read "...person supported is given oral and written rights information..." (instead of "and/or." Written information should always be provided to the person. | *Concur. Revision made and incorporated into Chapter 06-.06.* |

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| | 3. A listing of available advocacy services;<br><br>4. A copy of all agency rules and regulations pertinent to the person supported; and<br><br>5. The information shall be presented in a manner that promotes understanding by the person supported of his/her rights and the person supported shall be given an opportunity to ask questions about the information. If the person supported who was unable to understand the information at the time of admission later becomes able to do so, the information shall be presented to the person supported at that time. If a person supported is likely to continue indefinitely to be unable to understand the information, the licensee shall promptly attempt to provide the required information to his/her legal representative (conservator, parent, guardian, or legal custodian) or other appropriate person or an agency responsible for protecting the rights of the person supported. | | | |
| **117.)** | 0465-02-19-.06 PERSONNEL AND STAFFING.<br><br>(1) The licensee shall maintain a personnel file for each support coordinator with the following: | Carrie Hobbs Guiden, The Arc of TN | We believe that the statement should read, "Support Coordinators who do not have a Bachelor's degree in a human services field must be supervised by someone who DOES meet that qualification (rather than DOES NOT). | *Concur. See response to Comment 76.* |

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| | (b) Individuals employed as ISC's must meet at least one (1) of the following educational and relevant experience requirements:<br><br>6. Support Coordinators who do not have a Bachelor's degree in a human services field must be supervised by someone who does not meet that qualification. | | | |
| **118.)** | 0465-02-07(18)-.10 INDIVIDUAL SUPPORT PLAN (ISP) TEAM. | Carrie Hobbs Guiden, The Arc of TN | Needs to be renumbered to 0465-02-18-10. | *Concur. Revision made.* |
| **119.)** | 0465-02-19-.06 PERSONNEL AND STAFFING.<br><br>(1) The licensee shall maintain a personnel file for each support coordinator with the following:<br><br>(c) The facility must ensure that all staff submit to a criminal background check prior to, but no more than 30 days in advance of, employment or reassignment that includes direct contact with or direct responsibility for persons supported as required by T.C.A. § 33-2-1202. | Carrie Hobbs Guiden, The Arc of TN | We recommend that a caseload of 30 be an average to give providers the flexibility to adjust caseloads based on the level of need of the individuals. We also take this opportunity to point out that if the provider caseloads are 30 and current ISC caseloads are 30, then the MCO caseloads should mirror that same requirement – it is our understanding it is going to be 50. | *Concur. Caseload is no longer identified in Licensure Rule, however, providers need to ensure they comply with requirements established elsewhere, such as the Provider Manual.*<br><br>*DIDD has no authority over the size of MCO caseloads.* |
| **120.)** | 0465-02-20-.08 PERSON SUPPORTED ASSESSMENTS.<br><br>(1) The following assessments of the person supported must be completed | Carrie Hobbs Guiden, The Arc of TN | These points seem more relevant to adults than pre-school children. We recommend, at minimum, removing "alcohol" from (c) and reconsider the wording of "independent living skills" in (a). How many "independent | *Concur. See response to Comment 67.* |

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| 591 | prior to the development of an ISP:<br><br>(a) An assessment of current capabilities in such areas as adaptive behavior and independent living skills;<br><br>(b) A basic medical history, information, and determination of the necessity of a medical evaluation, and a copy, where applicable, of the result of the medical evaluation;<br><br>(c) A six (6) month history of prescribed medications, frequently used over-the-counter medications, alcohol, and/or other drugs; and<br><br>(d) An existing psychological assessment on file which is updated as recommended by the ISP team. | | living skills" do preschool children have? | |
| **121.)** | 0465-02-20-.12 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT.<br><br>(1) No procedures should be used for behavior management which results in physical or emotional harm to the person supported. | Carrie Hobbs Guiden, The Arc of TN | "should" needs to be "shall" | *Concur. Change made.* |
| **122.)** | n/a | Carrie Hobbs Guiden, The Arc of TN | In general, we recommend combining licensure rules for "ID" facilities and "DD" facilities rather than having them separate. It creates unnecessary complications and more paper. | *Do not concur. See response to Comment 7.* |
| **123.)** | 0465-02-01-.02 DEFINITION OF DISTINCT CATEGORIES OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES FACILITIES. | Shannon Clark, Trousdale School | Thank you for making a distinction between intellectual and developmental disabilities. We recognize this may cause confusion for existing providers, but we applaud the | *Concur. The positive feedback is appreciated.* |

| | Rule | Comment Submitted By | Comment | Response |
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| | | | expansion for the growing number of individuals that may be served as developmentally disabled. | |
| **124.)** | 0465-02-02-.12 DEEMED COMPLIANCE. | Shannon Clark, Trousdale School | Thank you for including the National Commission for the accreditation of Special Education Services as a recognized accrediting body. We believe this level of quality review for current and potential service providers will prove to be a positive standard for the State. | *Concur. The positive feedback is appreciated.* |
| **125.)** | Various | Shannon Clark, Trousdale School | We would like to request clarification for sections of the standards we do not do (e.g. Restrictive Behavior Management). If we have a written policy that states we do not do it, would we be in compliance because this meets our accreditation standards? Our assumption is that this would be the case with deemed compliance, but we are requesting verification. | *Concur. Policies can be developed that are more stringent, but cannot be less than Licensure Rules require.* |
| **126.)** | Chapter 0465-02-19 MINIMUM PROGRAM REQUIREMENTS FOR INTELLECTUAL AND DEVELOPMENTAL DISABILITIES SUPPORT COORDINATION AGENCIES | Randall Moore, Compass Coordination (on behalf of TASC) | We have two, general concerns about these proposed rules. The first concern is the additional level of complexity that the rules introduce into an environment in which many types of case management and support coordination for persons with ID/D have been operating for many years, and in which other models currently are being developed and implemented. The rules for the most part are reiterations of programmatic and other standards already set by the DIDD and the Bureau of TennCare through the approved Medicaid Waiver applications; the DIDD Provider Manual for HCBS Service Providers; and related DIDD and TennCare Policies specific to the 1915(c) | *Concur. See response to Comment 70.* |

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| | | | Waivers. This approach seems to exceed a standard for setting "minimum" licensure rules and will necessitate modification of these rules each time a model or program of support coordination or case management is changed or introduced. The most obvious example is the setting of a caseload size ration of 1:30 in the rules. Not all 1915(c) Waivers adhere to this standard, and other 1115 Waiver models are being developed (ECF CHOICES, for example), in which much different and higher caseload ratios are being used. There are many other such examples within these proposed rules. | |
| 593 | | | The second, general concern is that the rules apply expectations for life (fire) safety and the environmental safety and adequacy within the physical offices operated by our agencies. These rules are typically required of facilities operated for the provision of IDD services because those facilities actually house or serve persons with ID or DD who are physically present on an ongoing, regular or permanent basis. The safety and health of the individual is the basis and rationale for the state's interests in licensing these facilities under state law. However, these state interests are not justified in applying the same rules to operators whose offices are not places in which persons with ID or DD are not and do not have to be present for receiving Support Coordination services. | *Do not concur. See response to Comment 86.* |
| | | | It is our recommendation that DIDD convene a workgroup of the various future licensees | *Do not concur. Please see response to comment 2.* |

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| | | | who will be impacted by these rules. This workgroup should be tasked with advising the DIDD in revising these rules pursuant to and as part of the rulemaking public comment process. | |
| **127.)** | 0465-02-04-.11 RESIDENTIAL OCCUPANCIES - ONE- AND TWO-FAMILY DWELLINGS (ONE TO THREE PERSONS SUPPORTED).<br><br>(1) Definition - One- and two-family dwellings include buildings containing not more than two (2) dwelling units in which each dwelling unit is occupied by members of a single family with not more than three (3) unrelated persons supported who are unable to respond to an approved emergency signal, including voice prompt, and evacuate the facility without physical assistance, in three (3) minutes or less. A facility required to meet one- and two-family dwelling occupancy with persons supported unable to evacuate without physical assistance, in three (3) minutes or less, includes an Intellectual Disability and Developmental Disability Residential Habilitation Facility.<br><br>(2) Physical Assistance - Includes, but is not limited to, staff leading the person supported by the hand, and guiding and helping him/her transfer to a wheelchair. | Don Redden, Developmental Services of Dickson County (DSDC) | This rule, 0465-02-04-.11, which is specific to residential habilitation facilities, creates a number of issues for people with significant disabilities and the agencies that support them, including:<br><br>It requires that there must be at least one staff specifically present in the facility at all times to assist with the evacuation of each person who is not "Capable of Self-Preservation."<br><br>If there are two or three persons incapable of self-preservation in the home, then a like number of staff would have to be present. The current funding structure will not support that type of staffing.<br><br>At a time when staff availability is at a crisis point, this rule requires an addition of staff.<br><br>Unlike national fire codes, this rule makes no provision for facilities that have a sprinkler or fire suppression system - everyone must evacuate in three (3) minutes. Instead of encouraging the use of sprinkler systems, this rule discourages their use, putting people at risk.<br><br>The rule does not appear to be in line with | *Do not concur. This rule and comment is specific to Res Hab homes with a capacity of three persons or fewer. It is not accurate to imply that sprinklers and/or fire suppression systems in and of themselves suffice as an approved "Defend In Place" strategy. This can only be done on a "home by home" basis and only after a review by a certified life safety inspector. If a provider wants to pursue a "Defend in Place" strategy for a 3 person or fewer Res Hab home, it is possible to obtain a waiver to this rule. The provider would need to initiate this option by reaching out to the applicable Regional Licensure Coordinator.* |

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| 595 | (3) Criteria - For the purpose of Life Safety, facilities accommodating persons supported unable to evacuate without physical assistance, in three (3) minutes or less and are required to meet one- and two-family dwelling occupancies must comply with the following:<br><br>(a) The applicable standards of the Life Safety Code of the National Fire Protection Association, or equivalent standards hereafter adopted by the Office of the State Fire Marshal; and<br><br>1. All staff should be able to assist each person supported in evacuation from the facility. This may be accomplished, for example, by assigning responsibility for a particular person supported to a particular staff member, especially where he/she needs complete physical assistance to evacuate. Persons supported who use a wheelchair for evacuation purposes need not be assigned a specific staff person to assist them as long as they are able to transfer from a fixed position to a wheelchair without physical assistance, and evacuate the facility in three (3) minutes or less.<br><br>2. Evacuation procedures shall be sufficient so that it is not necessary for a staff person to re-enter the building after once leaving. | | the Federal Settings Rule for Medicaid-reimbursed HCBS providers since by rule it reduces privacy and eliminates housing choices for persons with more significant disabilities.<br><br>The rule will ultimately require that some people live in institutional settings in order to receive support.<br><br>Recommendations:<br><br>Create a stakeholders workgroup to review the rule and make recommendations on alternative solutions.<br><br>The workgroup should include representatives of DIDD Licensure and legal staff, the State Fire Marshall's office, TennCare, advocacy organizations, self-advocates, residential service providers. | |

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| 3. A risk assessment must be completed for each person supported admitted to the facility within five (5) calendar days of admission on a form prepared by the Department.<br><br>4. If the risk assessment indicates that the person supported is able to evacuate without physical assistance within three (3) minutes or less, then it is not necessary to assign a specific staff person to assist him/her in evacuating.<br><br>5. If the risk assessment indicates that the person supported is not able to evacuate without physical assistance within three (3) minutes or less, then a specific staff person must be assigned to assist him/her in evacuating. Such staff assignment is required at all times when the person is inside the facility.<br><br>6. The risk assessment must be repeated when the circumstances of the person supported change.<br><br>7. Staff assigned to persons supported needing assistance must be trained in evacuation procedures specific to the service recipient(s) being assisted.<br><br>8. Persons supported who are ambulatory who cannot evacuate | | | |

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| independently within three (3) minutes must receive education and information needed to improve their ability to evacuate the facility more independently. Persons supported with a documented inability to respond to education need not receive this training.<br><br>0465-02-01-.01 DEFINITION OF TERMS USED IN ALL RULES.<br><br>(7) "Capable of Self-Preservation" means that a person supported is capable of responding to an approved emergency signal, including prompting by voice, by following a pre-taught evacuation procedure within a reasonable time limitation whether or not he/she is fully aware of the reasons for the action. A person supported is capable of self-preservation if they are able to transfer unassisted from a bed or another fixed position to an individualized means of mobility, which is continuously available, and able to demonstrate the ability to transverse a pre-defined means of egress from the facility within a reasonable time limitation. Persons supported who have security measures imposed upon them beyond their control, which prevent their egress from the facility, are not capable of self-preservation. | | | |

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| **128.)** | General, however, the follow in specified within the comments:<br><br>0465-02-01-.01 DEFINITION OF TERMS USED IN ALL RULES.<br><br>(9) "Case Management" means support provided for obtaining eligibility for service, assessment, development and evaluation and revision of the plan of care and the assistance with the selection of service providers for persons who are supported in the Self-Determination Waiver or on the waiting list for services.<br><br>0465-02-01-.02 DEFINITION OF DISTINCT CATEGORIES OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES FACILITIES. | Don Redden, Developmental Services of Dickson County (DSDC) | As a long time provider of supports for people with intellectual disabilities in Tennessee, I can say that the Office of Licensure has been a significant benefit to the people of the State of Tennessee. For the last 40 years it has provided a level of protection and security for people with disabilities, their families, and our communities. As they have aged and new services have been added, the rules need an update and revision. Generally speaking I am very disappointed with the revisions that DIDD is currently promulgating. The rules call for a much more thoughtful revision than that presented. I would call on the Department to do the following:<br><br>Recall the rules<br>Establish a work group to review and rewrite<br>Promulgate a set of 21st century rules<br><br>Some of my specific concerns include:<br><br>Rules should generally be generic and applicable across funding sources. These rules contain many time limited terms, e.g., "Self-Determination Waiver" [0465-02-01-.01(9)] that should not be included.<br><br>The rules differentiate between ID and DD in the categories of day habilitation and semi-independent living (0465-02-01-.02). Why is that when the definitions are exactly the same except for intellectual disability and developmental disability? DIDD is the Department of Intellectual and | *Do not concur. See response to Comment 2.* |

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| | | | Developmental Disabilities, not intellectual or developmental disabilities. The separation should be dropped and only the DD categories retained. | |
| **129.)** | 0465-02-15-.08 ASSESSMENTS.<br><br>(1)The following assessments of the person supported must be completed prior to the development of an ISP:<br><br>(c) A six (6) month history of prescribed medications, frequently used over-the-counter medications, alcohol, and/or other drugs.<br><br>0465-02-15-.13 SUPPORTIVE SERVICES.<br><br>(1) The governing body must ensure that the following support services are provided for each person supported:<br><br>(f) Counseling, training, and other assistance in procuring and taking prescription and nonprescription drugs.<br><br>0465-02-20-.08 PERSON SUPPORTED ASSESSMENTS.<br><br>(1) The following assessments of the person supported must be completed prior to the development of an ISP:<br><br>(c) A six (6) month history of prescribed medications, frequently | Don Redden, Developmental Services of Dickson County (DSDC) | The rules are replete with oddities and contradictions, including:<br><br>Creating a six month history of the use of alcohol and other drugs [0465-02-15-.08(1)(c)] and a subsequent rule requiring the provider to assist in procuring non-prescription drugs 0465-02-15-.13(1(f).<br><br>A similar six month history of the use of alcohol by preschool-aged children [0465-02-20-.08(1)(c)].<br><br>Listing the legal competency status of preschool-aged children [0465-02-20-.05(1)(c)].<br><br>Several different requirements concerning staff screening for communicable diseases ranging from simply requiring compliance with procedures of the Department of Health (for personal assistance) to having a TB skin test within 30 days of employment (for placement services). | *Do not concur. This statement is irrelevant.*<br><br>*Do not concur. See response for Comment 58.*<br><br>*Concur. See response to Comment 66.*<br><br>*Concur. See response to Comment 65.*<br><br>*Concur. Efforts were made to ensure uniformity of language.* |

| | Rule | Comment Submitted By | Comment | Response |
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| | used over-the-counter medications, alcohol, and/or other drugs.<br><br>0465-02-20-.05 PERSON SUPPORTED RECORDS.<br><br>(1) The record of each person supported must contain the following information:<br><br>(c) The legal competency status of the person supported, including the name of his/her legal representative (conservator, parent, guardian, or legal custodian), if applicable. | | | |
| 130.) | 0465-02-20-.08 PERSON SUPPORTED ASSESSMENTS.<br><br>(1) The following assessments of the person supported must be completed prior to the development of an ISP:<br><br>(d) An existing psychological assessment on file which is updated as recommended by the ISP team.<br><br>0465-02-20-.09 INDIVIDUAL SUPPORT PLAN (ISP) TEAM.<br><br>(1) The facility must ensure that an ISP team is identified and provided for each person supported. The team must, at a minimum, include the following:<br><br>(b) Direct support staff, with input | Don Redden, Developmental Services of Dickson County (DSDC) | In addition to the previously noted issues, the Preschool licensing rules contain many dated and questionable items, including:<br><br>Requirement of a psychological assessment rather than developmental assessment [0465-02-20-.08(1(d)].<br><br>An ISP team including direct support staff with input from each shift [0465-02-20-.09(1)(b)] even though there are no shifts in preschool facilities.<br><br>ISP to be developed within 30 days [0465-02-20-.10(1)(a)] instead of the 45 day requirement of TEIS. This causes many early intervention providers to request a waiver from Licensure every year.<br><br>Use of restrictive behavior management | *Concur. See response to Comment 67.*<br><br>*Concur. Language amended to read "appropriate provider staff".*<br><br>*Concur. See response to Comment 68.*<br><br>*Concur in part. See response to Comment 69.* |

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| 601 | from each shift and weekend staff; as appropriate.<br><br>0465-20-.10 INDIVIDUAL SUPPORT PLAN (ISP) DEVELOPMENT AND IMPLEMENTATION.<br><br>(1) The facility must ensure that a written ISP is provided and implemented for each person supported. The ISP must meet the following requirements:<br><br>(a) Developed within thirty (30) days of the admission of the person supported to the facility.<br><br>0465-02-20-.12 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT. | | (0465-02-20-.12) with preschool children - this should be prohibited under this license. Restrictive behavior management should never be used with young children. | |
| **131.)** | General, however, the following was specified in the comments:<br><br>CHAPTER 0465-02-19 MINIMUM PROGRAM REQUIREMENTS FOR INTELLECTUAL AND DEVELOPMENTAL DISABILITIES SUPPORT COORDINATION AGENCIES | Don Redden, Developmental Services of Dickson County (DSDC) | Licensure was intended to be minimum rules which can apply any services meeting the service definitions, whether funded by the state or not. They should be applicable to a variety of different entities. The rules on support coordination agencies (0465-02-19) are anything but minimal. They are completely waiver specific and more prescriptive than those in the Provider Manual. They appear to be copied from the ISC contract. The terms may soon become or are already obsolete (e.g., the frequency of fact-to-face contacts). They need to be completely rewritten. | *Concur. See response to Comment 70.* |
| **132.)** | n/a | Don Redden, Developmental Services of | Tennessee code 33-2-404. Rules for licensure -- Amendment of rules states: ] | *Do not concur. See response to Comment 2.* |

| Rule | Comment Submitted By | Comment | Response |
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| 602 | Dickson County (DSDC) | (b) Notwithstanding any law to the contrary, each department shall have the authority to amend its rules for licensure as needed to be consistent with the federal home-based and community-based settings final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014), including the authority to differentiate licensure requirements for any entity contracted to provide Medicaid-reimbursed home- and community-based services in order to allow the facility or entity to comply with the federal rule and continue to receive Medicaid reimbursement for home- and community-based services. Rules adopted by the department under this subsection (b) shall be developed with input from stakeholders and promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5; provided, however, that the department shall not promulgate emergency rules under this subsection (b) as defined in § 4-5-208.<br><br>In order to comply with the spirit and letter of this law, we would again recommend that the Department:<br><br>Withdraw the rules<br><br>Convene a stakeholders workgroup to revise the rules<br><br>Resubmit the revised rules for promulgation by January 2017 | |

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| | | | The citizens of the State of Tennessee should expect no less than the best efforts of the Department and the best 21st century rules for governing services for its most vulnerable citizens. | |
| **133.)** | All | Cindra Jones, D&S Community Services | No stakeholder input, is inconsistent with requirements. | *Do not concur. See response to Comment 2.* |
| **134.)** | All | Cindra Jones, D&S Community Services | Unclear regarding sanctions and how they can be issued with no guidelines or oversight. | *Concur. See response to Comment 1.* |
| **135.)** | All | Cindra Jones, D&S Community Services | No funding to support 1:1 staffing ratio for Res Hab. | *Do not concur. See response to Comment 127.* |
| **136.)** | All | Cindra Jones, D&S Community Services | Overall unclear in segregation of ID and DD, and very inconsistent in how rules apply. | *Do not concur. See response to Comment 7.* |

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**Regulatory Flexibility Addendum**
Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-402(a)(3) and T.C.A. § 4-5-402(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

*It is not anticipated that this rule will have any impact 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)

(Insert statement here)

*It is not anticipated that this rule will have any impact on local government.

**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 move the licensing authority for intellectual disabilities and developmental disabilities from DMHSAS to DIDD.

**(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. § 33-2-403, this code give the authority to license services for persons with intellectual or developmental disabilities and personal support services for persons with intellectual or developmental disabilities to DIDD.

**(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;

DIDD contracted providers, private providers, and ICF/IID providers.

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

None are directly related 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;

The result would be minimal since the estimated impact is less than $500,000.00 and less than 2% of DIDD's annual budget.

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

Lee Vestal, Director of Risk Management and Licensure

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

Lee Vestal, Director of Risk Management and Licensure

**(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

Citizens Plaza Bldg., 400 Deaderick Street, 10th Floor, Nashville, TN 37243
615-253-8733
Lee.Vestal@tn.gov

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

(8)

| Department of State<br>Division of Publications<br>312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower<br>Nashville, TN 37243<br>Phone: 615-741-2650<br>Email: publications.information@tn.gov | For Department of State Use Only<br>Sequence Number: 07-11-16<br>Rule ID(s): 6224-6243<br>File Date: 7/6/16<br>Effective Date: 10/4/16 |
|---|---|

# 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 Department of Intellectual and Developmental Disabilities |
| **Division:** | Office of Licensure |
| **Contact Person:** | Richard R. Prybilla |
| **Address:** | 400 Deaderick Street, 100th Floor, Citizens Plaza, Nashville, TN |
| **Zip:** | 37243 |
| **Phone:** | 615-532-6526 |
| **Email:** | Richard.R.Prybilla@tn.gov |

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

___ Amendment
X 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** |
|---|---|
| 0465-02-01 | Definitions |
| **Rule Number** | **Rule Title** |
| 0465-02-01-.01 | Definitions of Terms Used in All Rules |
| 0465-02-01-.02 | Definition of Distinct Categories of intellectual and Developmental Disabilities Facilities/Services |
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| | |

| **Chapter Number** | **Chapter Title** |
|---|---|
| 0465-02-02 | Licensure Administration and Procedures |
| **Rule Number** | **Rule Title** |
| 0465-02-02-.01 | Statement of Authority |
| 0465-02-02-.02 | Types and Conditions of Licenses |
| 0465-02-02-.03 | Unlawful Operation |
| 0465-02-02-.04 | Application Forms |
| 0465-02-02-.05 | Fees |
| 0465-02-02-.06 | Application Process for Initial License |

| | |
|---|---|
| 0465-02-02-.07 | Application Process for License Renewal |
| 0465-02-02-.08 | Distinct Categories of Facilities and Services |
| 0465-02-02-.09 | Number of Licenses Required |
| 0465-02-02-.10 | Change of Ownership or Location |
| 0465-02-02-.11 | Time Limits |
| 0465-02-02-.12 | Deemed Compliance |
| 0465-02-02-.13 | Access to Premises and Information |
| 0465-02-02-.14 | Grounds for Denial, Revocation, or Suspension |
| 0465-02-02-.15 | Expiration of Licenses |
| 0465-02-02-.16 | Posting of Licenses |
| 0465-02-02-.17 | Surrender Requirements |
| 0465-02-02-.18 | Exclusions from Licensure |
| 0465-02-02-.19 | Waiver Authority |
| 0465-02-02-.20 | Investigation of Abuse, Dereliction, or Deficiency in Operation of a Facility or Service |
| 0465-02-02-.21 | Notice of Non-Compliance and Plan of Compliance |
| 0465-02-02-.22 | Unannounced Inspection |
| 0465-02-02-.23 | Assistance to Persons Supported When a License is Denied, Suspended, or Revoked |
| 0465-02-02-.24 | Civil Penalties for Licensees |

| **Chapter Number** | **Chapter Title** |
|---|---|
| 0465-02-03 | Application of Rules for Distinct Service Categories |
| **Rule Number** | **Rule Title** |
| 0465-02-03-.01 | Intellectual Disabilities Adult Habilitation Day Facilities/Services |
| 0465-02-03-.02 | Developmental Disabilities Adult Habilitation Day Facilities/Services |
| 0465-02-03-.03 | Developmental Disabilities Preschool Facilities/Services |
| 0465-02-03-.04 | Diagnosis and Evaluation Facilities |
| 0465-02-03-.05 | Institutional Habilitation Facilities |
| 0465-02-03-.06 | Residential Habilitation Facilities |
| 0465-02-03-.07 | Boarding Home Facilities |
| 0465-02-03-.08 | Placement Services |
| 0465-02-03-.09 | Respite Care Services |
| 0465-02-03-.10 | Semi-Independent Living Services |
| 0465-02-03-.11 | Personal Support Services Agencies |
| 0465-02-03-.12 | Supported Living Services Facilities |
| 0465-02-03-.13 | Support Coordination Agencies |

| **Chapter Number** | **Chapter Title** |
|---|---|
| 0465-02-04 | Life Safety Licensure Rules |
| **Rule Number** | **Rule Title** |
| 0465-02-04-.01 | Life Safety Requirements |
| 0465-02-04-.02 | Health Care Occupancies |
| 0465-02-04-.03 | Educational Occupancies |
| 0465-02-04-.04 | Business Occupancies |
| 0465-02-04-.05 | Industrial Occupancies |
| 0465-02-04-.06 | Residential Occupancies - Board and Care |
| 0465-02-04-.07 | Mobile Non-Ambulatory |
| 0465-02-04-.08 | Capable of Self-Preservation |
| 0465-02-04-.09 | Day Care Occupancies |
| 0465-02-04-.10 | Residential Occupancies - One- and Two-Family Dwellings (One to Three Persons Supported) |
| 0465-02-04-.11 | Residential Occupancies - One- and Two-Family Dwellings (One to Three Persons Supported) |

| **Chapter Number** | **Chapter Title** |
|---|---|
| 0465-02-05 | Adequacy of Environment and Services |
| **Rule Number** | **Rule Title** |

| | |
|---|---|
| 0465-02-05-.01 | Standard for New Construction |
| 0465-02-05-.02 | Environmental Requirements for All Licensees |
| 0465-02-05-.03 | Environmental Requirements for Residential Licensees |
| 0465-02-05-.04 | Environmental Requirements for Non-Residential Licensees |
| 0465-02-05-.05 | Licensees Providing Food Services and Nutrition |
| 0465-02-05-.06 | Licensees Providing Transportation Services |
| 0465-02-05-.07 | Licensees Serving Children |
| 0465-02-05-.08 | Licensees Providing Vocational Services |
| 0465-02-05-.09 | Licensees Serving Persons with Vision Loss |
| 0465-02-05-.10 | Residential Licensees Serving Persons with Hearing Loss |
| 0465-02-05-.11 | Non-Residential Licensees Serving Persons with Hearing Loss |

| **Chapter Number** | **Chapter Title** |
|---|---|
| 0465-02-06 | Minimum Program Requirements for All Facilities/Services |
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(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)

**RULES OF THE TENNESSEE**
**DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**OFFICE OF LICENSURE**

**CHAPTER 0465-02-01**
**DEFINITIONS**

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**0465-02-01-.01 DEFINITION OF TERMS USED IN ALL RULES.** Unless the context indicates otherwise, terms have the following meaning:

(1) "Adaptive Behavior" means the effectiveness or degree with which a person supported meets the standard of personal independence, maturation, learning, and social responsibility expected for his/her age and cultural group.

(2) "Agency" means a sole proprietorship, partnership, corporation, limited liability company or limited liability partnership providing personal support services or support coordination as defined below. Agency includes all entities that employ or subcontract with individuals who provide personal support services or support coordination for persons supported.

(3) "Applicant or Licensee Applicant" means the proprietorship, partnership, association, governmental agency, or corporation which makes, or is required to make, application for the licensure of a facility/service determined to be under the licensure jurisdiction of the Department.

(4) "Assessment" means a documented evaluation of a person supported for the purpose of determining prevention, treatment, and/or rehabilitation needs. An assessment may, but does not necessarily, include examinations and tests determined to be necessary by the service staff based on the presenting problems and symptoms of the person supported.

(5) "Aversive Stimuli" means painful or noxious stimuli, which are employed to reduce the frequency of or to eliminate problem behaviors.

(6) "Behavior Management Drugs" means a drug or medication used for the purpose of modifying, limiting, or eliminating problem behaviors. Included are antipsychotic drugs/antipsychotics, antianxiety drugs, and antidepressants. Excluded are drugs that may have behavior-modifying effects, but are not prescribed or administered for that purpose, such as anticonvulsants.

(7) "Capable of Self-Preservation" means that a person supported is capable of responding to an approved emergency signal, including prompting by voice, by following a pre-taught evacuation procedure within a reasonable time limitation whether or not he/she is fully aware of the reasons for the action. A person supported is capable of self-preservation if they are able to transfer unassisted from a bed or another fixed position to an individualized means of mobility, which is continuously available, and able to demonstrate the ability to transverse a pre-defined means of egress from the facility or dwelling within a reasonable time limitation. Persons supported who have security measures imposed upon them beyond their control, which prevent their egress from the facility or dwelling, are not capable of self-preservation.

(8) "Caregiver" means a temporary care-giving adult individual with power of attorney or form provided by the Department of Children Services for care of minor child as defined by T.C.A. § 34-6-302.

(9) "Case Management" means support provided for obtaining eligibility for service, assessment,

development and evaluation and revision of the plan of care and the assistance with the selection and coordination of services and providers for persons who are supported, including those in the Self-Determination Waiver.

(10) "Center Based Environment" means a congregate setting where services are rendered. This setting is subject to life safety inspections, which vary dependent upon the applicable occupancy classification.

(11) "Chief Executive Officer or Director" means the individual appointed, designated, or hired by the governing body to be responsible for the licensee's day-to-day operation.

(12) "Civil Rights" means the rights of personal liberty guaranteed to citizens by the Constitutions of the United States and the State of Tennessee, and by federal and state statutes. Licensees are encouraged to adopt the principles contained within the Universal Declaration of Human Rights found at www.un.org.

(13) "Community/Home Based Environment" means a non-congregate setting where services are rendered. This environment is not subject to life safety inspections, as the corporate office is the licensed setting.

(14) "Community Living Skills" means the array of skills which enables a person supported to live independently in the community. These include, but are not limited to, skills in the following areas:

(a) Independent living;

(b) Educational/Vocational;

(c) Inter-personal;

(d) Social;

(e) Problem solving;

(f) Financial;

(g) Leisure time;

(h) Mobility in the community; and

(i) Use of community resources.

(15) "Conservator" means an individual or individuals or a corporation appointed by the court to exercise the decision-making rights and duties of a person with a disability in one or more areas in which he/she lacks capacity as determined and required by the orders of the court.

(16) "Corporal Punishment" means the application of painful stimuli to the body in an attempt to terminate behavior or as a penalty for behavior, but does not mean aversive stimuli.

(17) "Chronic Condition" means a mental and/or physical impairment that is expected to last indefinitely.

(18) "Department" or "DIDD" means the Tennessee Department of Intellectual and Developmental Disabilities.

(19) "Direct Support Staff" means licensee personnel who have, face-to-face contact with persons supported, excluding administrators, bookkeepers, accountants, secretaries, typists, clerks, or other clerical personnel, doctors, nurses, psychologists, speech and language therapists, pharmacy and other professional support personnel, maintenance, groundskeepers, cooks, bus drivers, or other personnel, teachers, trainers, social workers, and other professional personnel, unless such personnel are under specific assignment to direct services staff duties and then only for that amount

of time devoted to direct support staff duties.

(20) "DSM" means the current version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, a handbook for mental health professionals listing different categories of mental disorders and the criteria for diagnosing them.

(21) "Education Services" means consultation provided by a licensed nurse to the person supported or primary family caregiver concerning a chronic condition.

(22) "Emergency Procedures" means the use of procedures necessary to control severely aggressive or destructive behaviors that could not have been anticipated and that place the person supported or others in imminent danger.

(23) "Emotional Abuse" means any threatening behavior or statement directed toward a person supported that causes emotional trauma or fear including, but not limited to, humiliation, harassment, threats of punishment or deprivation, intimidation or demeaning or derogatory communication (vocal, written, gestures), including verbal abuse, directed to or within eyesight or audible range of the person supported.

(24) "Emotional Harm" means psychological distress which may include; fear, anxiety, stress, trauma, humiliation, depression or grief. Such a response may or may not be visible in people with intellectual or developmental disabilities.

(25) "Exploitation" means any act intended to exploit, extort, or defraud a person supported including, but not limited to deliberate misplacement, misappropriation or wrongful temporary or permanent use of belongings or money (the loss of $50.00 or more within a 60 day calendar period) with or without the consent of the person supported. The illegal or improper use of the resources or status of the person supported for another's benefit or advantage.

(26) "Facility" means an institution, treatment resource, group residence, boarding home, sheltered workshop, activity center, rehabilitation center, hospital, or other entity by these or other names, providing intellectual and/or developmental disabilities services.

(27) "Governing Body" means an individual or individuals with primary legal authority and responsibility for the overall operation and to whom a director/chief executive officer is responsible. Depending upon the organizational structure, this body may be an owner or owners, a board of directors or other governing members of the licensee, or state, city, or county officials appointed by the licensee, etc.

(28) "Grievance Procedure" means a procedure for responding to an expression of a cause of distress believed by a person supported, or by acting on behalf of a person supported, to constitute a reason for complaint.

(29) "Guardian" means an individual or individuals appointed by a court to provide partial or full supervision, protection and assistance of the person or property, or both, of a minor as defined by T.C.A. § 34-1-101(9).

(30) "Habilitation or Habilitative Services" means the structured process by which the service provider assists a person supported to acquire and maintain those life skills which enable them to cope more effectively with the demands of his/her disability and the environment, and to raise the physical, mental, and social skills. This process includes programs of formal, structured education and training as described in the ISP.

(31) "Hold Out to the Public" means asserting expertise and availability through advertising, public notice, self-promotion, etc.

(32) "Human Rights Committee" means a designated group of people which consists of at least three (3) members, one (1) of whom must be independent of the licensee. The committee's function is to review the licensee's activities to ensure that the rights of the person supported are not suppressed, neglected, or abused.

(33) "ICD" means the current version of the International Statistical Classification of Diseases and Related Health Problems, published by the World Health Organization. The ICD provides codes to classify diseases and a wide variety of signs, symptoms, abnormal findings, complaints, social circumstances and external causes of injury or disease.

(34) "Independent Living Skills" means the complete continuum of skills involved in increasing independence. These include, but are not limited to, the following areas: grooming/personal hygiene, selection/care of clothing, responsible self-medication, personal safety, housekeeping, nutritional/meal preparation, eating/table manners, use of telephone, and money/budgeting concepts.

(35) "Individual Support Plan" (ISP) means a document developed by the ISP team/circle of support and the person supported, which identifies the needs of the person supported and specifies goals to be addressed in treatment and the interventions used to accomplish these goals. ISPs may also be referred to as a Plan of Care, Person Centered Support Plan, Support Plan, Individual Family Support Plan, etc.

(36) "Intellectual and Developmental Disabilities Professional" means an individual with a bachelor's degree in a field related to developmental disabilities or an individual with a bachelor's degree and two (2) years of supervised work in the field of intellectual or developmental disabilities.

(37) "Intellectual Disabilities / Developmental Disabilities Services" means all services pertaining to and incidental to the prevention, diagnosis, evaluation, treatment, domiciliary care, training, habilitation, counseling, or supervision of a person supported with intellectual and/or developmental disabilities.

(38) "Legend Drugs" mean any item that federal law prohibits dispensing without a prescription from a licensed doctor, dentist, optometrist, or veterinarian, as defined in T.C.A. § 53-10-101.

(39) "Licensed Clinical Psychologist" means a psychologist licensed to practice psychology in Tennessee with the certified competency in clinical psychology determined by the Board of Examiners in Psychology.

(40) "Licensed Practitioner" means an individual who is licensed by the Tennessee Health Related Boards as a:

(a) Physician (medical doctor or doctor of osteopathy);

(b) Certified nurse practitioner;

(c) Physician assistant;

(d) Nurse with a master's degree in nursing who functions as an Advanced Practice Nurse (APN);

(e) Psychologist with health service provider designation;

(f) Licensed professional counselor;

(g) Senior psychological examiner;

(h) Licensed marriage and family therapist;

(i) Licensed clinical social worker;

(j) Licensed psychological examiner; or

(k) Licensed alcohol and drug abuse counselor.

(41) "Licensee" means the proprietorship, partnership, association, governmental agency, or corporation which provides a service under the licensure jurisdiction of the Department.

(42) "Major Life Activities" means:

(a) Self-care;

(b) Receptive and expressive language;

(c) Learning;

(d) Mobility;

(e) Self-direction;

(f) Capacity for independent living; or

(g) Economic self-sufficiency.

(43) "Medication" means drug, either prescribed or available over the counter, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or condition.

(44) "Medication Administration" means giving the person supported injections or any form of medication or administration that would only be appropriate and acceptable for individuals who are authorized to do so by T.C.A., Title 63 or rules and regulations of the Tennessee Board of Medical Examiners or the Tennessee Board of Nursing and in a manner prescribed under Departmental Rules.

(45) "Medication Assistance" means providing medication reminders and opening medication packaging, but does not mean giving the person supported injections or any form of medication or medication administration that would only be appropriate and acceptable for individuals who are authorized to do so by Title 63, Chapter 7 of the T.C.A. Medication assistance includes, but is not limited to, any of the following:

(a) Loosening the cap on a pill bottle for oral medication;

(b) Opening a pill reminder box if the box is filled by the person supported, authorized representative, or licensed medical personnel practicing within the scope of his/her license;

(c) Placing medication within reach of the person supported;

(d) Holding the hand steady of the person supported, to help him/her with drinking liquid medication;

(e) Guiding the hand of the person supported, when he/she is applying eye/ear/nose drops and wiping the excess liquid;

(f) Helping the person supported with a nasal cannula or mask for oxygen, plugging the machine in and turning it on;

(g) Applying non-prescription creams and lotions purchased over-the-counter to external parts of the body of the person supported.

(46) "Mobile Non-Ambulatory" means a person who is able, without other assistance, to transfer to and move about only with the aid of a wheelchair, walker, crutch, wheeled platform, or similar device.

(47) "On-Duty and On-Site" means a staff person who is on the premises and has the obligation to carry out any job responsibilities designated in his/her job description.

(48) "On-Site" means a staff person who is on the premises, but is only required to be on duty during an emergency.

(49) "Person Supported" means a service recipient defined under T.C.A. § 33-1-101(23) as a person who is receiving services, has applied for services, or for whom someone has applied for or proposed services because the person has intellectual and/or developmental disabilities.

(50) "Person Who is Ambulatory" means a person who is physically and mentally capable under emergency conditions of finding a way to safety without physical assistance from another person. A person who is ambulatory may use a cane, wheelchair or other supportive device and may require verbal prompting.

(51) "Personal Care" means services provided to a person supported who does not require chronic or convalescent medical or nursing care. Personal care may include, but are not limited to, any of the following services:

(a) Responsibility for the safety of the person supported;

(b) A daily awareness by the management and staff of the needs of the person supported;

(c) Knowledge of the whereabouts of the person supported;

(d) Reminding a person supported of appointments;

(e) The ability and readiness to intervene if a crisis arises for a person supported;

(f) Supervision of major life activities, self-care, self-direction, capacity for independent living, or economic self-sufficiency for the person supported;

(g) The safekeeping and supervision of the self-administration of prescription medication of the person supported; and/or

(h) Medication administration in a home and community based setting where the licensee is contracted with the Department and the staff are appropriately certified.

(52) "Personal Support Services" means one or more of the following are services provided at the regular or temporary residence of the person supported to assist with activities of daily living. Personal support services include, but are not limited to:

(a) Self-care assistance with tasks such as eating, dressing, toileting, bathing, mobility, transfer assistance and other services and supports to maintain health and wellness;

(b) Household assistance with tasks such as housekeeping, laundry, meal planning, meal preparation, shopping, bill paying, and use of telecommunication devices;

(c) Personal assistance to access community activities such as transportation, social, recreational or other personal activities; and

(d) Education services.

(53) "Personal Support Services Agency" means a sole proprietorship (someone who owns an unincorporated business by him/herself), partnership, corporation, limited liability company, or limited liability partnership providing personal support services.

(54) "Personal Support Services Worker" or "Worker" means a person licensed as a personal support services agency, or an employee for an individual subcontracted by a personal support services agency who is providing personal support services under an arrangement between a person supported and a personal support services agency.

(55) "Physical Abuse" means actions including, but not limited to, any physical motion or action by which physical harm, pain or emotional harm. Also included is the use of excessive force when restraining

a person supported (e.g., using methods to restrain them which are not outlined in staff training) and acts which constitute sexual activity.

(56) "Physician" means a graduate of an accredited medical school authorized to confer upon graduates the degree of Doctor of Medicine (M.D.) who is duly licensed in Tennessee or an osteopathic physician who is a graduate of a recognized osteopathic college authorized to confer the degree of Doctor of Osteopathy (D.O.) and who is licensed to practice osteopathic medicine in Tennessee.

(57) "Physician Assistant" means an individual who renders services, whether diagnostic or therapeutic, which are acts constituting the practice of medicine and, but for the provisions of T.C.A. § 63-6-204, could only be performed by a licensed physician.

(58) "Policies and Procedures Manual" means a document that describes the philosophy, services, organization, policies, and procedures for the provision and implementation of services for the person supported provided by the licensee.

(59) "PRN" means an order which is written to allow a medication or a treatment to be given on an as-needed basis.

(60) "Psychiatrist" means a physician who specializes in the assessment and treatment of persons diagnosed with psychiatric disorders; is certified by the American Board of Psychiatry and Neurology or has the documented equivalent in education, training and/or experience; and who is fully licensed to practice medicine in the State of Tennessee.

(61) "Psychotropic Drug/Medication" means a drug which exercises a direct effect upon the central nervous system and which is capable of influencing and modifying behavior. Drugs covered by these rules include but are not limited to:

(a) Anti-depressants;

(b) Anti-psychotics;

(c) Agents for control of mania and depression;

(d) Anti-anxiety agents;

(e) Psychomotor stimulants; and

(f) Hypnotics.

(62) "Qualified Dietician" means a person licensed as a dietician/nutritionist by the Tennessee Board of Dietician/Nutritionist Examiners.

(63) "Qualified Food Service Manager" means a qualified dietician, a graduate of a dietetic technician or assistant training program approved by the American Dietetic Association, or a graduate of a state-approved course that provides ninety (90) or more hours of classroom instruction in food service supervision, who has experience as a supervisor in a health care institution with consultation from a qualified dietician.

(64) "Qualified Medical Records Practitioner" means a record technician (ART) currently accredited by the American Medical Records Association, or a registered record administrator (RRA) currently registered by the American Medical Record Association, or others qualified by work experience.

(65) "Qualified Prescribers" means individuals authorized to prescribe medications by the State of Tennessee Board of Medical Examiners or the Tennessee Board of Nursing.

(66) "Quality Assurance" means a systematic procedure for the review and evaluation of the agency's functions, quality of services, and the utilization of resources in the provision of services.

(67) "Reputable and Responsible Character" means having a personal and/or business history which suggests that the licensee can be trusted with responsibility for persons supported who are particularly vulnerable to neglect, and financial and sexual exploitation. Personal and/or business histories involving operation of substandard facilities and/or services and an arrest record resulting in a conviction for offense relating to theft, larceny, embezzlement, rape, assault, homicide, drugs, and pornography, are inherently inconsistent with "reputable and responsible character."

(68) "Restraint" means measures taken to restrict the freedom of movement of a person supported, including:

(a) "Chemical Restraint" - a medication that is prescribed to restrict the freedom of movement of the person supported for the control of extreme violent physical behavior. Chemical restraints are medications used in addition to, or in replacement of, his/her regular drug regimen to control extreme violent behavior. The medications that comprise the regular medical regimen (including PRN medications) of the person supported are not considered chemical restraints, even if the purpose of the medication is to control ongoing behavior;

(b) "Mechanical Restraint" - the application of a mechanical device, material, or equipment attached or adjacent to the body of the person supported, including ambulatory restraints, which he/she cannot easily remove and that restricts freedom of movement or customary access to his/her body. Mechanical restraint does not include the use of:

1. Restrictive devices or manual methods employed by a law enforcement agent or other public safety officer to maintain custody, detention, or public safety during the transport of an individual under the jurisdiction of the criminal justice system or juveniles with charges in the juvenile justice system;

2. Restraints for medical immobilization, adaptive support, or medical protection; or

3. Restrictive devices administratively authorized to ensure the safety of the person supported or others when a person supported who is involuntary committed person must be transported.

(c) "Physical Holding" - the use of bodily contact by staff with a person supported in order to restrict his/her freedom of movement or customary access to his/her body to prevent the behavior of the person supported from becoming dangerous to him/herself, others, or property. Physical holding does not include the use of:

1. Physical touch associated with prompting, comforting, or assisting that does not prevent freedom of movement or customary access to the body of the person supported;

2. Physical escort, which means the temporary touching or holding of the hand(s), wrist(s), arm(s), shoulder, or back for the purpose of inducing the person supported to walk to a safe location; or

3. Physical intervention for the temporary holding of the hand(s), wrist(s), arm(s), shoulders(s), or leg(s), which does not otherwise restrict freedom of movement or access to the body of the person supported, for the purpose of terminating unsafe behavior.

(69) "Restrictive Procedure" means a treatment or procedure that limits the rights of the person supported for the purpose of controlling or modifying problem behavior, including but not limited to, time-out and restraint, and seeks to replace them with behaviors that are adaptive and appropriate.

(70) "Schedule II Drugs" means drugs and other substances, by whatever name (official, common, usual, chemical, or brand) as defined in T.C.A. § 39-17-407 or listed in T.C.A. § 39-17-408.

(71) "Seclusion" means the confinement of a person supported alone in a room or an area where he/she is prevented from leaving. This definition is not limited to instances in which a person supported is confined by a locked or a closed door. Seclusion does not include:

(a) The segregation of a person supported for the purpose of managing biological contagion consistent with the Centers for Disease Control Guidelines;

(b) Confinement to a locked unit where other persons supported are present. Seclusion is not solely confinement of a person supported to an area, but separation of the person supported from other individuals; or

(c) Time-out, a behavior management procedure in which the opportunity for positive reinforcement is withheld, contingent upon the demonstration of undesired behavior. Time-out may involve the voluntary separation of a person supported from others.

(72) "Self-Administration of Medication" means the ability of a person supported to take prescribed or over-the-counter medications without assistance from another individual.

(73) "Shall or Must" means a mandatory provision.

(74) "Should or May" means a suggestion or recommendation.

(75) "Standard Precautions" means an approach to infection control based on the principle that broken skin and mucus membranes, as well as all blood, bodily fluids, and secretions (except sweat) may contain transmittable infectious agents. Standard precautions apply to all people regardless of suspected or confirmed infection status in any setting where care is provided. Current guidelines for standard precautions are published by the Centers for Disease Control and Prevention (CDC).

(76) "Support Coordination" means the assessment, planning, implementation coordination and monitoring of services and supports that assist persons with intellectual and developmental disabilities to develop personal relationships, participate in their community, increase control over their own lives and develop the skills and abilities needed to achieve these goals as specified in the person-centered ISP of the person supported.

(77) "Support Coordination Agency" means a sole proprietorship (someone who owns an unincorporated business by him/herself), partnership, corporation, limited liability company or limited liability partnership providing support coordination.

(78) "Support Coordinator" means a person licensed as a support coordination agency, or an employee or an individual subcontracted by a support coordination agency who is providing support coordination under an arrangement between a person supported and a support coordination agency.

(79) "Time-Out" means a behavior management procedure in which the opportunity for positive reinforcement is withheld, contingent upon the demonstration of undesired behavior. Time-out may involve the voluntary separation of a person supported from individuals.

(80) "Treatment" means a therapeutic process to reduce or eliminate the symptoms and side effects of mental illness, alcohol and/or drug abuse, or dependency disorders through direct observation, assessment, examination, and therapeutic intervention. Treatment services include: screening; clinical assessment; diagnostic evaluation; treatment planning; therapeutic interventions, including individual, family, and group therapy; medication prescription and monitoring; and discharge planning and referral.

(81) "Treatment Review Committee" means a committee to make decisions for a person supported who lacks capacity as defined by T.C.A. § 33-3-218. The composition, duties and responsibilities of Treatment Review Committees are defined by T.C.A. § 33-6-107.

(82) "Vocational Services" means the services provided to persons supported, which involve remunerative work experiences and the provision of vocational activities.

(83) "Volunteer" means an individual who is not paid by the licensee and whose varied skills are used by the licensee to support and supplement the efforts of the paid staff.

(84) "Written" means, as applied to a licensee's records, any generally accepted format, including electronic or paper, used for retaining business or client records.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-01-.02 DEFINITION OF DISTINCT CATEGORIES OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES FACILITIES/SERVICES.**

(1) "Intellectual Disabilities Adult Habilitation Day Facility/Services" means a non-residential facility or service which offers a variety of habilitative activities to adults with intellectual disabilities. Such habilitative activities may range from training activities in independent living to vocational skills depending on the needs of the person supported. This includes adult developmental training, work activity, and sheltered workshop programs, but does not include job placement and supported employment programs. This category is provided in either a center based or a community/home based environment. Each setting requires a separate license.

(2) "Developmental Disabilities Adult Habilitation Day Facility/Service" means a non-residential facility or service which offers a variety of habilitative activities to adults with developmental disabilities. Such habilitative activities may range from training activities in independent living to vocational skills depending on the needs of the person supported. This includes adult developmental training, work activity, and sheltered workshop programs, but does not include job placement and supported employment programs. This category is provided in either a center based or a community/home based environment. Each setting requires a separate license.

(3) "Intellectual and Developmental Disabilities Boarding Home Facility" means a residential facility that offers personal care services to persons with intellectual and/or developmental disabilities, including room, board, and supervision to two (2) or more persons supported unrelated by blood or marriage to the owner or operator. People living in such facilities are capable of self-preservation, able to care for basic self-help needs with minimal assistance, able to care for personal possessions, able to maintain personal living areas in a state of orderliness, able to recognize danger or threat to personal safety, able to maintain behavior which is generally tolerable to the community, and able to attend to minor health care needs.

(4) "Intellectual and Developmental Disabilities Diagnosis and Evaluation Facility" means a non-residential service, which provides personnel and testing resources to perform diagnosis and evaluation of persons supported having, or suspected of having, intellectual and/or developmental disabilities.

(5) "Intellectual and Developmental Disabilities Institutional Habilitation Facility" means a facility which offers, on a regular basis, health-related services for persons supported with intellectual and/or developmental disabilities who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide but, because of physical, intellectual, and/or developmental disabilities, require residential care and services (more than room and board) that involve health-related care under the supervision of a physician. Such a facility also offers an intensive program of habilitative services.

(6) "Intellectual and Developmental Disabilities Placement Services" means a program which provides or arranges regular residential placements, for persons with intellectual and/or developmental disabilities, in the individual home of care providers who are recruited, trained, and supervised by the program. The entity licensed is the program delivering such services rather than the individual homes of the program's care providers. No more than three (3) persons supported may receive services in an individual care provider's home. Such programs are known as foster care, sponsor care, or family model residential care.

(7) "Developmental Disabilities Preschool Facility/Service" means a non-residential service which offers a program of training, habilitation, or care for children with developmental disabilities, or children at risk of developmental disabilities, not of the chronological mandatory age to be enrolled in services of the

Department of Education, and which is designed to teach self-help, socialization, communication, or school readiness skills, or designed to train parents or surrogates in methods and techniques of habilitation. This category of service is provided in either a center based or community based environment. Each setting requires a separate license.

(8) "Intellectual and Developmental Disabilities Residential Habilitation Facility" means a residential facility which provides room and board, and assistance in acquiring, retaining and improving self-help, socialization, adaptive skills, and any other services necessary for a person supported with intellectual and/or developmental disabilities to live in a community setting. No more than four (4) persons supported shall reside in the home unless the home was licensed on or before June 23, 2000. The facility shall provide training in the acquisition of, and assistance in completing skills related to, daily living, personal grooming, cleanliness, household chores, eating, meal preparation, and any other skills necessary based on the needs of the person supported. Any of these services shall be specified in the ISP with specific therapeutic goals. Any professional services delivered in the facility shall be provided by duly licensed staff and specified in the ISP.

(9) "Intellectual and Developmental Disabilities Respite Care Services" means a program which provides or arranges for the temporary support of persons supported with intellectual and/or developmental disabilities in the care of staff recruited, trained, and supervised by the licensee for the purpose of giving relief to the regular caregiver or to provide other assistance to the person supported, his/her family, guardian, or care giver. The licensed entity is the program delivering such services rather than the individual homes of the program's providers. No more than three (3) people can receive this service in one (1) home.

(10) "Intellectual Disabilities Semi-Independent Living Services" means a program which provides services for persons supported with intellectual disabilities, who are able to reside in a housing situation without program staff residing on site. The services of program staff support the home life style of the person supported in order to reside in such housing situations. The program offers and provides regular, and as needed, support services in procuring or monitoring adequate housing for persons supported, supervising home life styles, and assisting in development of higher-order independent living skills. The entity licensed is the program delivering the services rather than the individual dwellings for persons supported.

(11) "Developmental Disabilities Semi-Independent Living Services" means a program which provides services for persons supported with developmental disabilities, who are able to reside in a housing situation without program staff residing on site. The services of program staff support the home life style of the person supported in order to reside in such housing situations. The program offers and provides regular, and as needed, support services in procuring or monitoring adequate housing for persons supported, supervising home life styles, and assisting in development of higher-order independent living skills. The entity licensed is the program delivering the services rather than the individual dwellings for persons supported.

(12) "Intellectual and Developmental Disabilities Supported Living Services" means a service entity which provides support and assistance to individuals with intellectual and/or developmental disabilities, who live in their own homes or apartments but require staff support and assistance to reside in such housing situations. Service entity staff provides support and assistance on a regular basis in accordance with the needs of the person supported living in the home. No more than three (3) persons supported shall reside in the home. The service entity delivering the support is licensed rather than the homes of the person supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

RULES OF THE TENNESSEE
DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES
OFFICE OF LICENSURE

CHAPTER 0465-02-02
LICENSURE ADMINISTRATION AND PROCEDURES

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**0465-02-02-.01 STATEMENT OF AUTHORITY.** The Department of Intellectual and Developmental Disabilities ("DIDD" or "Department") is authorized to license facilities and services operated for the provision of intellectual and developmental disabilities, and personal support services in the State of Tennessee by T.C.A. Title 33, Chapter 2, Part 4.

(1) Notwithstanding any law or rule to the contrary, a residential facility or provider licensed by DIDD to provide residential services to persons with intellectual or developmental disabilities shall not be prohibited from providing residential services to the elderly or adults with physical disabilities, so long as the services are adequate to ensure the health, safety, and welfare of each resident.

(2) Medicaid-reimbursed home and community based service (HCBS) providers are required to comply with the federal home-based and community-based setting final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014).

(a) HCBS providers and facilities licensed on or before March 31, 2015, shall have performed the required Self-Assessment and shall have submitted the same to the respective DIDD Regional Office. Providers who self-reported or were assessed to be non-compliant with the HCBS Settings Rule shall have a completed and validated Provider Transition Plan on file with the respective DIDD Regional Office.

(b) HCBS providers and facilities receiving an initial license on or after April 1, 2015, shall have on file with the DIDD Provider Enrollment Coordinator acceptable policies addressing quality assessment, assurance, and improvement, including a description of how the provider meets compliance with the HCBS Settings Rule (these are required elements which must be submitted with a New Provider Application For Long Term Services).

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.02 TYPES AND CONDITIONS OF LICENSES.**

(1) Initial License - An initial license is issued to a facility or service to give the licensee an opportunity to implement minimum program requirements and to give DIDD an opportunity to evaluate the facilities' or service's compliance performance. Initial licenses will not exceed a period of twelve (12) months.

(2) Full License - A full license is valid for up to one (1) year from the date of issuance and is issued to a facility or service when the licensee demonstrates compliance with the licensure law and applicable rules as determined by DIDD.

(3) Provisional License - A provisional license may be issued to a facility or service when it does not meet all of the requirements for a full license. The Department may grant a provisional license, for a period not to exceed six (6) months, if all of the conditions below are satisfied:

(a) The facility or service is making a diligent effort to comply with the licensure law and rules. A "diligent effort to comply with rules" is determined by past performance of the facility or service in meeting rules and correcting deficiencies and by commitments to correct existing deficiencies within time frames agreed to by the Department;

(b) The continued operation of the facility or service will not endanger the health or safety of

persons supported.

(c) The facility or service has submitted an acceptable compliance plan specifying how and when deficiencies will be corrected. The Department will consider the seriousness of the deficiencies and the past performances of the facility or service in determining whether the compliance plan is acceptable; and

(d) The facility or service has substantially met the commitments made in the preceding year's compliance plan, if any.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.03 UNLAWFUL OPERATION.**

No organization may begin the provision of service delivery until the Department issues a license. Providing intellectual and developmental disability, or personal support services without a license is unlawful and may result in civil and/or criminal sanctions pursuant to T.C.A. §§ 33-2-405 and 33-2-412.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.04 APPLICATION FORMS.**

(1) The application for a license is to be made on forms prepared and supplied to the applicant by the Department.

(2) Each application for a license must be submitted in a legible format with all the information requested on the application. The information gathered by the Department on the application is needed pursuant to T.C.A. § 33-2-406 to determine the applicant's responsible and reputable character and the applicant's ability to meet the minimum standards for the operation of a facility or service.

(3) The information to be supplied to the Department is as follows:

(a) The name, address, and other background and identifying information of the applicant;

(b) A description of the location, design, and type of facility or service to be licensed;

(c) The name, address, and other background and identifying information of the individual or individuals responsible for the operation of the facility or service to be licensed, including social security number, date of birth, place of residence during the past five (5) years, place of birth, proof of citizenship or evidence of legal immigration status, and criminal background check;

(d) Personal character references;

(e) The signature of the licensee applicant or of the individual charged by the licensee applicant for certifying the correctness and completeness of the application and for ensuring compliance with the licensure rules; and

(f) Any such other information as the Department may require.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.05 FEES.**

(1) The applicant must submit fees for the processing of the application prior to the Department's determination to grant or to deny licensure. Each initial and renewal application for licensure must be submitted with the appropriate fees. All fees submitted are non-refundable. The fee rate is based on

the number of distinct categories of service or facility, as applicable, to be operated at each site. For a residential site, the fee rate is based on the number of beds to be licensed. A fee must be submitted for each facility and/or service for which licensure is being sought under the following schedule:

| Non-Residential Facility Fees Per Site: | | |
|---|---|---|
| One (1) | Distinct Category of Service or Facility | $ 810.00 |
| Two (2) | Distinct Categories of Services and/or Facilities | $ 1,010.00 |
| Three (3) | Distinct Categories of Services and/or Facilities | $ 1,220.00 |
| Four (4) | Distinct Categories of Services and/or Facilities | $ 1,420.00 |
| More Than (4) | Distinct Categories of Services and/or Facilities | $ 1,620.00 |

| Residential Facility Fees Per Site: | |
|---|---|
| Institutional Habilitation Facilities (per bed) | $ 175.00 |

| All Other Residential Facilities: | |
|---|---|
| 2-3 Beds | $ 200.00 |
| 4-10 Beds | $ 280.00 |
| 11-15 Beds | $ 410.00 |
| 16-50 Beds | $ 810.00 |
| more than 50 Beds | $ 1,220.00 |

(2) In addition to the fees associated with initial and renewal applications outlined above, other fees may be charged as follows:

(a) Inspection - a fee of fifty dollars ($50.00) for the inspection or re-inspection of any facility or service.

(b) Change of Status - a fee of one hundred dollars ($100.00) for changes in:

1. Organization Name;

2. Executive Director;

3. Bed Capacity; or

4. Life Safety Occupancy/Classification.

(c) Relocation - a fee of three hundred dollars ($300.00) for any change in the physical address of a facility service.

(3) The Department shall invoice the applicant or licensee the appropriate fee(s). The applicant or licensee shall pay the fee(s) within thirty (30) days after receipt of the invoice, unless the current license expires before the end of the thirty (30) day period. If the current license expires before the end of the thirty (30) day period, the licensee shall pay the fee(s) before the expiration of the current license.

(4) The Department may withhold the issuance of a license or suspend an existing license pending the payment of fees.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.06 APPLICATION PROCESS FOR INITIAL LICENSE.**

(1) The applicant must submit application forms as required by the Department.

(2) The applicant must submit the required fees for application processing.

(3) The applicant is responsible for any fees charged by other regulatory agencies whose inspection of the facility or service is necessary for the issuance of licenses.

(4) Upon receipt of the completed application and the required fees, the Department will arrange for needed inspections of the proposed site or sites, when applicable.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.07 APPLICATION PROCESS FOR LICENSE RENEWAL.**

(1) Prior to the expiration of an initial, full, or provisional license, the Department will notify the licensee of the need to submit an application for license renewal. The Department will advise the licensee of the information, fees, and the documents needed to process the renewal application.

(2) The applicant must submit the renewal application, fees, and other information required by licensure.

(3) The applicant is responsible for any fees charged by other regulatory agencies whose inspection of the facility or service is necessary for the issuance of licenses.

(4) The Department, when applicable, will conduct or arrange for inspections of the facility's or service's current life safety and environmental conditions, and review the facility's or service's program performance history. Dates for unannounced inspections will be random and will vary from year to year.

(5) Upon receipt of the application material and the required fees, the Department will review the application material, the current life safety and environmental conditions, when applicable, and the performance history of the facility or service and take one of the following actions:

(a) If the Department determines that all facilities or services operated by the licensee are in compliance with the applicable licensure law and rules, then a full license will be issued;

(b) If the Department determines that all facilities or services operated by the licensee do not comply with the applicable licensure law and rules, a provisional license may be issued covering the facility or service not in full compliance; or

(c) If the Department determines that a license should not be issued to one (1) or more facilities or services operated by the licensee, the licensee shall be notified of the denial of licensure. Within fifteen (15) calendar days of such notification of denial of licensure, the licensee may file a written request for a hearing before the Licensure Review Panel on the denial.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.08 DISTINCT CATEGORIES OF FACILITIES AND SERVICES.**

The licensure rules identify and define distinct categories of facilities or services. These facilities and services must meet applicable life safety and environmental rules, as well as minimum program rules based on the type of program services and the needs of the persons supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.09 NUMBER OF LICENSES REQUIRED.**

Each licensee will be issued one (1) license for each site at which the licensee is operating a facility or service. The license for each site will indicate what category or categories of facility and/or service is authorized to be operated at that site. However, when a licensee operates more than one (1) category at a single site, two (2) licenses may be issued if one (1) or more of the categories at the site require an initial or a provisional license, and one (1) or more are eligible for a full license.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.10 CHANGE OF OWNERSHIP OR LOCATION.**

Licenses are not assignable or transferable except as provided by law. A new application must be made and a new license issued before services are provided when there is a change in the ownership of a facility/service or a change of location.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.11 TIME LIMITS.**

Upon inspection of any facility or service making application for or holding a license, the Department may allow a reasonable time period for the facility or service to correct any deficiencies that are found by inspection.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.12 DEEMED COMPLIANCE.**

(1) A facility or service which is accredited or certified by any of the following may be deemed by the Department to be in compliance ("deemed compliance status") with applicable licensure program requirements:

(a) The Joint Commission (TJC), formerly Joint Commission on Accreditation of Health Care Organizations (JCAHO);

(b) Council on Accreditation of Rehabilitation Facilities (CARF);

(c) Social Security Act, Title XIX, Public Law 89-98, as amended (Medicaid) for Intermediate Care Facilities for the Mentally Retarded (ICF/IID) only;

(d) The Accreditation Council on Services for People with Disabilities;

(e) Council on Accreditation for Children and Family Service;

(f) National Commission on Accreditation for Special Education Services (NCASES);

(g) Council on Quality and Leadership (CQL); or

(h) Department of Education Early Intervention (Certification for center based facilities, Approval for community based facilities).

(2) In addition, a licensee that received a rating of Fair or above (or their equivalents) from their most recent survey by the DIDD Quality Assurance unit may be deemed to be in compliance ("deemed compliance status") with applicable licensure program requirements.

(3) To be considered for a deemed compliance status determination under this section, the licensee must

submit written and official evidence of accreditation, certification, and/or acceptable survey results to the Department including any cited deficiencies with a plan of correction.

(4) Licensees receiving deemed compliance status must also demonstrate compliance with the life safety and environmental rules. Deemed compliance status of the licensee does not alter the operator's obligation to correct any deficiencies cited during the unannounced inspections required by T.C.A. § 33-2-413, or to cooperate with investigations conducted by the Department of reports of abuse, dereliction, or deficiency in the operation of the facility or service. Notwithstanding deemed compliance of the licensee is subject to the suspension or revocation of its license under the terms and procedures established in T.C.A. § 33-2-407 and the rules of this chapter.

(5) Pursuant to T.C.A. § 33-2-403(c), a facility or service which can demonstrate compliance with regulations and standards by a previously acquired license from another state agency is considered in compliance with rules promulgated by the Department to the extent that duplicate inspection and enforcement is necessary.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.13 ACCESS TO PREMISES AND INFORMATION.**

With or without giving notice, representatives of the Department shall have the right to enter upon or into the premises of any facility or service providing intellectual and/or developmental disabilities or personal support services in order to make inspections deemed necessary to determine compliance with licensure law and rules. The licensee must comply with all reasonable requests of the Department and allow it to obtain information from third parties, including, but not limited to, the person supported, and/or to review all records of the facility or service.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.14 GROUNDS FOR DENIAL, REVOCATION, OR SUSPENSION.**

(1) The maintenance and renewal of a license is contingent upon evidence of continued compliance with rules and regulations. The Department may deny, suspend, or revoke a license on any of the following grounds:

(a) Violation of licensure law or rules;

(b) Permitting, aiding, or abetting the commission of any illegal act in a licensed facility or service;

(c) Conduct or practice detrimental to the welfare of a person supported by a licensed or service;

(d) The submission of false information to the Department; or

(e) The use of subterfuge (e.g., filing through a second party after an individual has been denied a license).

(2) Unless the Department finds that summary suspension of a license is necessary, the procedure for revocations, suspension, and denials is as follows:

(a) The licensee shall be notified in writing of the basis for the revocation, suspension or denial.

(b) Within fifteen (15) days of the notification the licensee may file a written request for review by the Licensure Review Panel appointed under T.C.A., Title 33 Part. 2. Review shall be held at the earliest possible date.

(c) The Licensure Review Panel shall report its recommendations to the Commissioner of the Department. The Commissioner shall determine whether the original action shall remain effective and notify the licensee.

(d) Within fifteen (15) days of notification the licensee may file a written request for hearing before the Department. The hearing shall be conducted under the U.A.P.A. Title 4 Chapter 5.

(3) Summary suspension may only occur when the Department determines that continued operation of a licensed facility or service presents an immediate threat to the health, safety or welfare of persons supported. When a summary suspension occurs, proceedings for revocation or other action against the licensee shall be promptly instituted and determined in accordance with the Uniform Administrative Procedures Act.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.15 EXPIRATION OF LICENSES.**

The expiration date of all licenses issued by the Department will be indicated on the face of the license. However, when a licensee has made timely and sufficient application for a new license (including payment of the required fees), the existing license does not expire until the status of the application has been determined by the Department. When the application is denied or the terms of the new license limited, the existing license does not expire until the last day for seeking review of the order or a later date fixed by an order of the reviewing court.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.16 POSTING OF LICENSES.**

The license certificate must be posted for public viewing in a conspicuous place at the facility or service.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.17 SURRENDER REQUIREMENTS.**

The license certificate must be surrendered to the Department upon revocation or suspension of the license, upon transfer of ownership of the facility or service, or when the facility or service otherwise ceases to operate.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.18 EXCLUSIONS FROM LICENSURE.**

(1) The following facilities or services are excluded from the licensure jurisdiction of the Department:

(a) A facility that is appropriately licensed by the Department of Health, and whose primary purpose is not the provision of intellectual and/or developmental disability services.

(b) A satellite hospital, as defined by rules of the Department of Health, whose primary purpose may be the provision of intellectual, mental, or developmental disability services, and other facilities appropriately licensed by the Department of Health pursuant to T.C.A. § 68-11-201, *et. seq.*

(c) A facility which is operated by the Department of Education, the Department of Correction, the Department of Human Services, or the Department of Children's Services, and that affirmatively states that its primary purpose is not the provision of intellectual and/or developmental disabilities services or personal support services.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.19 WAIVER AUTHORITY.**

The Department may waive any rule determined to be irrelevant or to pose a hardship. A hardship waiver may be granted only when strict enforcement of a particular requirement would not be in the best interest of persons supported. All waivers granted will be made in writing and entered in the official record of the licensed service or facility. This written document shall include the justification for the waiver. All waivers will be reviewed by the Department and the Licensure Review Panel.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.20 INVESTIGATION OF ABUSE, DERELICTION, OR DEFICIENCY IN OPERATION OF A FACILITY OR SERVICE.**

(1) The Department will investigate reports or suspicion of abuse, dereliction, or deficiency in the operation of a licensed service or facility in accordance with T.C.A. § 33-2-416.

(2) The licensee shall post a sign in the facility or service displaying the Department's regional toll-free telephone number which informs persons supported, families, and the public that they may file a complaint with the Department. Any exemptions to posting signs will be determined by the Department.

(3) The licensee must report to the Department any serious allegations or suspicion of abuse, dereliction, or deficiency in the operation of the facility or service.

(4) The licensee must report to the Department any significant occurrences involving the facility/service or person supported and staff. "Significant occurrences" may include, but is not be limited to, occurrences such as accidents, injuries, or death regarding the person supported; fires, loss of heat/air conditioning, and/or other structural problems with the building(s).

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.21 NOTICE OF NON-COMPLIANCE AND PLAN OF COMPLIANCE.**

(1) The Department will give a Notice of Non-Compliance to the licensee on a form prepared and provided by the Department when an inspection or investigation of a licensee reveals non-compliance with licensure law or rules.

(2) The licensee must submit, by the date specified on the Notice of Non-Compliance, a written Plan of Compliance in response to the Notice of Non-Compliance.

(3) The licensee's written Plan of Compliance shall include a description of the action taken or to be taken in correcting deficiencies, and the date by which each corrective action is completed or to be completed.

(4) The Department will notify the licensee in writing whether the Plan of Compliance is acceptable and the basis for the decision. When the Plan of Compliance is not acceptable, the Department and licensee may continue to seek agreement. If agreement cannot be reached in a reasonable time, as determined by the Department, the Department may institute sanctions against the license.

(5) The licensee shall maintain copies of the most recent compliance plans in a central location.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.22 UNANNOUNCED INSPECTION.**

The Department shall make at least one (1) unannounced inspection of each licensed facility/service yearly.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.23 ASSISTANCE TO PERSONS SUPPORTED WHEN A LICENSE IS DENIED, SUSPENDED, OR REVOKED.**

When a license is to be denied, suspended, or revoked, the Department will notify the appropriate state and local agencies, which may be able to provide assistance to persons supported by coordinating placement and/or services.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-02-.24 CIVIL PENALTIES FOR LICENSEES.**

(1) The Department may, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a licensure law or rule.

(2) The procedure for imposing a civil penalty shall be as follows:

(a) Department staff shall verbally notify a licensee that a civil penalty may be imposed due to the licensee's violation of a licensure law or rule.

(b) Within six (6) business days of the verbal notification, the licensee shall be notified in writing of the basis for the civil penalty and the amount imposed.

(c) Within fifteen (15) days of the notification the licensee may file a written request for review by the Licensure Review Pane appointed under T.C.A., Title 33 Part. 2. Review shall be held at the earliest possible date.

(d) The Licensure Review Panel shall report its recommendations to the Commissioner of the Department. The Commissioner shall determine whether the original action shall remain effective and notify the licensee.

(e) Within fifteen (15) days of notification the licensee may file a written request for hearing before the Department. The hearing shall be conducted under the U.A.P.A. Title 4 Chapter 5.

(f) The civil penalty shall be effective beginning on the date the written notification of the decision is issued.

(g) The Department may impose a penalty for each day a licensee remains in violation of a licensure rule, regulation, ordinance or law. Each licensure law, rule, regulation or ordinance violated shall constitute a separate offense.

(3) In determining the amount of the daily penalty, the commissioner may consider the following:

(a) The severity of the violation and the harm or risk of harm to a person supported;

(b) The willfulness of the violation;

(c) The circumstances leading to the violation;

(d) The efforts made by the licensee to attain compliance;

(e) Any extraordinary enforcement cost incurred by the Department;

(f) The interest of the public; and

(g) Whether the civil penalty imposed will be an economic deterrent to the non-compliant activity.

(4) The Department may impose a civil penalty in accordance with the following schedule:

(a) First Offense

1. Priority 1/Critical Offenses - $500.00

2. All other offenses - $250.00

(b) Second or subsequent offense of same type within a twelve (12) month period:

1. Priority 1/Critical Offense - $2,500.00 to $5,000.00

2. All other offenses - $500.00 to $2,500.00

(5) The Department may continue to work with a licensee to seek compliance with any licensure law or rule. The Department may waive any penalty determined by the Department to impose a hardship. A hardship waiver of a civil penalty may be granted only when strict enforcement of a particular requirement would not be in the best interest of persons supported.

(6) A "Priority 1 offense," for the purposes of these rules is defined as a substantiated investigation involving the death of a person supported; neglect, physical or sexual abuse of the person supported by the licensee or staff; and/or a serious injury to a person supported. A "critical offense," for purposes of these rules, is defined as those Department-designated administrative rules whose violation could result in serious harm to the person supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-3-404, 33-2-407.* ***Administrative History:***

**RULES OF THE TENNESSEE**
**DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**OFFICE OF LICENSURE**

**CHAPTER 0465-02-03**
**APPLICATION OF RULES FOR DISTINCT SERVICE CATEGORIES**

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**0465-02-03-.01 INTELLECTUAL DISABILITIES ADULT HABILITATION DAY FACILITIES/SERVICES**

(1) The governing body of a center based Intellectual Disabilities Adult Habilitation Day Facility/Service, which provides services for four (4) or more persons who are not capable of self-preservation must provide services and facilities, which comply with the following rules:

(a) Rule 0465-02-04-.02(2) Health Care Occupancies;

(b) Chapter 0465-02-05 Adequacy of Environment and Services;

(c) Chapter 0465-02-06 Minimum Program Requirements for All Facilities/Services; and

(d) Chapter 0465-02-07 Minimum Program Requirements for Intellectual Disabilities Adult Habilitation Day Facilities/Services.

(2) The governing body of a center based Intellectual Disabilities Adult Habilitation Day Facility/Service must provide services and facilities which comply with the following rules:

(a) As determined by the Department's Office of Licensure:

1. Rule 0465-02-04-.03 Educational Occupancies;

2. Rule 0465-02-04-.05 Industrial Occupancies; and

3. Rule 0465-02-04-.09 Daycare Occupancies.

(b) Chapter 0465-02-05 Adequacy of Environment and Services;

(c) Chapter 0465-02-06 Minimum Program Requirements for All Facilities/Services;

(d) Chapter 0465-02-07 Minimum Program Requirements for Intellectual Disabilities Adult Habilitation Day Facilities/Services; and

(e) If services are to be provided to one (1) or more mobile non-ambulatory person, Rule 0465-02-04.07 Mobile Non-Ambulatory.

(3) The governing body of a community/home based Intellectual Disabilities Adult Habilitation Day Facility/Service must provide services, which comply with the following rules:

(a) Rule 0465-02-04-.04 Business Occupancies;

(b) Chapter 0465-02-05 Adequacy of Environment and Services;

(c) Chapter 0465-02-06 Minimum Program Requirements for All Facilities/Services; and

(d) Chapter 0465-02-07 Minimum Program Requirements for Intellectual Disabilities Adult Habilitation Day Facilities/Services.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-03-.02 DEVELOPMENTAL DISABILITIES ADULT HABILITATION DAY FACILITIES/SERVICES**

(1) The governing body providing Developmental Disabilities Adult Habilitation Day under this chapter shall comply with the following rules:

(a) Chapter 0465-02-08 Minimum Program Requirements for Developmental Disabilities Adult Habilitation Day Facilities/Services;

(b) Applicable Life Safety Rules for Educational Occupancies found in Chapter 0465-02-04;

(c) Chapter 0465-02-06 Minimum Program Requirements for All Facilities/Services;

(d) Rule 0465-02-04-.07 Mobile Non-Ambulatory Rule, if applicable; and

(e) Applicable rules in Chapter 0465-02-05 Adequacy of Environment and Services.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-03-.03 DEVELOPMENTAL DISABILITIES PRESCHOOL FACILITIES/SERVICES.**

(1) The governing body of a center based Developmental Disabilities Preschool Facility/Service must provide services and facilities, which comply with the following rules:

(a) Rule 0465-02-04-.03(2) Educational Occupancies;

(b) Chapter 0465-02-05 Adequacy of Environment and Services;

(c) Chapter 0465-02-06 Minimum Program Requirements for All Facilities/Services; and

(d) Chapter 0465-02-20 Minimum Program Requirements for Developmental Disabilities Preschool Facilities/Services.

(2) The governing body of a community based Developmental Disabilities Preschool Facility/Service must provide services and facilities which comply with the following rules:

(a) Rule 0465-02-04-.04 Business Occupancies;

(b) Chapter 0465-02-05 Adequacy of Environment and Services;

(c) Chapter 0465-02-06 Minimum Program Requirements for All Facilities/Services; and

(d) Chapter 0465-02-20 Minimum Program Requirements for Developmental Disabilities Preschool Facilities/Services.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-03-.04 DIAGNOSIS AND EVALUATION FACILITIES.**

(1) The governing body of an Intellectual and Developmental Disabilities Diagnosis and Evaluation facility must provide services and facilities, which comply with the following rules:

(a) Rule 0465-02-04-.04(2) Business Occupancies;

(b) Chapter 0465-02-05 Adequacy of Environment and Services;

(c) Chapter 0465-02-06 Minimum Program Requirements for All Facilities/Services; and

(d) Chapter 0465-02-09 Minimum Program Requirements for Intellectual and Developmental Disabilities Diagnosis and Evaluation Facilities.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-03-.05 INSTITUTIONAL HABILITATION FACILITIES.**

(1) The governing body of an Intellectual and Developmental Disabilities Institutional facility must provide services and facilities, which comply with the following rules:

(a) Rule 0465-02-04-.02(2) Health Care Occupancies;

(b) Chapter 0465-02-05 Adequacy of Environment and Services;

(c) Chapter 0465-02-06 Minimum Program Requirements for All Facilities/Services; and

(d) Chapter 0465-02-10 Minimum Program Requirements for Intellectual and Developmental Disabilities Institutional Habilitation Facilities.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-03-.06 RESIDENTIAL HABILITATION FACILITIES.**

(1) The governing body of an Intellectual and Developmental Disabilities Residential Habilitation facility which provides services for four (4) or more persons who are not capable of self-preservation must provide services and facilities, which comply with the following rules:

(a) Rule 0465-02-04-.02(2) Health Care Occupancies;

(b) Chapter 0465-02-05 Adequacy of Environment and Services;

(c) Chapter 0465-02-06 Minimum Program Requirements for All Facilities/Services; and

(d) Chapter 0465-02-11 Minimum Program Requirements for Intellectual and Developmental Disabilities Residential Habilitation Facilities/Services.

(2) The governing body of an Intellectual and Developmental Disabilities Residential Habilitation facility which provides services for one to three (1-3) persons who are not capable of self-preservation must provide services and facilities, which comply with the following rules:

(a) Rule 0465-02-04-.11 Residential Occupancies;

(b) Chapter 0465-02-05 Adequacy of Environment and Services;

(c) Chapter 0465-02-06 Minimum Program Requirements for All Facilities/Services; and

(d) Chapter 0465-02-11 Minimum Program Requirements for Intellectual and Developmental Disabilities Residential Habilitation Facilities.

(3) The governing body of an Intellectual and Developmental Disabilities Residential Habilitation facility which provides services to one to three (1-3) persons must provide services and facilities, which comply with the following rules:

(a) Rule 0465-02-04-.11 One and Two-Family Dwellings Occupancies;

(b) Chapter 0465-02-05 Adequacy of Environment and Services;

(c) Chapter 0465-02-06 Minimum Program Requirements for All Facilities/Services;

(d) Chapter 0465-02-11 Minimum Program Requirements for Intellectual and Developmental Disabilities Residential Habilitation Facilities; and

(e) If services are to be provided to one (1) or more persons who are mobile non-ambulatory, Rule 0465-02-04.07 Mobile Non-Ambulatory.

(4) The governing body of an Intellectual and Developmental Disabilities Residential Habilitation facility providing services to four (4) or more persons must provide services and facilities, which comply with the following rules:

(a) Rule 0465-02-04-.06(2) Residential Occupancies - Board and Care;

(b) Chapter 0465-02-05 Adequacy of Environment and Services;

(c) Chapter 0465-02-06 Minimum Program Requirements for All Facilities/Services;

(d) Chapter 0465-02-11 Minimum Program Requirements for Intellectual and Developmental Disabilities Residential Habilitation Facilities; and

(e) If services are to be provided to one (1) or more persons who are mobile non-ambulatory, Rule 0465-02-04.07 Mobile Non-Ambulatory.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-03-.07 BOARDING HOME FACILITIES.**

(1) The governing body of an Intellectual and Developmental Disabilities Boarding Home facility which provides services to two (2) or three (3) persons must provide services and facilities, which comply with the following rules:

(a) Rule 0465-02-04.10 One and Two-Family Dwellings Occupancies;

(b) Chapter 0465-02-05 Adequacy of Environment and Services;

(c) Chapter 0465-02-06 Minimum Requirements for All Facilities/Services;

(d) Chapter 0465-02-12 Minimum Program Requirements for Intellectual and Developmental Disabilities Boarding Home Facilities; and

(e) If services are to be provided to one (1) or more persons who are mobile non-ambulatory, Rule 0465-02-04.07 Mobile Non-Ambulatory.

(2) The governing body of an Intellectual and Developmental Disabilities Boarding Home facility providing services to four (4) or more persons must provide services and facilities, which comply with the following rules:

(a) Rule 0465-02-04-.06(2) Residential Occupancies - Board and Care;

(b) Chapter 0465-02-05 Adequacy of Environment and Services;

(c) Chapter 0465-02-06 Minimum Program Requirements for All Facilities/Services;

(d) Chapter 0465-02-12 Minimum Program Requirements for Intellectual and Developmental Disabilities Boarding Home Facilities; and

(e) If services are to be provided to one (1) or more persons who are mobile non-ambulatory, Rule 0465-02-04.07 Mobile Non-Ambulatory.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-03-.08 PLACEMENT SERVICES.**

(1) The governing body of an Intellectual and Developmental Disabilities Placement Services must provide services, which comply with the following rules:

(a) Rule 0465-02-04-.04 Business Occupancies, for the location from which the licensed program services are to be delivered. The licensed program services may be delivered from a location which is used for other purposes, such as a facility licensed by the Department, if such facility meets the provisions of Rule 0465-02-04-.01 Life Safety Requirements for the primary use of the building;

(b) Chapter 0465-02-06 Minimum Program Requirements for All Facilities/Services; and

(c) If services are to be provided to one (1) or more persons who are mobile non-ambulatory, Rule 0465-02-04-.07 Mobile Non-Ambulatory.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-03-.09 RESPITE CARE SERVICES.**

(1) The governing body of an Intellectual and Developmental Disabilities Respite Care Services facility must provide services which comply with the following rules:

(a) Rule 0465-02-04-.04 Business Occupancies, for the location from which the licensed program services are to be delivered. The licensed program services may be delivered from a location which is used for other purposes, such as a facility licensed by the Department, if such facility meets the provisions of Rule 0465-02-04-.01 Life Safety Requirements for the primary use of the building;

(b) Chapter 0465-02-.06 Minimum Program Requirements for All Facilities/Services;

(c) Chapter 0465-02-.14 Minimum Program Requirements for Intellectual and Developmental Disabilities Respite Care Services; and

(d) If services are to be provided to one (1) or more persons who are mobile non-ambulatory, Rule 0465-02-04.07 Mobile Non-Ambulatory.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-03-.10 SEMI-INDEPENDENT LIVING SERVICES.**

(1) The governing body of an Intellectual and Developmental Disabilities Semi-Independent Living services provider must provide services and facilities which comply with the following rules:

(a) Rule 0465-02-04-.04 Business Occupancies, for the location from which the licensed program services are to be delivered. The licensed program services may be delivered from a location which is used for other purposes, such as a facility licensed by the Department, if such facility meets the provisions of Rule 0465-02-04-.01 Life Safety Requirements for the primary use of the building;

(b) Chapter 0465-02-.06 Minimum Program Requirements for All Facilities/Services;

(c) Chapter 0465-02-.15 Minimum Program Requirements for Intellectual Disabilities Semi-Independent Living Services; and

(d) If services are to be provided to one (1) or more persons who are mobile non-ambulatory, Rule 0465-02-04.07 Mobile Non-Ambulatory.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-03-.11 PERSONAL SUPPORT SERVICES AGENCIES.**

(1) The licensee providing personal support services under this chapter shall comply with and provide services that comply with the following rules:

(a) Chapter 0465-02-06 Minimum Program Requirements for All Facilities/Services;

(b) Chapter 0465-02-02 Licensure Administration and Procedures;

(c) Chapter 0465-02-17 Minimum Program Requirements for Intellectual and Developmental Disabilities Personal Support Services Agencies; and

(d) Chapter 0465-02-06-.03 Minimum Program Requirements for All Facilities/Services, Financial Management.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-03-.12 SUPPORTED LIVING SERVICES.**

(1) The governing body of an Intellectual and Developmental Disabilities Supported Living Services provider must comply with and provide services, which comply with the following rules:

(a) Rule 0465-02-04-.04 Business Occupancies, for the location from which the licensed program services are to be delivered. The licensed program services may be delivered from a location which is used for other purposes including, but not limited to a facility licensed by the Department, if such facility meets the provisions of Rule 0465-02-04-.01, Life Safety Requirements for the primary use of the building;

(b) Chapter 0465-02-06 Minimum Program Requirements for All Facilities/Services;

(c) Chapter 0465-02-18 Minimum Program Requirements for Intellectual and Developmental Disabilities Supported Living Services; and

(d) If services are to be provided to one (1) or more persons who are mobile non-ambulatory, Rule 0465-02-04-.07 Mobile Non-Ambulatory.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-03-.13 SUPPORT COORDINATION AGENCIES.**

(1) The licensee providing support coordination shall comply with and provide services that comply with the following rules:

(a) Chapter 0465-02-02 Licensure Administration and Procedures;

(b) Chapter 0465-02-04-.04 Life Safety Licensure Rules, Business Occupancy;

(c) Chapter 0465-02-05 Adequacy of Environment and Services;

(d) Chapter 0465-02-06 Minimum Program Requirements for All Facilities/Services; and

(e) Chapter 0465-02-19 Minimum Program Requirements for Intellectual and Developmental Disabilities Support Coordination Agencies.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**RULES OF THE TENNESSEE**
**DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**OFFICE OF LICENSURE**

**CHAPTER 0465-02-04**
**LIFE SAFETY LICENSURE RULES**

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**0465-02-04-.01 LIFE SAFETY REQUIREMENTS.**

For purposes of life safety, licensees of the Department of Intellectual and Developmental Disabilities are required to meet the appropriate standards of the edition of the National Fire Protection Association Life Safety Code currently in use by the Office of the State Fire Marshal as set forth in Rule 0780-02-02-.01 of the Rules of the Department of Commerce and Insurance. In addition, all residential settings must be physically accessible to persons supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-04-.02 HEALTH CARE OCCUPANCIES.**

(1) Definition – Health Care Occupancies are used for purposes such as medical or other treatment or care of persons with physical, intellectual, or developmental disabilities, disease, or infirmity, and for the care of children, persons recovering from an illness or operation, or persons of advanced age. Health Care Occupancies provide sleeping facilities for the occupants or are occupied by persons who are mostly incapable of self-preservation because of age, physical or intellectual disability, or because of security measures not under the occupants' control. Examples of licensees required to meet health care occupancy standards are the following:

(a) Intellectual and Developmental Disabilities Institutional Habilitation Facility.

(b) Any residential facility serving four (4) or more persons who are not capable of self-preservation and any non-residential facility serving four (4) or more persons six (6) years of age or older who are not capable of self-preservation.

(2) Criteria - For the purpose of life safety, licensees required to meet Health Care Occupancies must comply with the applicable standards of the Life Safety Code of the National Fire Protection Association, Health Care Occupancies, or equivalent standards hereafter adopted by the Office of the State Fire Marshal.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-04-.03 EDUCATIONAL OCCUPANCIES.**

(1) Definition - Educational Occupancies include all buildings used for gathering of groups of persons supported for purposes of instruction. An example of a facility required to meet educational occupancy standards is a Pre-School Facility-Center Based.

(2) Criteria - For the purpose of life safety, licensees required to meet educational occupancies must comply with the following:

(a) The applicable standards of the Life Safety Code of the National Fire Protection Association, Educational Occupancies, or equivalent standards hereafter adopted by the Office of the State Fire Marshal; and

1. Document fire-safety drills which shall be conducted:

(i) Monthly at unexpected times and under varying conditions; and

(ii) Under direct staff supervision.

2. Document that all smoke-detection devices are tested at least every six (6) months.

3. Document that all fire extinguishers are properly maintained and serviced.

4. Document instruction to staff upon employment and to persons supported upon

admission in fire evacuation procedures.

5. Adopt and post a policy on smoking in specified areas.

6. Suspended unit electric heaters may be used, except in means of egress, provided such heaters are located high enough to be out of the reach of persons using the area and are approved for use by the Office of Licensure.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-04-.04 BUSINESS OCCUPANCIES.**

(1) Definition - Business Occupancies are used for the transaction of business (other than that covered under Mercantile), for the keeping of accounts and records, and similar purpose. Examples of a facility required to meet business occupancy standards are the following:

(a) Adult Habilitation Facility/Services-Community/Home Based;

(b) Developmental Disability Pre-School Facility/Services-Community Based;

(c) Placement Services;

(d) Respite Care Services;

(e) Supported Living Services; and

(f) Semi-Independent Living Services.

(2) Criteria - For the purpose of Life Safety, licensees required to meet business occupancies must comply with the applicable standards of the Life Safety Code of the National Fire Protection Association, Business Occupancies, or equivalent standards hereafter adopted by the Office of the State Fire Marshal.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-04-.05 INDUSTRIAL OCCUPANCIES.**

(1) Definition - Industrial Occupancies include factories making products of all kinds and properties devoted to operations such as processing, assembling, mixing, packaging, finishing or decorating, and repairing. An example of facilities required to meet industrial occupancy standards is an Adult Habilitation Facility/Services-Center Based.

(2) Criteria - For the purpose of Life Safety, licensees required to meet industrial occupancies must comply with the following:

(a) The applicable standards of the Life Safety Code of the National Fire Protection Association, Industrial Occupancies, or equivalent standards hereafter adopted by the Office of the State Fire Marshal; and

1. Document fire-safety drills which shall be conducted:

(i) Monthly at unexpected times and under varying conditions, and

(ii) Under direct staff supervision.

2. Document that all smoke-detection devices are tested monthly and that the batteries are changed when no longer functional.

3. Document that all fire extinguishers are properly maintained and serviced.

4. Document instruction to staff upon employment and to persons supported upon admission in fire evacuation procedures.

5. Adopt a policy on smoking and ensure designated areas are posted.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-04-.06 RESIDENTIAL OCCUPANCIES - BOARD AND CARE.**

(1) Definition - Board and Care facilities include a building or part thereof that is used for the lodging and boarding of four (4) or more persons supported, not related by blood or marriage to the owner or operator, to provide care services. Examples of facilities required to meet board and care occupancy standards are an Intellectual and Developmental Disabilities Boarding Home Facility and an Intellectual and Developmental Disabilities Residential Habilitation Facility.

(2) Criteria - For the purpose of Life Safety, licensees required to meet Board and Care occupancy must comply with the following:

(a) Applicable standards of the Life Safety Code of the National Fire Protection Association, Residential Board and Care Occupancies, or equivalent standards hereafter adopted by the Office of the State Fire Marshal; and

1. Provide at least two hundred (200) square feet, gross, of occupiable space per person.

2. Provide at least:

(i) Eighty (80) square feet per person of bedroom space for single occupancy; or

(ii) Sixty (60) square feet per person of bedroom space for multiple occupancy.

3. Not allow multiple occupancy which exceeds four (4) persons per bedroom.

4. Equip any stairways with emergency lighting.

5. Provide emergency lighting in any corridors used as means of egress.

6. Not use unvented gas heaters.

7. Use portable electric space heaters only in emergency situations and only under conditions specified by the Office of Licensure.

8. Allow the use of fireplaces only under the following conditions:

(i) For recreation or therapy only;

(ii) Not used as a primary source of heat;

(iii) Used in activity or living rooms;

(iv) Under proper supervision and in accordance with specific written fire safety procedures; and

(v) Fireplaces may be installed and used only in areas other than sleeping areas of persons supported, provided the fireplace is equipped with a heat-tempered glass fireplace enclosure guaranteed against breakage up to a temperature of six

hundred and fifty (650) degrees Fahrenheit.

9. Allow the use of portable cooking devices in the kitchen only.

10. Document fire-safety drills which shall be conducted:

    (i) Monthly at unexpected times and under varying conditions; and

    (ii) Under direct staff supervision.

11. Provide a functioning UL rated battery-operated smoke detector in each bedroom occupied by a person supported and document that all smoke-detection devices are tested monthly and that batteries are changed when no longer operating, but at least yearly.

12. Provide operable 2A-10B, C multi-purpose fire extinguishers in a fixed location and readily accessible for use in the facility, and document that all fire extinguishers are properly maintained and serviced. The Office of Licensure will determine the number of fire extinguishers required in a particular facility.

13. Document instructions to staff upon employment and persons supported upon admission in fire evacuation procedures.

14. Adopt a policy on smoking and ensure designated areas are posted.

15. Suspended unit electric heaters may be used, except in means of egress and sleeping areas of persons supported, provided such heaters are located high enough to be out of the reach of persons supported using the area and provided the heaters are equipped with appropriate safety devices and are approved for use by the Office of Licensure.

16. Use extension cords only on a limited basis and under the conditions acceptable to the Office of Licensure of the Department.

(b) Provide services only for persons who require no greater level of care than personal care as defined at 0465-02-01(51).

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-04-.07 MOBILE NON-AMBULATORY.**

(1) For the purpose of Life Safety, licensees required to meet the Mobile Non-Ambulatory Rule must comply with the following:

(a) People that use mobility devices only be located on the level of exit discharge;

(b) Provide approved ramps;

(c) Provide corridors of at least five (5) unobstructed feet in width;

(d) Provide doors and exits of at least thirty-two (32) inches clear opening; and

(e) Provide bathrooms approved by the Office of Licensure.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-04-.08 CAPABLE OF SELF-PRESERVATION.**

All residential facilities serving four (4) or more persons supported who are not capable of self-preservation and all non-residential facilities serving four (4) or more persons supported six (6) years of age or older who are not capable of self-preservation are required to meet the criteria for Health Care Occupancies.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-04-.09 DAY CARE OCCUPANCIES.**

(1) Definition - Day Care Occupancies include all buildings used for gathering of groups of persons supported for purposes of instruction. Adult Day Care occupancies are for facilities serving more than twelve (12) persons. Group Day Care Homes are for facilities serving seven to twelve (7-12) persons. Family Day Care Homes are for facilities serving less than seven (7) persons. An example of a facility required to meet day care occupancy standards is an Adult Habilitation Facility/Services-Center Based.

(2) Criteria - For the purpose of Life Safety, licensees required to meet Day Care Occupancies must comply with the following:

(a) Applicable standards of the Life Safety Code of the National Fire Protection Association, Day Care Occupancies, or equivalent standards hereafter adopted by the Office of the State Fire Marshal; and

1. Document fire-safety drills which shall be conducted:

(i) Monthly at unexpected times and under varying conditions; and

(ii) Under direct staff supervision.

2. Document that all smoke-detection devices are tested at least every six (6) months.

3. Document that all fire extinguishers are properly maintained and serviced.

4. Document instruction to staff upon employment and to persons supported upon admission in fire evacuation procedures.

5. Adopt a policy on smoking and ensure designated areas are posted.

6. Suspended unit electric heaters may be used, except in means of egress, provided such heaters are located high enough to be out of the reach of persons using the area and are approved for use by the Office of Licensure.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-04-.10 RESIDENTIAL OCCUPANCIES - ONE- AND TWO-FAMILY DWELLINGS (ONE TO THREE PERSONS SUPPORTED).**

(1) Definition - One- and Two-Family Dwellings (One to Three persons supported) includes buildings in which each living unit is occupied by members of a single family or licensee staff with no more than three (3) persons supported. Examples of dwellings required to meet one- and two-family dwelling occupancy standards are an Intellectual and Developmental Disabilities Boarding Home Facility and an Intellectual and Developmental Disabilities Residential Habilitation Facility.

(2) Criteria - For the purpose of Life Safety, licensee required to meet one and two-family dwelling occupancy must comply with the following:

(a) Applicable standards of the Life Safety Code of the National Fire Protection Association, One and Two-Family Dwellings, or equivalent standards hereafter adopted by the Office of the State

Fire Marshal; and

1. Provide at least two hundred (200) square feet, gross, of occupiable space per person supported.

2. Provide at least:

   (i) Eighty (80) square feet per person of bedroom space for single occupancy; and

   (ii) Sixty (60) square feet per person of bedroom space for multiple occupancy.

3. Maintain proper storage and safeguards for all flammable materials.

4. Not use unvented gas heaters or portable electric space heaters.

5. Not allow the use of portable cooking devices in rooms other than the kitchen.

6. Use extension cords only on a limited basis and under the conditions acceptable to the Office of Licensure of the Department.

7. Provide a functioning UL rated battery-operated smoke detector in each bedroom occupied by a person supported, in the living rooms, and in other such rooms or areas as the Office of Licensure of the Department may require.

8. Provide an operable 2A-10B, C multi-purpose fire extinguisher in a fixed location and readily accessible for use.

9. Identify areas where smoking is permitted - smoking in bedrooms must not be allowed.

10. Not allow persons supported requiring mobility aids to sleep above or below ground floor.

11. Document fire-safety drills which shall be conducted:

    (i) Monthly at unexpected times and under varying conditions; and

    (ii) Under direct staff supervision.

12. Document that all smoke detectors are tested monthly and that batteries are changed when no longer operating but at least yearly.

(b) Provide services for only persons supported who require no greater level of care than personal care as defined at Rule 0465-02-01-(49).

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-04-.11 RESIDENTIAL OCCUPANCIES - ONE- AND TWO-FAMILY DWELLINGS (ONE TO THREE PERSONS SUPPORTED).**

(1) Definition - One- and two-family dwellings include buildings containing not more than two (2) dwelling units in which each dwelling unit is occupied by members of a single family with not more than three (3) unrelated persons supported who are unable to respond to an approved emergency signal, including voice prompt, and evacuate the dwelling without physical assistance, in three (3) minutes or less. A dwelling required to meet one- and two-family dwelling occupancy with persons supported unable to evacuate without physical assistance, in three (3) minutes or less, includes an Intellectual Disability and Developmental Disability Residential Habilitation Facility.

(2) Physical Assistance - Includes, but is not limited to, staff leading the person supported by the hand, and guiding and helping him/her transfer to a wheelchair.

(3) Criteria - For the purpose of Life Safety, dwellings accommodating persons supported unable to evacuate without physical assistance, in three (3) minutes or less and are required to meet one- and two-family dwelling occupancies must comply with the following:

(a) The applicable standards of the Life Safety Code of the National Fire Protection Association, or equivalent standards hereafter adopted by the Office of the State Fire Marshal; and

1. All staff should be able to assist each person supported in evacuation from the dwelling. This may be accomplished, for example, by assigning responsibility for a particular person supported to a particular staff member, especially where he/she needs complete physical assistance to evacuate. Persons supported who use a wheelchair for evacuation purposes need not be assigned a specific staff person to assist them as long as they are able to transfer from a fixed position to a wheelchair without physical assistance, and evacuate the dwelling in three (3) minutes or less.

2. Evacuation procedures shall be sufficient so that it is not necessary for a staff person to re-enter the building after once leaving.

3. A risk assessment must be completed for each person supported admitted within five (5) calendar days of admission on a form prepared by the Department.

4. If the risk assessment indicates that the person supported is able to evacuate without physical assistance within three (3) minutes or less, then it is not necessary to assign a specific staff person to assist him/her in evacuating.

5. If the risk assessment indicates that the person supported is not able to evacuate without physical assistance within three (3) minutes or less, then a specific staff person must be assigned to assist him/her in evacuating. Such staff assignment is required at all times when the person is inside the dwelling.

6. The risk assessment must be repeated when the circumstances of the person supported change.

7. Staff assigned to persons supported needing assistance must be trained in evacuation procedures specific to the service recipient(s) being assisted.

8. Persons supported who are ambulatory who cannot evacuate independently within three (3) minutes must receive education and information needed to improve their ability to evacuate the dwelling more independently. When documented attempts at education fail the licensee need not continue training efforts.

9. Provide at least two hundred (200) square feet, gross, of occupiable space per service recipient.

10. Provide at least:

(i) eighty (80) square feet per person of bedroom space for single occupancy; or

(ii) sixty (60) square feet per person of bedroom space for multiple occupancy.

11. Maintain proper storage and safeguards for all flammable materials.

12. Not use unvented gas heaters or portable electric heaters.

13. Use extension cords only on a limited basis and under the conditions acceptable to the Office of Licensure.

14. Provide a smoke detector in each bedroom occupied by a person supported, in the living

rooms, and in other such rooms or areas as the Office of Licensure may require. Smoke detectors must be hardwired into the electrical system.

15. Provide operable, type 2A-10B, C, multipurpose fire extinguishers in a fixed location and readily accessible for use, and document that all fire extinguishers are properly maintained and serviced.

16. Identify areas where smoking is permitted; smoking in bedrooms must not be allowed.

17. Persons supported who use mobility aids shall not sleep above or below ground floor.

18. Document fire-safety drills which must be conducted:

    (i) Monthly at unexpected times and under varying conditions, ensuring each shift holds one (1) per quarter; and

    (ii) Under direct staff supervision.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**RULES OF THE TENNESSEE**
**DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**OFFICE OF LICENSURE**

**CHAPTER 0465-02-05**
**ADEQUACY OF ENVIRONMENT AND SERVICES**

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**0465-02-05-.01 STANDARD FOR NEW CONSTRUCTION.**

The licensee or applicant for licensure must ensure that new construction for licensees subject to the licensure standards of the Department meets the appropriate standards of the edition of the Standard Building Code currently in effect as adopted by the Office of the State Fire Marshall in rule 0780-02-02-.01 of the promulgated rules of the Department of Commerce and Insurance.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-05-.02 ENVIRONMENTAL REQUIREMENTS FOR ALL LICENSEES.**

(1) The environment must be maintained in a safe manner and a continuing effort made to eliminate potential hazards.

(2) The environment must be maintained in a sanitary and clean condition, free from all accumulation of dirt and rubbish, well-ventilated, and free from foul, stale, or musty odors.

(3) The environment must be kept free of mice, rats, and other rodents.

(4) Housekeeping practices and standards must be maintained which will ensure the eradication of flies, roaches, and other vermin.

(5) All interior and exterior stairs and steps must be equipped with securely and safely installed handrails.

(6) All interior and exterior stairways, halls, porches, walkways, and all other means of egress and areas

of exit must be maintained free of any obstacles, including furniture or other stored items.

(7) A heating system must be provided which is capable of maintaining a comfortable humidity level at all times within the environment and a minimum temperature of sixty-five (65) degrees Fahrenheit.

(8) A cooling, natural ventilation or air conditioning system must be provided which is capable of maintaining a comfortable humidity level at all times within the environment and a maximum temperature of eighty-five (85) degrees Fahrenheit.

(9) Operable windows for ventilation must be provided unless the requirement for operable windows is otherwise exempted by the licensee's life safety occupancy classification and the environment is equipped with an air conditioning system.

(10) All operable windows used for ventilation must be equipped with screens which do not render the window unusable if the windows are also required for escape or emergency rescue purposes.

(11) A telephone system must be provided which is capable of ensuring prompt notification in cases of emergencies and which is capable of meeting the needs of persons supported.

(12) Emergency telephone numbers must be posted for the most local available agencies for fire protection, police or sheriff, ambulance or medical intervention, and poison control.

(13) An adequate first aid kit must be provided as recommended by the local chapter of the American Red Cross or the licensee's medical staff, as applicable.

(14) Drinking water must be provided from a source approved by the Tennessee Department of Health.

(15) A system for the disposal of sewage must be provided which is connected to a public sewage system or which is connected to a private sewage system (septic tank and field system), which has the approval of the local public health agency having jurisdiction.

(16) Natural or artificial lighting must be provided, which is adequate for the needs of persons supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-05-.03 ENVIRONMENTAL REQUIREMENTS FOR RESIDENTIAL LICENSEES.**

(1) The governing body must ensure that each person supported is provided with the following:

(a) A separate bed of proper size and height for the convenience and comfort of the person supported;

(b) A mattress and springs, or a mattress foundation, both of which are clean, comfortable, and in good repair;

(c) Clean linens consisting of both a top and bottom sheet, which are clean, in good repair, and are changed as often as needed, but at least weekly;

(d) Bedding, such as blankets, which are clean, in good repair, and appropriate to the weather;

(e) A clean and comfortable pillow, unless contra-indicated by the choice of the person supported or for health reasons;

(f) Space in a dresser or chest of drawers, which is adequate for the storage of the clothing of the person supported;

(g) Closet or wardrobe space, which is adequate for the hanging storage for the clothing of the person supported; and

(h) Access to a mirror at an appropriate height.

(2) Unless the licensee is required to meet Health Care Occupancy standards, or unless the room has a door which leads directly to the outside, each bedroom must be provided with a window which meets the following criteria:

(a) Is operable from the inside without the use of special keys, tools, or knowledge;

(b) Provides a clear opening of not less than twenty (20) inches in width, twenty-four (24) inches in height, and five and seven-tenths (5.7) square feet in area; and

(c) The bottom of the opening is not more than forty-four (44) inches from the floor.

(3) Each bedroom must be decorated in an appropriate manner including bedspreads, window coverings, and wall hangings.

(4) Bathrooms must be provided, which are equipped as follows:

(a) One (1) private toilet for each six (6) persons, including staff;

(b) One (1) lavatory with hot water for each six (6) persons, including staff,

(c) One (1) private tub or shower with hot water for each eight (8) persons, including staff,;

(d) Slip-resistant tub and shower floor surfaces;

(e) Adequate and sanitary, soap and towels provided in each lavatory; and

(f) Adequate and sanitary, toilet paper provided at each toilet.

(5) A dining area and dining furniture must be provided, which are sufficient, appropriate, and in good repair for meeting the needs of the persons supported.

(6) A combined living and activity area and furnishings must be provided, which are sufficient in size, in good repair, and appropriate for meeting the needs of the persons supported. The area must contain one (1) seating area, including items such as chairs or sofas, for each person, and other residential furniture such as tables, lamps, wall hangings, a television, and a clock.

(7) An outdoor area must be provided which is neat, free of potential hazards, and is appropriate to meeting the needs of the persons supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-05-.04 ENVIRONMENTAL REQUIREMENTS FOR NON-RESIDENTIAL LICENSEES.**

(1) If persons supported are regularly scheduled to be in the facility for extended periods of time which encompass recognized mealtimes, then the facility must provide a dining area with tables and chairs sufficient for the persons supported to take their meals, whether meals are provided by the facility, the person supported, or other source.

(2) Provide one (1) lavatory and one (1) private toilet for each fifteen (15) persons supported.

(3) Equip each lavatory with adequate and sanitary, hand soap and hand towels.

(4) Equip each toilet with adequate and sanitary, toilet paper.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302,*

*33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-05-.05 LICENSEE PROVIDING FOOD SERVICES AND NUTRITION.** All residential licensee required to meet this chapter of rules must comply with the requirements of this rule. Any non-residential licensee required to meet this chapter of rules, which provides food and nutrition on a regular basis to persons supported must comply with the requirements of this rule.

(1) Food and nutrition must be provided in as typical a fashion as possible.

(2) Records must be maintained which document the content of all meals served for, at least, the previous thirty (30) days.

(3) Food must be served in appropriate quantity, at appropriate temperatures, and in a form consistent with customary situations.

(4) All Persons supported, including those individuals with physical handicaps, shall be provided the opportunity to eat meals at a table in a dining area unless temporarily contra-indicated for medical reasons.

(5) Provisions must be made for following special diets for persons supported when such diets are prescribed for medical or health reasons, and encouragement given to the person supported to follow such special diets.

(6) In residential settings, provisions must be made for three (3) well-balanced meals at recognized mealtimes with no more than fourteen (14) hours elapsing between the evening meal and the breakfast meal the following morning.

(7) In residential settings, a forty-eight (48) hour supply of food must be maintained, which is sufficient for meeting the needs of the persons supported.

(8) Appropriate equipment and utensils for cooking food and serving meals must be provided in sufficient quantity to serve all persons supported. Such equipment and utensils must be in good repair and washed and sanitized after each use.

(9) Kitchens must be equipped with appliances and fixtures, which are sufficient and appropriate for cooking meals, refrigerating food, washing utensils and dishes, and the sanitary disposal of waste.

(10) Foods requiring cold storage must be maintained at a temperature of forty-five (45) degrees Fahrenheit or below.

(11) Foods requiring frozen storage must be maintained at a temperature of ten (10) degrees Fahrenheit or below.

(12) All dry foods and goods must be stored in a manner to prevent possible contamination and must be stored a minimum of six (6) inches above the floor.

(13) Garbage (food waste) must be stored in secure containers with tight-fitting lids and liners or discharged through a properly installed food waste disposal system.

(14) Garbage (food waste) containers must be emptied daily into secure containers located outside.

(15) Provisions must be made for the regular removal or disposal of garbage (food waste) from the premises.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-05-.06 LICENSEES PROVIDING TRANSPORTATION SERVICES.** If the licensee, or employees of the licensee, provides transportation to persons supported in vehicles owned either by the licensee or by the

employee, the governing body must ensure that the following requirements are met:

(1) All vehicles must be maintained and operated in a safe manner;

(2) All staff providing transportation must possess an appropriate driver's license. Documentation of such license must be maintained in the licensee's records;

(3) All licensee-owned and staff-owned vehicles used for the transportation of persons supported must be adequately covered by vehicular liability insurance for personal injury to occupants of the vehicle. Documentation of such insurance must be maintained in the licensee's records; and

(4) Appropriate safety restraints must be used as required by state and federal law.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-05-.07 LICENSEES SERVING CHILDREN.** Any licensee required to meet this chapter of rules, which provides services to children six (6) years of age or younger must comply with these requirements.

(1) Non-toxic, lead-free paint must be used on all painted surfaces.

(2) Electrical wall outlets which are accessible to children must be protected with covers.

(3) Poisonous and toxic materials must be identified, stored, and used only in such manner and under such conditions as not to pose any threat of poisoning of persons supported or contaminating of food.

(4) All sources of heat must be protected by screens or other protective barriers to prevent burns or injury to children.

(5) Furnishings and other equipment must be free of sharp or projecting objects or surfaces and not pose any potential harm or injury to children.

(6) Steps or stairs which pose a fall hazard to children must be protected by barriers.

(7) Outside play areas must be fenced or otherwise situated to protect children from hazards such as open drainage ditches, adjacent streets, and traffic.

(8) Outside play areas must provide fifty (50) square feet of play area for each child present.

(9) Grass, bark, sand, rubber mats, or other resilient surfaces must be used under play equipment used for climbing or swinging.

(10) Furniture, equipment, and bathroom fixtures must be sized or adapted for meeting the needs of the children supported.

(11) Equipment must be provided that is sufficient and appropriate for active and quiet play needs and for implementing program activities for each child.

(12) Non-residential facilities must provide nap facilities if the children are scheduled to remain in the facility for as long as six (6) hours.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-05-.08 LICENSEES PROVIDING VOCATIONAL SERVICES.**

(1) Activities of an industrial or productive vocational nature such as assembling, packaging, painting, stripping, wood or metal working, or manufacturing must be conducted in a designated area or room which is separated by fire-rated construction, as required by the applicable Life Safety rules under

Chapter 0465-02-04 of these rules, from any other part of the building not used for vocational purposes such as classrooms, residential areas, offices, or storage rooms.

(2) Permanent aisles and passageways which provide the most direct route of egress to exits must be clearly identified within open work areas, and such aisles and passageways must be maintained free of obstacles and in good repair.

(3) All floor surfaces, platforms, and other walking surfaces must be maintained in a clean manner and free of holes or projections which constitute hazards.

(4) All materials must be stored in tiers which are stacked, racked, blocked, inter-blocked, or otherwise secured to prevent sliding, collapsing, or falling.

(5) All powered equipment, machinery, and powered hand tools must be equipped and maintained with the safety guards, shields, and other devices necessary to protect the health and safety of the operators and others in the work area.

(6) All exposed rotating parts, motor shafts, drive belts, chains, cables, gears, cutting blades, wheels, and other moving parts of machinery must be adequately guarded.

(7) Personal protective equipment and clothing must be provided to persons supported and employees, when appropriate, when handling dangerous materials or working at hazardous operations.

(8) All interior floor and wall openings, open-sized mezzanine areas or platforms, which are six (6) feet or more above the adjacent ground level, must be guarded by standard railing.

(9) Natural or adequately-powered ventilation which conforms to ventilation rates of the state-adopted building codes must be provided for all working areas.

(10) Equipment, conductors, controls, and signaling devices which are necessary to provide a complete electrical system must be provided. All specifications and materials must meet state-adopted standards of the building codes and of the Underwriters' Laboratories, Inc., or similarly established standards.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-05-.09 LICENSEES SERVING PERSONS WITH VISION LOSS.** The governing body of any residential or non-residential licensee, which is required to admit only persons supported who are capable of self-preservation, and which also provides services to one (1) or more persons supported who have vision loss, must ensure compliance with the following requirements:

(1) The person supported must be able to demonstrate independent familiarity with the physical design and layout of the environment and be able to initiate and complete evacuation without physical assistance;

(2) The environment design and placement of furnishings are consistent, free of special hazards, and made known to the person supported, especially when changes occur in the design or placement of furnishings; and

(3) Prior notice of the admission of such persons supported must be given to the Office of Licensure.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-05-.10 RESIDENTIAL LICENSEES SERVING PERSONS WITH HEARING LOSS.** The governing body of any residential licensee, which is required to admit only persons who are capable of self-preservation, and which also admits one (1) or more persons who have loss of hearing, must ensure that when the sounding of the standard fire alarm is not sufficient to notify a sleeping person who has hearing loss of the need to evacuate, must

then provide a means of such notification which:

(1) Is independent of personal, physical contact, or notification by staff or other persons during sleep;

(2) Provides some mechanical means of sensory notification during sleep;

(3) Is consistent in notifying the person supported of the need to evacuate; and

(4) Has the prior approval of the Office of Licensure.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-05-.11 NON-RESIDENTIAL LICENSEES SERVING PERSONS WITH HEARING LOSS.**

Non-residential licensees which serve persons supported with hearing loss must ensure that the means of notifying the person supported, which may include personal contact by staff, is consistent, is always available, and has the approval of the Office of Licensure.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**RULES OF THE TENNESSEE**
**DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**OFFICE OF LICENSURE**

**CHAPTER 0465-02-06**
**MINIMUM PROGRAM REQUIREMENTS FOR ALL FACILITIES/SERVICES**

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**0465-02-06-.01 GOVERNANCE.**

(1) The governing body must ensure that the licensee complies with all applicable federal, state, and local laws, ordinances, rules, and regulations.

(2) The governing body must ensure that the facility/services are administered and operated in accordance with written policies and procedures.

(3) The governing body must exercise general direction over the facility/services and establish policies governing the operation of the facility/services and the welfare of the person supported.

(4) The governing body must designate an individual responsible for the operation of the facility/services.

(5) The governing body must ensure that the licensee serves only persons whose placement will not cause a violation of its licensed status and capacity based on the distinct licensure category, the life safety occupancy classification, and the required staffing ratios, if any.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-06-.02 POLICIES AND PROCEDURES.**

(1) The governing body must ensure that a written policies and procedures manual is maintained. The

manual must include the following elements:

(a) A description of each facility/service provided by the licensee. The description must include the hours of operation and admission and discharge criteria;

(b) An organizational chart which clearly shows or describes the lines of authority between the governing body, the chief executive officer, and the staff;

(c) Policy and procedures which ensure that someone is delegated the authority to act in the absence of the individual responsible for the operation of the facility/service;

(d) A schedule of fees, if any, currently charged to persons supported for all services provided by the licensee;

(e) A statement of person supported rights and the grievance procedures to be followed when a suspected violation of person supported rights has been reported;

(f) Policy and procedures which ensure the confidentiality of the information of a person supported, and which include the following provisions:

1. Staff must comply with applicable confidentiality laws and regulations, (e.g., T.C.A. § 33-3-104(10); federal alcohol and drug regulations, which is found at 42 CFR, Part 2); the Health Insurance Portability and Accountability Act (HIPAA), which is found at 45 CFR, Part 160, Part 162, and Part 164);

2. The person supported must not be required to make public statements, which acknowledge gratitude to the licensee or for the licensee's facility/services;

3. The person supported must not be required to perform in public gatherings; and

4. Identifiable photographs of the person supported must not be used without the written and signed consent of the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian).

(g) A medication administration policy and control procedures for licensees involved in the administration of medication to persons supported;

(h) The plans and procedures to be followed in the event of fire evacuation and natural disaster emergencies;

(i) The plans and procedures to be followed in the event of an emergency involving care of persons supported, which will provide for emergency transportation, emergency medical care, and staff coverage in such event;

(j) A policy which prohibits persons supported from having any of the following responsibilities:

1. Care of other persons supported;

2. Supervision of other persons supported, unless on-duty/on-site staff are present; and

3. Responsibilities requiring access to confidential information.

(k) Policy and procedures to be followed in the reporting and investigation of suspected or alleged abuse, or neglect of persons supported, or other critical incidents. The procedures must include provisions for corrective action, if any, to be taken as a result of such reporting and investigation;

(l) Policy and procedures which ensure that volunteers, if used by the licensee, are in a supportive capacity and are under the supervision of appropriate designated staff members;

(m) Policy and procedures which govern the use of behavior-management techniques, if used by the licensee;

(n) Policy regarding the use of human subjects in research, if the licensee is involved in, or planning to be involved in, such research, which includes procedures for the following:

1. Identification of subjects, projects, and staff;

2. Provisions to protect the personal and civil rights of the subjects;

3. Obtaining the consent of the subjects involved;

4. Assurance that all research projects are conducted under the direction and supervision of professional staff qualified by education and experience to conduct research;

5. Emergency guidelines for problems that may develop during research activities; and

6. Appointment of a licensee representative to act as coordinator of the research activities.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-06-.03 FINANCIAL MANAGEMENT.**

(1) The licensee holding or receiving funds or property for the person supported as trustee or representative payee will adhere to all laws, state and federal, that govern their position and relation to persons supported.

(2) The licensee must prohibit staff and proprietors from borrowing money from persons supported.

(3) The licensee must ensure that all money held and disbursed on behalf of persons supported is for the strict, personal benefit of the person supported.

(4) The licensee must not mix its funds with those of the person supported.

(5) The licensee must not take funds or property of the person supported for the licensee's own use or gain.

(6) The licensee must provide an annual reporting of the funds of the person supported, which are being held and disbursed by the licensee to the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian).

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-06-.04 PERSONNEL AND STAFFING.**

(1) A job description must be maintained, which includes the employment requirements and the job responsibilities for each staff position.

(2) A personnel record must be maintained which verifies that each employee meets the respective employment requirements for the staff position held.

(3) Training and development activities, which are appropriate in assisting the staff in meeting the needs of the persons supported, must be provided for each staff member. The provision of such activities must be evidenced by documentation in the records.

(4) Training and development activities, which are appropriate in assisting volunteers (if used by the

licensee) in implementing their assigned duties, must be provided for each volunteer. The provision of such activities must be evidenced by documentation in the licensee's records.

(5) Direct Support Staff members must be competent persons aged eighteen (18) years of age or older.

(6) The personnel records for each employee must contain the following:

(a) Evidence of a criminal background check, as required by T.C.A. § 33-2-1202;

(b) Evidence of the staff's status on the Tennessee registry of persons who have abused, neglected, or misappropriated the property of vulnerable individuals ("Abuse Registry") maintained by the Department of Health;

(c) Evidence of the staff's status on the State's sexual offender registry (After January 1, 2016, no individual or volunteer who is listed on the State's Sex Offender Registry may be hired or otherwise permitted to provide services); and

(d) Evidence of the staff's status the Tennessee Felony Offender Information Lookup (FOIL). The information available on this list pertains to Tennessee felony offenders who are or who have been in the custody of the Tennessee Department of Correction or under the Supervision of the Tennessee Board of Probation and Parole. The information is submitted by various jurisdictions within Tennessee. Confirmation and/or elaboration should be obtained from the originating jurisdiction.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-06-.05 PERSON SUPPORTED RECORDS.**

(1) The governing body must ensure that an individual record for each person supported is maintained which, at a minimum, includes the following information:

(a) The name of the person supported;

(b) The address of the person supported;

(c) The telephone number of the person supported;

(d) The gender of the person supported;

(e) The date of birth of the person supported;

(f) The date of admission of the person supported;

(g) The source of referral to the licensee of the person supported;

(h) The name, address, and telephone number of an emergency contact person for the person supported;

(i) If the licensee charges fees for its services, a written fee agreement dated and signed by the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian) prior to provision of any services other than emergency services. This agreement must include, at least, the following information:

1. The fee or fees to be paid by the person supported;

2. The services covered by such fees; and

3. Any additional charges for services not covered by the basic service fee.

(j) Appropriate informed, signed, and dated consent and authorization forms for the release or obtainment of information about the person supported; and

(k) Written acknowledgement that the person supported and his/her legal representative (conservator, parent, guardian or legal custodian) has been informed of the rights and responsibilities of the person supported and the licensee's general rules affecting persons supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-06-.06 PERSON SUPPORTED RIGHTS.**

(1) The following rights must be afforded to all persons supported by all licensees and are not subject to modification.

(a) Persons supported have the right to be fully informed before or upon admission about their rights and responsibilities and about any limitation on these rights imposed by the rules of the licensee. The licensee must ensure that the person supported is given oral and written rights information that includes, at least, the following:

1. A statement of the specific rights guaranteed the person supported by these rules and applicable state laws;

2. A description of the licensee's grievance procedure;

3. A listing of available advocacy services; and

4. A copy of all general licensee rules and regulations for persons supported.

(b) The information shall be presented in a manner that promotes understanding by persons supported of his/her rights, and the person supported shall be given an opportunity to ask questions about the information. If the person supported who was unable to understand the information at the time of admission later becomes able to do so, the information shall be presented to the person supported at that time. If a person supported is likely to continue indefinitely to be unable to understand the information, the licensee must promptly attempt to provide the required information to his/her legal representative (conservator, parent, guardian, or legal custodian) or other appropriate person or agency responsible for protecting the rights of the person supported;

(c) Persons supported have the right to voice grievances to staff, to the licensee, and to outside representatives of their choice, with freedom from restraint, interference, coercion, discrimination, or reprisal;

(d) Persons supported have the right to be treated with consideration, respect, and full recognition of their dignity and individuality;

(e) Persons supported have the right to be protected by the licensee from neglect, mistreatment from physical, verbal, and emotional abuse (including corporal punishment), and from all forms of misappropriation and/or exploitation;

(f) Persons supported have the right to be assisted by the licensee in the exercise of his/her civil rights;

(g) Persons supported have the right to be free of any requirement that they perform services which are ordinarily performed by staff; and

(h) If residential services are provided, persons supported must be allowed to send personal mail

unopened and to receive mail and packages, which may be opened in the presence of staff when there is reason to believe that the contents thereof may be harmful to the person supported or others.

(2) Medicaid-reimbursed individuals receiving HCBS services shall be afforded the rights referenced in 42 C.F.R. § 441.301(c)(4) of the HCBS Settings Rule.

(3) The following rights must be afforded to all persons supported by all licensees, unless modified in accordance with Rules 0465-02-06-.07 and/or 0465-02-06-.08:

(a) Persons supported have the right to participate in the development of their ISP, and to receive sufficient information about proposed and alternative interventions and program goals to enable them to participate effectively;

(b) Persons supported have the right to participate fully, or to refuse to participate, in community activities including cultural, educational, religious, community services, vocational, and recreational activities;

(c) If residential services are provided, persons supported must be allowed to have free use of common areas with due regard for privacy, personal possessions, and the right of others;

(d) If residential services are provided, persons supported have the right to furnish and decorate their bedroom/sleeping area, within the lease or other agreement;

(e) If residential services are provided, persons supported have the right to be given privacy and freedom for the use of bathrooms at all hours;

(f) If residential services are provided, persons supported have the right to be given privacy and freedom in the use of their bedroom/sleeping area. If residential services are provided and if married persons are residents, privacy for visits by spouses must be ensured, and if both spouses are residents, they must be permitted to share a room; and

(g) If residential services are provided, persons supported have the right to associate and communicate privately with persons of their choice including receiving visitors at any time.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-06-.07 MODIFICATION OR LIMITATION OF PERSON SUPPORTED RIGHTS BY FACILITY/SERVICES RULES, POLICIES, OR PROCEDURES.**

(1) The rights of all persons supported by a licensee may only be modified or limited under the following conditions:

(a) The licensee is not a Medicaid-reimbursed home and community based service (HCBS) provider required to comply with the federal home-based and community-based setting final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014).

(b) It is demonstrated and documented that a legitimate purpose cannot reasonably be achieved without such modification or limitation;

(c) No modification or limitation may be made solely for the convenience of staff or be more stringent than is necessary to achieve the demonstrated purpose;

(d) Persons supported or representatives of persons supported, as appropriate, must be fully informed of proposed rules, policies or procedures modifying or limiting the rights of the person supported, and of the reasons therefore, and must be given an opportunity to object, propose alternatives, and consult with family, friends, and/or advocacy agencies prior to their implementation; and

(e) Rules, policies, or procedures which modify or limit the rights of the person supported must be in writing and posted in a conspicuous place.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-06-.08 MODIFICATION OR LIMITATION OF PERSON SUPPORTED RIGHTS.**

(1) The rights of a person supported may only be modified or limited under the following conditions:

(a) It is demonstrated and documented that such modification or limitation is necessary to achieve a legitimate goal in the ISP of the person supported;

(b) No modification or limitation may be made solely for the convenience of staff or be more stringent than is necessary;

(c) The person supported or his/her legal representative (conservator, parent, guardian, or legal custodian), as appropriate, must be fully informed of the proposed limitation or modification and must be given an opportunity to object, propose alternatives, and consult with family, friends, and/or advocacy agencies prior to implementation of the modifications or limitations; and

(d) Any modifications or limitations must be documented in the ISP of the person supported in accordance with the following requirements:

1. Identify a specific and individualized assessed need;

2. Document the positive interventions and supports used prior to any modifications to the person-centered service plan;

3. Document less intrusive methods of meeting the need that have been tried but did not work;

4. Include a clear description of the condition that is directly proportionate to the specific assessed need;

5. Include regular collection and review of data to measure the ongoing effectiveness of the modification;

6. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;

7. Include the informed consent of the person supported; and

8. Include an assurance that interventions and supports will cause no harm to the person supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**RULES OF THE TENNESSEE**
**DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**OFFICE OF LICENSURE**

**CHAPTER 0465-02-07**

**MINIMUM PROGRAM REQUIREMENTS FOR**
**INTELLECTUAL DISABILITIES**
**ADULT HABILITATION DAY FACILITIES/SERVICES**

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**0465-02-07-.01 POLICIES AND PROCEDURES.**

The licensee must maintain a written policies and procedures manual which includes procedures for tuberculosis control and reporting of infectious and communicable diseases to the Tennessee Department of Health.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-07-.02 PROFESSIONAL SERVICES.**

(1) The licensee must provide or procure assistance for persons supported in locating qualified dental, medical, nursing, and pharmaceutical care, including care for emergencies during hours of the facility's operation.

(2) The licensee must ensure that an annual physical examination is provided or procured for each person supported (unless less often is indicated by the physician of the person supported). Such examinations should include routine screenings (such as vision and hearing) and laboratory examinations (such as Pap smear and blood work), as deemed necessary by the physician and special studies where the index of suspicion is high.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-07-.03 PERSONNEL AND STAFFING.**

(1) The licensee must provide two (2) direct support staff members for the first twenty (20) persons supported. One (1) additional direct support staff member must be provided for each additional increment of twenty (20) persons supported present.

(2) The licensee must ensure that employees practice infection control procedures that will protect persons supported from infectious diseases.

(3) Employees shall be screened or tested for tuberculosis according to the procedures of the Tennessee Department of Health. Documentation of such screening or testing shall be maintained in the employee's personnel file.

(4) Employees must be provided with a basic orientation in the proper techniques and strategies for the support of persons supported with seizure disorders, prior to being assigned to work with them.

(5) A staff member must be on duty who is trained in First Aid and Cardiopulmonary Resuscitation (CPR).

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-07.04 PERSON SUPPORTED RECORDS.**

(1) The record of each person supported must contain the following information:

(a) A recent photograph and a description of the person supported;

(b) The social security number of the person supported;

(c) The legal competency status of the person supported;

(d) The sources of financial support of the person supported, including social security, veteran's benefits and insurance;

(e) The sources of coverage for medical care costs of the person supported;

(f) The name, address and telephone number of the physician or healthcare agency providing medical services of the person supported;

(g) Documentation of all drugs/medications prescribed or administered by the licensee to the person supported, which indicates the date prescribed, type, dosage, frequency, amount, and reason for prescription;

(h) A discharge summary of the person supported, which states the date of discharge, reasons for discharge, and referral for other services, if appropriate;

(i) Report of medical problems, accidents, seizures and illnesses, and treatments for such medical problems, accidents, seizures and illnesses for the person supported;

(j) Report of significant behavior incidents and of actions taken for the person supported; and

(k) Report of the use of restrictive behavior management techniques for the person supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-07-.05 MEDICATION ADMINISTRATION.**

(1) When medications are administered by certified staff to persons supported the licensee must:

(a) Consider the ability and training of the person supported, when supervising the self-administration of medication;

(b) Ensure that prescription medications are taken only by the person supported for whom they are prescribed, and in accordance with the directions of a physician;

(c) Provide storage for medications in a locked container, which ensures proper conditions of security and sanitation, and prevents accessibility to any unauthorized individual;

(d) Assure the disposal of discontinued and outdated medications and containers with worn, illegible or missing labels; and

(e) Report all medication variance (errors), medication reactions, or suspected side effects to the practitioner who prescribed the medication.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-07-.06 VOCATIONAL SERVICES.**

(1) The licensee must ensure that work provided is dignified and not demeaning or degrading to the person supported. Vocational Service activities provided must be challenging to the capabilities of the person supported yet result in a sense of accomplishment and productivity.

(2) Day services shall be provided or procured in accordance with the age level, interests, and abilities of the person supported as specified in the ISP.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-07-.07 ASSESSMENTS.**

(1) The following assessments of the person supported must be completed prior to the development of an ISP:

(a) An assessment of current capabilities in such areas as adaptive behavior and independent living skills;

(b) A basic medical history, information, and determination of the necessity of a medical evaluation, and a copy, where applicable, of the result of the medical evaluation;

(c) A six (6) month history of prescribed medications, frequently used over-the-counter medications, alcohol, and/or other drugs; and

(d) An existing psychological assessment on file which is updated as recommended by the ISP team.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-07-.08 INDIVIDUAL SUPPORT PLAN (ISP) TEAM.**

(1) The licensee must ensure that an ISP team known as the Circle of Support is identified and provided for each person supported. The team may include the following as determined by the person supported:

(a) The person supported;

(b) The legal representative (conservator, parent, guardian, or legal custodian) of the person supported, if applicable, unless their inability or unwillingness to attend is documented;

(c) Appropriate Provider staff;

(d) Relevant professionals or individuals, unless their inability to attend is documented;

(e) Friends, advocates and other non-paid supports, if applicable, and

(f) The Independent Support Coordinator/Case Manager.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-07-.09 INDIVIDUAL SUPPORT PLAN (ISP) DEVELOPMENT AND IMPLEMENTATION.**

(1) The licensee must ensure that a written ISP is provided and implemented for each person supported. The ISP must meet the following requirements:

(a) Developed within thirty (30) days of the admission of the person supported;

(b) Developed by the ISP team of the person supported;

(c) Includes the date of development of the ISP;

(d) Includes signatures of the person supported, appropriate staff, and, if applicable, the legal representative (conservator, parent, guardian, or legal custodian) of the person supported;

(e) Specifies the needs identified by assessment of the person supported and addresses those needs within the particular service/program component;

(f) Includes personal goals and objectives of the person supported, which are related to the specific needs identified, and specifies which goals and objectives are to be addressed by a particular service/program component; and

(g) Includes methods or activities by which the goals and objectives of the person supported are to be implemented.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-07-.10 INDIVIDUAL SUPPORT PLAN (ISP) MONITORING AND REVIEW.**

(1) Written progress notes must be maintained, which include at least quarterly reviews of progress or changes occurring in the ISP.

(2) Changes relative to health, safety, and implementation of outcome based services must be assessed on an ongoing basis and reflected within the quarterly reviews.

(3) The ISP team must review the ISP annually and revise, as necessary.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-07-.11 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT.**

(1) No procedures shall be used for behavior management which results in physical or emotional harm to the person supported.

(2) Corporal punishment, seclusion, aversive stimuli, chemical restraint, and denial of a nutritionally adequate diet shall not be used.

(3) Restraint (physical holding, mechanical restraint), medications for behavior management, time-out rooms, or other techniques with similar degrees of restriction or intrusion must not be employed except as an integral part of an ISP.

(4) Restrictive or intrusive behavior management procedures must not be used until after less restrictive alternatives for dealing with the problem behavior have been systematically tried or considered and have been determined to be inappropriate or ineffective.

(5) Prior to the implementation of a written program or behavior support plan incorporating the use of a highly restrictive or intrusive technique, the program plan must be reviewed and approved by the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian), with documentation of such approval. A Human Rights Committee must also review and approve the written program.

(6) When procedures such as physical holding, mechanical restraint, and time-out are used in emergency situations to prevent the person supported from inflicting bodily harm, more than three (3) times within six (6) months, a behavioral assessment shall be conducted by an appropriate professional. Recommendations shall be incorporated into a written plan that is part of the ISP.

(7) Behavior management medications may be used only when authorized in writing by a physician for a specific period of time.

(8) The program plan for the use of a mechanical restraint must specify the extent and frequency of the monitoring schedule according to the type and design of the device and the condition of the person supported.

(9) A person supported who is placed in a mechanical restraint must be released for a minimum of ten (10) minutes at least every two (2) hours and provided with an opportunity for freedom of movement, exercise, liquid intake/refreshment, nourishment, and use of the bathroom.

(10) Physical restraint/physical holding may be used only until the person supported is calm.

(11) A person supported who is placed in time-out must be released after a period of not more than sixty (60) minutes.

(12) The ability of a person supported to exit from time-out must not be prevented by means of keyed or other locks, and locations used for time-out must allow for the immediate entry of staff.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**RULES OF THE TENNESSEE**
**DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**OFFICE OF LICENSURE**

**CHAPTER 0465-02-08**
**MINIMUM PROGRAM REQUIREMENTS FOR**
**DEVELOPMENTAL DISABILITIES**
**ADULT HABILITATION DAY FACILITIES/SERVICES**

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**0465-02-08-.01 POLICIES AND PROCEDURES.**

(1) The licensee shall maintain a written policy and procedures manual which includes:

(a) A policy ensuring that employees and volunteers practice infection control procedures and standard precautions that will protect the persons supported from infectious diseases;

(b) Procedures for tuberculosis control and reporting of infectious and communicable diseases to the Tennessee Department of Health; and

(c) Requirements that each employee or volunteer comply with procedures for detection, prevention, and reporting of communicable diseases according to procedures of the Tennessee Department of Health.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-08-.02 PROFESSIONAL SERVICES.**

The licensee shall provide or procure assistance for people in locating qualified dental, medical, nursing, and pharmaceutical care, including care for emergencies during hours of operation.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-08-.03 PERSONNEL AND STAFFING.**

(1) The licensee shall provide: one (1) Direct Support Staff member for the first ten (10) persons supported; two (2) Direct Support Staff members for eleven (11) to fifteen (15) persons supported; three (3) Direct Support Staff members for sixteen (16) to twenty (20) persons supported. When more than twenty (20) persons are supported, one (1) additional Direct Support Staff member shall be provided for each additional twenty (20) persons supported present.

(2) The licensee shall ensure that employees practice infection control procedures that will protect persons supported from infectious diseases.

(3) Employees shall be screened or tested for tuberculosis according to the procedures of the Tennessee Department of Health. Documentation of such screening or testing shall be maintained in the employee's personnel file.

(4) Prior to contact with a person supported, employees shall receive documented orientation to the specific needs of any person supported to whom the employee is assigned.

(5) At least one (1) staff member shall be on duty who is trained in First Aid, cardiopulmonary resuscitation (CPR), and the Heimlich Maneuver.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-08-.04 PERSON SUPPORTED RECORDS.**

(1) Each record of the person supported shall contain the following:

(a) A recent photograph and a description of the person supported;

(b) Report of the use of restrictive behavior management techniques, as defined under Rule 0465-02-08-.11, if used;

(c) The name, address and telephone number of the physician or healthcare agency providing medical services of the person supported; and

(d) A discharge summary of the person supported, which states the date of discharge, reasons for discharge, and referral for other services, if appropriate.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-08-.05 MEDICATION ASSISTANCE.**

(1) When medications are taken by persons supported under the supervision of staff, the staff must:

(a) Consider the ability and training of the person supported, when supervising the self-administration of medication;

(b) Ensure that prescription medications are taken only by the person supported for whom they are prescribed, and in accordance with the directions of a physician;

(c) Provide storage for medications in a locked container, which ensures proper conditions of security and sanitation, and prevents accessibility to any unauthorized individual;

(d) Assure the disposal of discontinued and outdated medications and containers with worn, illegible or missing labels; and

(e) Report all medication variance (errors), medication reactions, or suspected side effects to the practitioner who prescribed the medication.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-08-.06 VOCATIONAL SERVICES.**

(1) The licensee shall ensure that work provided is dignified and not demeaning or degrading to the person supported. Work activities provided shall be challenging to the capabilities of the person supported yet can result in a sense of accomplishment and productivity.

(2) Day services shall be provided or procured in accordance with the age level, interests, and abilities of the person supported as specified in the ISP.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-08-.07 ASSESSMENTS.**

(1) The following assessments of the person supported must be completed prior to the development of an ISP:

(a) An assessment of current capabilities in such areas as adaptive behavior and independent living skills;

(b) A basic medical history, including a list of current medications, and documentation of the necessity for a medical evaluation. If a medical evaluation is necessary, documentation of the result of the medical evaluation; and

(c) A six (6) month history of prescribed medications, frequently used over-the-counter medications, alcohol, and/or other drugs.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-08-.08 INDIVIDUAL SUPPORT PLAN (ISP) TEAM.**

(1) The governing body must ensure that an ISP team known as the Circle of Support is identified and provided for each person supported. The team may include the following as determined by the person supported:

(a) The person supported;

(b) The legal representative (conservator, parent, guardian, or legal custodian) of the person supported, if applicable, unless their inability or unwillingness to attend is documented;

(c) Appropriate Provider staff;

(d) Relevant professionals or individuals, unless their inability to attend is documented;

(e) Friends, advocates and other non-paid supports, if applicable; and

(f) The Independent Support Coordinator/Case Manager.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-08-.09 INDIVIDUAL SUPPORT PLAN (ISP) DEVELOPMENT AND IMPLEMENTATION.**

(1) The licensee shall ensure that a written ISP is provided and implemented for each person supported. The ISP shall meet the following requirements:

(a) Developed within thirty (30) days of the admission of the person supported;

(b) Developed by the ISP team of the person supported;

(c) Includes the date of development of the ISP;

(d) Includes signatures of the person supported, appropriate staff, and, if applicable, the legal representative (conservator, parent, guardian, or legal custodian) of the person supported;

(e) Specifies the needs of the person supported which have been identified by assessment and to be addressed within the particular service/program component;

(f) Includes personal goals and objectives of the person supported, which are related to the specific needs identified, and specifies which goals and objectives are to be addressed by a particular service/program component; and

(g) Includes methods or activities by which the goals and objectives are to be implemented.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-08-.10 INDIVIDUAL SUPPORT PLAN (ISP) MONITORING AND REVIEW.**

(1) Written progress notes must be maintained, which include at least quarterly reviews of progress or changes occurring in the ISP.

(2) Changes relative to health, safety, and implementation of outcome based services must be assessed on an ongoing basis and reflected within the quarterly reviews.

(3) The ISP team must review the ISP annually and revise, as necessary.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-08-.11 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT.**

(1) No procedures shall be used for behavior management which results in physical or emotional harm to the person supported.

(2) Corporal punishment, seclusion, aversive stimuli, chemical restraint, and denial of a nutritionally adequate diet shall not be used.

(3) Restraint (physical holding, mechanical restraint), medications for behavior management, time-out rooms, or other techniques with similar degrees of restriction or intrusion must not be employed except as an integral part of an ISP.

(4) Restrictive or intrusive behavior management procedures must not be used until after less restrictive alternatives for dealing with the problem behavior have been systematically tried or considered and have been determined to be inappropriate or ineffective.

(5) Prior to the implementation of a written program or behavior support plan incorporating the use of a highly restrictive or intrusive technique, the program plan must be reviewed and approved by the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian), with documentation of such approval. A Human Rights Committee must also review and approve the written program.

(6) When procedures such as physical holding, mechanical restraint, and time-out are used in emergency situations to prevent the person supported from inflicting bodily harm, more than three (3)

times within six (6) months, a behavioral assessment shall be conducted by an appropriate professional. Recommendations shall be incorporated into a written plan that is part of the ISP.

(7) Behavior management medications may be used only when authorized in writing by a physician for a specific period of time.

(8) The program plan for the use of a mechanical restraint must specify the extent and frequency of the monitoring schedule according to the type and design of the device and the condition of the person supported.

(9) A person supported who is placed in a mechanical restraint must be released for a minimum of ten (10) minutes at least every two (2) hours and provided with an opportunity for freedom of movement, exercise, liquid intake/refreshment, nourishment, and use of the bathroom.

(10) Physical restraint/physical holding may be used only until the person supported is calm.

(11) A person supported who is placed in time-out must be released after a period of not more than sixty (60) minutes.

(12) The ability of a person supported to exit from time-out must not be prevented by means of keyed or other locks, and locations used for time-out must allow for the immediate entry of staff.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**RULES OF THE TENNESSEE**
**DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**OFFICE OF LICENSURE**

**CHAPTER 0465-02-09**
**MINIMUM PROGRAM REQUIREMENTS FOR**
**INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**DIAGNOSIS AND EVALUATION FACILITIES**

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**0465-02-09-.01 POLICIES AND PROCEDURES.**

(1) The governing body must ensure compliance with rule 0465-02-06-.02 Minimum Program Requirements for All Facilities/Services, Policies and Procedures.

(2) An ongoing system must be provided for the collection and recording of accurate data about the person supported.

(3) A procedure must be provided for allowing the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian) a method of challenging any information entered into the record of the person supported. The procedure must also allow for the subsequent removal of successfully challenged information.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-09-.02 ASSESSMENTS.**

(1) Assessments must be completed by using empirically reliable and valid instruments of diagnosis and evaluation.

(2) Diagnosis and evaluation services must be capable of assessment in the following areas:

(a) Intellectual development;

(b) Sensorimotor development;

(c) Affective development;

(d) Social development;

(e) Communicative development; and

(f) Physical development.

(3) Assessment of physical development must be completed by the following:

(a) Physical examination;

(b) Review of Medication history;

(c) Visual screening;

(d) Audiological screening;

(e) Nutritional screening; and

(f) If determined necessary, a genetic evaluation.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-09-.03 ASSESSMENT TEAM.**

(1) The licensee must ensure that an assessment team is identified and provided for each person supported. The team must minimally include:

(a) A designated individual who is responsible for each assessment;

(b) The active participation of each staff member or consultant who is responsible for the completion of the assessment; and

(c) The person supported or his/her legal representative (conservator, parent, guardian, or legal custodian).

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-09-.04 ASSESSMENT RECORDS.**

(1) The licensee must ensure that an individual record of the assessments is maintained for each person supported which includes the following:

(a) The reports of completed evaluations including the names and disciplinary status of the evaluating team members;

(b) The initial recommendations of the assessment team including the services needed for the person supported without consideration of the actual availability of such services;

(c) The availability of needed services and recommended service providers; and

(d) The documentation of efforts made in exploring resources for meeting the needs of the person

supported identified by the team's recommendations.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-09-.05 PERSONNEL AND STAFFING.**

(1) Professional staff must be provided who are capable of performing assessments and who are duly licensed, eligible for licensure, or duly certified to practice their profession in the State of Tennessee. The duties assigned in the performance of diagnosis and evaluation services must be commensurate with the level of competence, training and experience of the staff so assigned.

(2) Each employee must be provided with an initial orientation upon employment and with an annual in-service training activity which must be commensurate with the assigned duties of each employee.

(3) Employees with serious infectious diseases must not be permitted contact with persons supported.

(4) Employees shall be screened or tested for tuberculosis according to the procedures of the Tennessee Department of Health. Documentation of such screening or testing shall be maintained in the employee's personnel file.

(5) The licensee must be sufficiently staffed to the extent that they are not dependent upon volunteers or person supported in the delivery of services.

(6) The licensee must be sufficiently staffed to the extent that assistance is available from another staff member in the event of an emergency.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**RULES OF THE TENNESSEE**
**DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**OFFICE OF LICENSURE**

**CHAPTER 0465-02-10**
**MINIMUM PROGRAM REQUIREMENTS FOR**
**INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**INSTITUTIONAL HABILITATION FACILITIES**

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**0465-02-10-.01 POLICIES AND PROCEDURES.**

The written policies and procedures manual must include procedures for tuberculosis control and reporting of infectious and communicable diseases to the Tennessee Department of Health.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-10-.02 PROFESSIONAL SERVICES.**

(1) The facility must ensure that each person supported receives an annual physical examination (unless less often is indicated by the physician of the person supported), which includes routine screenings (such as vision and hearing) and laboratory examinations (such as Pap smear and blood work) as determined necessary by the physician and special studies where the index of suspicion is high.

(2) The facility must ensure that all persons supported receive social services including liaison between the person supported, his/her family, the facility and the community.

(3) The facility must ensure that each person supported receives a medical exam within ninety (90) days before or thirty (30) days after admission.

(4) The facility must ensure that each person supported receives an annual dental screening.

(5) The facility must ensure that each person supported receives qualified dental, medical, nursing, pharmacy, physical and occupational therapy, social, psychological, speech pathology and audiology services in accordance with his/her ISP.

(6) The facility must ensure that each person supported is provided with immunizations as required by the Tennessee Department of Health unless prohibited by a physician's order.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-10-.03 PERSONNEL AND STAFFING.**

(1) All professional services must be provided by individuals duly licensed or certified to practice their profession in the State of Tennessee, or by individuals who are eligible for licensure or certification and under the supervision of duly licensed or certified personnel, as appropriate.

(2) The facility must provide an overall ratio of one (1) Direct Support Staff member for each two and one-half (2 ½) persons supported present.

(3) The facility must ensure that employees practice infection control procedures that will protect persons supported from infectious diseases.

(4) Employees must have a regular tuberculosis skin test or screening within thirty (30) days of employment and as required thereafter by current Tennessee Department of Health guidelines.

(5) Employees must be provided with a basic orientation in the proper management of persons supported with seizure diagnoses prior to being assigned to work with persons supported with such disorders.

(6) Persons supported must never be left unattended during customary sleeping hours.

(7) A staff member must be on duty in the facility who is trained in First Aid and the Heimlich maneuver.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-10-.04 PERSON SUPPORTED RECORDS.**

(1) The record for each person supported must contain the following information:

(a) A recent photograph and a description of the person supported;

(b) The social security number of the person supported;

(c) The legal competency status of the person supported, including the name of his/her legal representative (conservator, parent, guardian, or legal custodian), if applicable;

(d) The sources of financial support of the person supported, including social security, veteran's benefits and insurance;

(e) The sources of coverage of medical care costs of the person supported;

(f) The name, address, and telephone number of the physician or healthcare agency providing medical services for the person supported;

(g) Documentation of all medications prescribed or administered by the facility to the person supported, which indicates date prescribed, type, dosage, frequency, amount and reason for the prescription;

(h) A discharge summary of the person supported, which states the date of discharge, reasons for discharge, and referral for other services, if appropriate;

(i) Report of medical problems, accidents, seizures, and illnesses of the person supported, and treatments for such medical problems, accidents, seizures, and illnesses;

(j) Report of significant behavior incidents and of actions taken for the person supported;

(k) Report of the use of restrictive behavior-management techniques for the person supported;

(l) A list of each individual article of personal property of the person supported valued at fifty dollars ($50.00) or more, including its disposition, if no longer in use; and

(m) Written accounts of all monies received and disbursed on behalf of the person supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-10-.05 MEDICATION ADMINISTRATION.**

(1) When medications are administered by certified staff to persons supported the licensee must:

(a) Consider the ability and training of the person supported, when supervising the self-administration of medication;

(b) Ensure that prescription medications are taken only by the person supported for whom they are prescribed, and in accordance with the directions of a physician;

(c) Provide storage for medications in a locked container, which ensures proper conditions of security and sanitation, and prevents accessibility to any unauthorized individual;

(d) Assure the disposal of discontinued and outdated medications and containers with worn, illegible or missing labels; and

(e) Report all medication variance (errors), medication reactions, or suspected side effects to the practitioner who prescribed the medication.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-10-.06 HEALTH, HYGIENE, AND GROOMING.**

(1) The facility must provide the person supported with assistance and training, as needed, with health, hygiene, and grooming practices.

(2) The facility must provide the person supported with assistance and training in the use of dental appliances, eyeglasses, and hearing aids.

(3) The facility must encourage the person supported to maintain a well-groomed and clean appearance that is age and activity appropriate and within reason of current acceptable styles of grooming and

dressing and appearance.

(4) Facility staff must be responsible for the implementation of the orders of a physician concerning recuperative procedures subsequent to an illness or injury of the person supported.

(5) The facility must ensure that each person supported bathes or receives a bath daily and that hair and nails are clean and groomed weekly.

(6) Facility staff must immediately clean persons supported who are incontinent, including a change of clothing and linen, as necessary.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-10-.07 CLOTHING FOR PERSONS SUPPORTED.**

(1) Each person supported must be provided the least restrictive level of support and assistance needed in the selection and purchase of clothing.

(2) The facility must allow each person supported to dress him/herself in his/her own clothes and to change clothes at appropriate times, according to his/her abilities.

(3) The facility must assist each person supported in securing an adequate allowance of personally owned, individualized, customary, clean, and seasonal clothes.

(4) Any marking of clothing belonging to the person supported for the purposes of identification must be done in an inconspicuous manner.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-10-.08 RECREATIONAL ACTIVITIES.**

The facility must ensure that opportunities are provided for recreational activities, which are appropriate and adapted to the needs, interests, and age of the person supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-10-.09 DAY ACTIVITIES.**

(1) The facility must ensure that day activities are provided or procured. Such day activities must be in accordance with the age level, interests, and abilities of the person supported, and in accordance with an ISP.

(2) If the person supported attends a school or day program provided outside of the facility, the facility's staff must participate with the school personnel in developing an individual education plan or with the day program staff in developing an ISP, as appropriate.

(3) The facility must ensure the participation of the person supported and direct support staff in developing and implementing daily activity schedules for each person supported.

(4) Activity schedules of persons supported must not have more than three (3) hours of unscheduled time daily.

(5) The facility must ensure that each person supported who has significant disabilities and uses a wheelchair, unless contraindicated by a physician's order:

(a) Is assisted by a direct support staff member in spending at least three (3) hours of his/her

waking day out of bed;

(b) Is assisted by a direct support staff member in spending a portion of their waking day out of his/her bedroom area;

(c) Is assisted by a direct support staff member in an exercise period daily; and

(d) Is assisted in being mobile whenever possible by the use of wheelchairs or other mobility devices.

(6) The facility must ensure that each person supported is provided with a planned period of outdoor activity on a daily basis except during inclement weather.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-10-.10 ASSESSMENTS.**

(1) The following assessments of the person supported must be completed prior to the development of his/her ISP:

(a) An assessment of current capabilities in such areas as adaptive behavior and independent living skills;

(b) A basic medical history, information, and determination of the necessity of a medical evaluation, and a copy, where applicable, of the results of the medical evaluation;

(c) A six (6) month history of prescribed medications, frequently used over-the-counter medications, alcohol, and/or other drugs; and

(d) An existing psychological assessment on file which is updated as recommended by the ISP team.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-10-.11 INDIVIDUAL SUPPORT PLAN (ISP) TEAM.**

(1) The facility must ensure that an ISP team known as the Circle of Support is identified and provided for each person supported. The team may include the following as determined by the person supported:

(a) The person supported;

(b) The legal representative (conservator, parent, guardian, or legal custodian) of the person supported, if applicable, unless their inability or unwillingness to attend is documented;

(c) Appropriate Provider staff;

(d) Relevant professionals or individuals, unless their inability to attend is documented;

(e) Friends, advocates and other non-paid supports, if applicable; and

(f) The QIDP (Qualified Intellectual Disabilities Professional).

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-10-.12 INDIVIDUAL SUPPORT PLAN (ISP) DEVELOPMENT AND IMPLEMENTATION.**

(1) The facility must ensure that a written ISP is provided and implemented for each person supported. The ISP must meet the following requirements:

(a) Developed within thirty (30) days of the admission of the person supported to the facility;

(b) Developed by the ISP team of the person supported;

(c) Includes the date of development of the ISP;

(d) Includes signatures of the person supported, appropriate staff, and, if applicable, the legal representative (conservator, parent, guardian, or legal custodian) of the person supported;

(e) Specifies the needs identified by assessment of the person supported and addresses those needs within the particular service/program component;

(f) Includes personal goals and objectives of the person supported, which are related to the specific needs identified, and specifies which goals and objectives are to be addressed by a particular service/program component; and

(g) Includes methods or activities by which the goals and objectives of the person supported are to be implemented.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-10-.13 INDIVIDUAL SUPPORT PLAN (ISP) MONITORING AND REVIEW.**

(1) Written progress notes must be maintained, which include at least quarterly reviews of progress or changes occurring in the ISP.

(2) Changes relative to health, safety, and implementation of outcome based services must be assessed on an ongoing basis and reflected within the quarterly reviews.

(3) The ISP team must review the ISP annually and revise, as necessary.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-10-.14 HUMAN RIGHTS COMMITTEE.**

The facility must provide a Human Rights Committee to ensure the rights of the person supported and provide advocacy for the person supported. The committee must consist minimally of at least three (3) members, including one (1) member who is independent of the facility. The committee's meetings and decisions must be documented.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-10-.15 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT.**

(1) No procedures shall be used for behavior management which results in physical or emotional harm to the person supported.

(2) Corporal punishment, seclusion, aversive stimuli, chemical restraint, and denial of a nutritionally adequate diet shall not be used.

(3) Restraint (physical holding, mechanical restraint), medications for behavior management, time-out rooms, or other techniques with similar degrees of restriction or intrusion must not be employed except as an integral part of an ISP.

(4) Restrictive or intrusive behavior management procedures must not be used until after less restrictive alternatives for dealing with the problem behavior have been systematically tried or considered and have been determined to be inappropriate or ineffective.

(5) Prior to the implementation of a written program or behavior support plan incorporating the use of a highly restrictive or intrusive technique, the program plan must be reviewed and approved by the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian), with documentation of such approval. A Human Rights Committee must also review and approve the written program.

(6) When procedures such as physical holding, mechanical restraint, and time-out are used in emergency situations to prevent the person supported from inflicting bodily harm, more than three (3) times within six (6) months, a behavioral assessment shall be conducted by an appropriate professional. Recommendations shall be incorporated into a written plan that is part of the ISP.

(7) Behavior management medications may be used only when authorized in writing by a physician for a specific period of time.

(8) The program plan for the use of a mechanical restraint must specify the extent and frequency of the monitoring schedule according to the type and design of the device and the condition of the person supported.

(9) A person supported who is placed in a mechanical restraint must be released for a minimum of ten (10) minutes at least every two (2) hours and provided with an opportunity for freedom of movement, exercise, liquid intake/refreshment, nourishment, and use of the bathroom.

(10) Physical restraint/physical holding may be used only until the person supported is calm.

(11) A person supported who is placed in time-out must be released after a period of not more than sixty (60) minutes.

(12) The ability of a person supported to exit from time-out must not be prevented by means of keyed or other locks, and locations used for time-out must allow for the immediate entry of staff.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**RULES OF THE TENNESSEE**
**DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**OFFICE OF LICENSURE**

**CHAPTER 0465-02-11**
**MINIMUM PROGRAM REQUIREMENTS FOR**
**INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**RESIDENTIAL HABILITATION FACILITIES/SERVICES**

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**0465-02-11-.01 HEALTH, SAFETY, AND WELFARE SAFEGUARDS.**

(1) The facility must provide or procure assistance for the person supported in locating qualified dental, medical, nursing, and pharmaceutical care including care for emergencies.

(2) The facility must ensure that each person supported receives an annual physical examination (unless less often is indicated by the physician of the person supported), which includes routine screenings

(such as vision and hearing) and laboratory examinations (such as Pap smear, mammogram, prostate screening, and blood work) as determined necessary by the physician and special studies where the index of suspicion is high.

(3) The facility must ensure that each person supported receives dental examinations and treatment as prescribed by the physician.

(4) The facility must require that a person supported receives immunizations as required by the Department of Health, unless contraindicated by a doctor's written orders.

(5) The facility must ensure that each person supported has a physical examination within the twelve (12) months prior to admission or within thirty (30) days after admission.

(6) The facility must ensure that employees practice infection control procedures that will protect the person supported from infectious diseases.

(7) The facility must enable the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian) to choose a personal physician for routine services.

(8) The facility must insure that appropriate corrective actions have been taken in response to substantiated abuse or neglect.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-11-.02 PERSONNEL AND STAFFING.**

(1) The facility must provide one (1) direct support staff member for every ten (10) persons supported present in the facility.

(2) Employees shall be screened or tested for tuberculosis according to the procedures of the Tennessee Department of Health. Documentation of such screening or testing shall be maintained in the employee's personnel file.

(3) The facility must document that the Hepatitis B vaccine is made available to direct support staff.

(4) Employees must be provided with a basic orientation in the specific needs of a person supported prior to being assigned to work with him/her.

(5) The facility must provide at all times at least one (1) on-duty staff member who is certified in First Aid and Cardiopulmonary Resuscitation (CPR).

(6) All employees must receive training in detection, reporting, and prevention of abuse. This training must be documented in the employee's record.

(7) All professional services must be provided by individuals duly licensed or certified to practice their profession in the State of Tennessee.

(8) Persons supported must never be left unattended unless otherwise specified in his/her ISP. Approval by appropriate staff must be documented in the record of the person supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-11-.03 PERSON SUPPORTED RECORDS.**

(1) The record of each person supported must contain the following information:

(a) A recent photograph and a description of the person supported;

(b) Social security number of the person supported;

(c) The legal competency status of the person supported, including the name of his/her legal representative (conservator, parent, guardian, or legal custodian), if applicable;

(d) The sources of financial support of the person supported, including social security, veteran's benefits, and insurance;

(e) The sources of coverage for medical care costs of the person supported;

(f) The name, address and telephone number of the physician or health agency providing medical services for the person supported;

(g) Documentation of all medications prescribed or administered by the facility to the person supported, which indicates date prescribed, type, dosage, frequency, amount, reason, and side effects;

(h) Documentation of medical problems, accidents, seizures and illnesses of the person supported and treatments for such medical problems, accidents, seizures and illnesses while the person supported is in the care of the facility;

(i) Documentation of significant behavior incidents and of actions taken while the person supported is in the care of facility staff;

(j) Documentation of the use of restrictive behavior-management techniques while the person supported is in the care of facility staff;

(k) A list of each individual article of personal property of the person supported, valued at one hundred dollars ($100) or more including its disposition, if no longer in use;

(l) Written accounts of all monies received and disbursed on behalf of the person supported; and

(m) A discharge summary of the person supported, which states the date of discharge, reasons for discharge, and referral for other services, if appropriate.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-11-.04 MEDICATION ADMINISTRATION.**

(1) When medications are administered by certified staff to persons supported the licensee must:

(a) Consider the ability and training of the person supported, when supervising the self-administration of medication;

(b) Ensure that prescription medications are taken only by the person supported for whom they are prescribed, and in accordance with the directions of a physician;

(c) Provide storage for medications in a locked container, which ensures proper conditions of security and sanitation, and prevents accessibility to any unauthorized individual;

(d) Assure the disposal of discontinued and outdated medications and containers with worn, illegible or missing labels; and

(e) Report all medication variance (errors), medication reactions, or suspected side effects to the practitioner who prescribed the medication.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302,*

*33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-11-.05 SUPPORTS AND SERVICES.**

(1) The facility must provide supports and services that comply with the following:

(a) Activities available to persons supported throughout the day must be based on the preferences and interests of each person supported;

(b) Activities have an identifiable purpose and are of meaningful activity;

(c) The physical and nutritional needs of the persons supported are addressed;

(d) Persons supported who have eating/swallowing diagnoses are identified and the identified diagnoses are addressed;

(e) Special diets and mealtime practices are implemented as needed;

(f) Persons supported must have access to prescribed adapted equipment and/or assistive technology;

(g) Equipment is monitored to determine proper fit, working order and need for repair;

(h) Equipment storage is available if needed; and

(i) Persons supported must be provided assistance in the use and protection of money.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-11-.06 PERSONAL SUPPORT AND ASSISTANCE.**

(1) The facility must provide persons supported with the level of support and assistance needed in a private and dignified manner.

(2) The facility must provide persons supported with the level of support and assistance needed in the use of dental appliances, eyeglasses, and hearing aids.

(3) The facility must be responsible for the implementation of all physicians' orders.

(4) The facility must assist each person supported in securing an adequate amount of personally owned, clean and seasonal clothes that are of correct size.

(5) Each person supported must be provided the level of support and assistance needed to purchase and select his/her own clothes.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-11-.07 RECREATIONAL ACTIVITIES.**

The facility must ensure that opportunities are provided for recreational activities, which are appropriate and adapted to the needs, interests, and age of the persons supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-11-.08 DAY ACTIVITIES.**

(1) The facility must ensure that day activities are provided or procured. Such day activities must take into account the age, interests, abilities and needed supports of the person supported and be provided in accordance with an ISP.

(2) If the person supported attends a school or day program provided outside of the facility, the facility's staff must participate with the school personnel in developing an individual education plan or with the day program staff in developing an ISP, as appropriate.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-11-.09 ASSESSMENTS.**

(1) The following assessments of the person supported must be completed prior to development of the ISP:

(a) An assessment of current capabilities in such areas as adaptive behavior and independent living skills;

(b) A basic medical history, information, and determination of the necessity of a medical evaluation, and a copy, where applicable, of the results of the medical evaluation;

(c) A six (6) month history of prescription and non-prescription medications, and an alcohol and substance abuse history; and

(d) An existing psychological assessment on file which is updated as recommended by the ISP team.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-11-.10 INDIVIDUAL SUPPORT PLAN (ISP) TEAM.**

(1) The licensee must ensure that an ISP team known as the Circle of Support is identified and provided for each person supported. The team may include the following as determined by the person supported:

(a) The person supported;

(b) The legal representative (conservator, parent, guardian, or legal custodian) of the person supported, if applicable, unless their inability or unwillingness to attend is documented;

(c) Appropriate provider staff;

(d) Relevant professionals or individuals, unless their inability to attend is documented;

(e) Friends, advocates and other non-paid supports, if applicable; and

(f) The Independent Support Coordinator/Case Manager.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-11-.11 INDIVIDUAL SUPPORT PLAN (ISP) DEVELOPMENT AND IMPLEMENTATION.**

(1) The facility must ensure that a written, ISP is provided and implemented for each person supported within thirty (30) days of admission. The ISP must include the following:

(a) The name of the person supported;

(b) The date of plan development;

(c) Goals and outcomes to be addressed which are related to the specific needs and preferences of the person supported;

(d) Interventions that address specific goals and outcomes, identify staff responsible for interventions and planned frequency of contacts;

(e) The facility must maintain documentation that supports the implementation and results of the ISP of the person supported;

(f) Signature(s) of staff who develop the ISP and the primary staff responsible for its implementation; and

(g) Signature of the person supported (and/or legal guardian or documentation of reasons for refusal to sign and/or inability to participate in ISP development.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-11-.12 INDIVIDUAL SUPPORT PLAN (ISP) MONITORING AND REVIEW.**

(1) Written progress notes must be maintained, which include at least quarterly reviews of progress or changes occurring in the ISP.

(2) Changes relative to health, safety, and implementation of outcome based services must be assessed on an ongoing basis and reflected within the quarterly reviews.

(3) The ISP team must review the ISP annually and revise, as necessary.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-11-.13 USE OF RESTRICTED BEHAVIOR INTERVENTIONS.**

(1) The facility must ensure that restricted behavior interventions are not provided until unrestricted interventions have been systematically tried or considered and have been determined to be inappropriate or otherwise contraindicated.

(2) The facility must ensure that restricted behavior interventions are only provided through an approved written intervention plan.

(3) If restricted interventions are provided, the written intervention plan must:

(a) Be based upon a functional assessment;

(b) Utilize the least intrusive effective intervention that supports the person supported in developing alternative behaviors;

(c) Include procedures to reinforce the person supported for interacting in more adaptive, effective ways so that the need for the challenging behavior is reduced;

(d) Include information on the functional assessment, treatment rationale, procedures, generalization and maintenance strategies, data collection, and schedule for progress review;

(e) Include measurable criteria for fading or removing the restricted intervention based on progress;

(f) Clearly define all responsibilities for implementing components of the plan;

(g) Clearly describe for staff:

1. The description of the behavior;

2. Situations in which the behavior is likely to occur;

3. Signs and signals that occur prior to the behavior and what staff should do to reduce the likelihood of the behavior occurring;

4. How staff should respond when the behavior occurs;

5. What staff should do to encourage appropriate responses;

6. What information staff should document; and

7. Crisis intervention or emergency procedures, as applicable;

(4) The facility must ensure that the written intervention plan is reviewed and approved by appropriately constituted Behavior Support and Human Rights Committees prior to its implementation.

(5) The facility must ensure that staff who implement the written intervention plan are trained to competency on implementing the plan.

(6) The facility must ensure that staff implementation of the plan is monitored regularly and reported as part of progress notes at least monthly.

(7) The facility must ensure that in the provision of behavior services, restraint or protective equipment is used only to protect the person supported or others from harm and when other less intrusive methods have been ineffective or are contraindicated.

(8) The facility must ensure that in the provision of behavior services, the programmatic restraint or protective equipment is used only as part of any approved intervention plan for which consent has been obtained.

(9) The facility does not employ the following devices or practices in the provision of behavior services:

(a) Restraint vests, camisoles, body wraps;

(b) Devices that are used to tie or secure a wrist or ankle to prevent movement;

(c) Restraint chairs or chairs with devices that prevent movement;

(d) Removal of mobility aids, such as a wheelchair or walker, of the person supported;

(e) Protective equipment that restricts or prevents movement or the customary use/functioning of the body or body part to which it is applied;

(f) Protective equipment that impairs or inhibits visual or auditory capabilities or prevents or impairs speech or other communication modalities;

(g) Any actions, including seclusion or restraints imposed as a means of coercion, discipline, convenience or retaliation;

(h) Corporal punishment, denial of a nutritionally balanced diet or any other procedures that may result in physical or emotional harm to the person supported;

(i) Restraint rooms; and

(j) Aversive stimuli.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-11-.14 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT.**

(1) No procedures shall be used for behavior management which results in physical or emotional harm to the person supported.

(2) Corporal punishment, seclusion, aversive stimuli, chemical restraint, and denial of a nutritionally adequate diet shall not be used.

(3) Restraint (physical holding, mechanical restraint), medications for behavior management, time-out rooms, or other techniques with similar degrees of restriction or intrusion must not be employed except as an integral part of an ISP.

(4) Restrictive or intrusive behavior management procedures must not be used until after less restrictive alternatives for dealing with the problem behavior have been systematically tried or considered and have been determined to be inappropriate or ineffective.

(5) Prior to the implementation of a written program or behavior support plan incorporating the use of a highly restrictive or intrusive technique, the program plan must be reviewed and approved by the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian), with documentation of such approval. A Human Rights Committee must also review and approve the written program.

(6) When procedures such as physical holding, mechanical restraint, and time-out are used in emergency situations to prevent the person supported from inflicting bodily harm, more than three (3) times within six (6) months, a behavioral assessment shall be conducted by an appropriate professional. Recommendations shall be incorporated into a written plan that is part of the ISP.

(7) Behavior management medications may be used only when authorized in writing by a physician for a specific period of time.

(8) The program plan for the use of a mechanical restraint must specify the extent and frequency of the monitoring schedule according to the type and design of the device and the condition of the person supported.

(9) A person supported who is placed in a mechanical restraint must be released for a minimum of ten (10) minutes at least every two (2) hours and provided with an opportunity for freedom of movement, exercise, liquid intake/refreshment, nourishment, and use of the bathroom.

(10) Physical restraint/physical holding may be used only until the person supported is calm.

(11) A person supported who is placed in time-out must be released after a period of not more than sixty (60) minutes.

(12) The ability of a person supported to exit from time-out must not be prevented by means of keyed or other locks, and locations used for time-out must allow for the immediate entry of staff.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-11-.15 USE OF PSYCHOTROPIC MEDICATIONS.**

(1) The facility must obtain the following when psychotropic medications are used:

(a) A diagnosis that is based on a comprehensive psychiatric assessment; and

(b) Reasons for prescribing medications.

(2) The facility must ensure that there is informed consent from the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian) prior to utilizing psychotropic medications.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**RULES OF THE TENNESSEE**
**DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**OFFICE OF LICENSURE**

**CHAPTER 0465-02-12**
**MINIMUM PROGRAM REQUIREMENTS FOR INTELLECTUAL AND DEVELOPMENTAL DISABILITIES BOARDING HOME FACILITIES**

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**0465-02-12-.01 POLICIES AND PROCEDURES.**

The written policies and procedures manual must include policies and procedures regarding tuberculosis control and the reporting of infectious and communicable diseases, as required by the Tennessee Department of Health.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-12-.02 PROFESSIONAL SERVICES.**

(1) The facility must provide or procure assistance for persons supported in locating qualified dental, medical, nursing and pharmaceutical care including care emergencies during hours of the facility's operation.

(2) The facility must ensure that an annual physical examination is provided or procured for each person supported (unless less often is indicated by the physician of the person supported). Such examinations should include routine screenings (such as vision and hearing) and laboratory examinations (such as Pap smear and blood work) as determined necessary by the physician and special studies where the index of suspicion is high.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-12-.03 PERSONNEL AND STAFFING.**

(1) The facility must provide one (1) direct support staff member for each ten (10) persons supported present in the facility.

(2) Persons supported are never to be left unattended in the facility.

(3) Employees shall be screened or tested for tuberculosis according to the procedures of the Tennessee Department of Health. Documentation of such screening or testing shall be maintained in the employee's personnel file.

(4) The facility must ensure that employees practice infection control procedures that will protect persons supported from infectious diseases.

(5) Employees must be provided with a basic orientation in the proper management of seizure disorders for persons supported prior to being assigned to work.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-12-.04 PERSON SUPPORTED RECORDS.**

(1) The record of each person supported must include the following information:

(a) A recent photograph and a description of the person supported;

(b) The social security number of the person supported;

(c) The legal competency status of the person supported, including the name of his/her legal representative (conservator, parent, guardian, or legal custodian), if applicable;

(d) The sources of financial support including social security, veteran's benefits and insurance of the person supported;

(e) Sources of coverage for the medical care costs of the person supported;

(f) The name, address and telephone number of the physician or of the healthcare agency providing medical services for the person supported;

(g) Documentation of all medications administered to the person supported by the facility, which indicates the date prescribed, type, dosage, frequency, amount and reason;

(h) A discharge summary of the person supported, which includes the date of discharge, reasons for discharge and referral for other services, if appropriate;

(i) A list of each individual article of personal property owned by the person supported valued at fifty dollars ($50) or more, including its disposition if it is no longer in use;

(j) Written accounts of all monies received and disbursed on behalf of the person supported;

(k) Report of medical problems, accidents, seizures and illnesses of the person supported, and treatments for such medical problems, accidents, seizures and illnesses while the person supported resides in the facility;

(l) Report of significant behavior incidents of the person supported and the actions taken; and

(m) Report of the use of restrictive behavior-management techniques on the person supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-12-.05 MEDICATION ASSISTANCE.**

(1) When medications are taken by persons supported under the supervision of staff, the staff must:

(a) Consider the ability and training of the person supported, when supervising the self-administration of medication;

(b) Ensure that prescription medications are taken only by the person supported for whom they are prescribed, and in accordance with the directions of a physician;

(c) Provide storage for medications in a locked container, which ensures proper conditions of

security and sanitation, and prevents accessibility to any unauthorized individual;

(d) Assure the disposal of discontinued and outdated medications and containers with worn, illegible or missing labels; and

(e) Report all medication variance (errors), medication reactions, or suspected side effects to the practitioner who prescribed the medication.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-12-.06 HEALTH, HYGIENE AND GROOMING.**

(1) The facility must assist and encourage the person supported in the use of dental appliances, eyeglasses, and hearing aids.

(2) The facility must assist and encourage the person supported in maintaining a well-groomed and clean appearance, which is age and activity appropriate, and which is within reason of currently acceptable styles of grooming, dressing, and appearance.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-12-.07 CLOTHING FOR PERSONS SUPPORTED.**

(1) Each person supported must be provided the least restrictive level of support and assistance needed in the selection and purchase of clothing.

(2) The facility must allow each person supported to dress him/herself in his/her own clothes and to change clothes at appropriate times according to his/her abilities.

(3) The facility must assist each person supported in securing an adequate allowance of personally-owned, individualized, customary, clean, and seasonal clothes.

(4) Any marking of clothing belonging to the person supported for identification purposes must be done in an inconspicuous manner.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-12-.08 RECREATIONAL ACTIVITIES.**

The facility must ensure that opportunities are provided for recreational activities, which are appropriate to and adapted to the needs, interests, and age of the person supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-12-.09 DAY ACTIVITIES.**

The facility must ensure that appropriate day activity programs, vocational placements, school placements, or other such appropriate day activities are provided or procured for all persons supported by the facility. Such day activities should be in accordance with the age level, interests, and abilities of the person supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-12-.10 ADMISSIONS.**

(1) The governing body must ensure that all persons supported admitted to and residing in the facility meet the following criteria:

(a) Capable of self-preservation;

(b) Able to care for basic self-help and minor health care needs with minimal assistance;

(c) Able to recognize danger or threat to personal safety; and

(d) Able to maintain appropriate behavior generally tolerable to the community.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-12-.11 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT.**

(1) No procedures shall be used for behavior management which results in physical or emotional harm to the person supported.

(2) Corporal punishment, seclusion, aversive stimuli, chemical restraint, and denial of a nutritionally adequate diet shall not be used.

(3) Restraint (physical holding, mechanical restraint), medications for behavior management, time-out rooms, or other techniques with similar degrees of restriction or intrusion must not be employed except as an integral part of an ISP.

(4) Restrictive or intrusive behavior management procedures must not be used until after less restrictive alternatives for dealing with the problem behavior have been systematically tried or considered and have been determined to be inappropriate or ineffective.

(5) Prior to the implementation of a written program or behavior support plan incorporating the use of a highly restrictive or intrusive technique, the program plan must be reviewed and approved by the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian), with documentation of such approval. A Human Rights Committee must also review and approve the written program.

(6) When procedures such as physical holding, mechanical restraint, and time-out are used in emergency situations to prevent the person supported from inflicting bodily harm, more than three (3) times within six (6) months, a behavioral assessment shall be conducted by an appropriate professional. Recommendations shall be incorporated into a written plan that is part of the ISP.

(7) Behavior management medications may be used only when authorized in writing by a physician for a specific period of time.

(8) The program plan for the use of a mechanical restraint must specify the extent and frequency of the monitoring schedule according to the type and design of the device and the condition of the person supported.

(9) A person supported who is placed in a mechanical restraint must be released for a minimum of ten (10) minutes at least every two (2) hours and provided with an opportunity for freedom of movement, exercise, liquid intake/refreshment, nourishment, and use of the bathroom.

(10) Physical restraint/physical holding may be used only until the person supported is calm.

(11) A person supported who is placed in time-out must be released after a period of not more than sixty (60) minutes.

(12) The ability of a person supported to exit from time-out must not be prevented by means of keyed or other locks, and locations used for time-out must allow for the immediate entry of staff.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**RULES OF THE TENNESSEE**
**DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**OFFICE OF LICENSURE**

**CHAPTER 0465-02-13**
**MINIMUM PROGRAM REQUIREMENTS FOR**
**INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**PLACEMENT SERVICES**

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**0465-02-13-.01 POLICIES AND PROCEDURES.**

(1) The written policies and procedures manual must include the following:

(a) Procedures for tuberculosis control and reporting of infectious and communicable diseases to the Tennessee Department of Health;

(b) Policies and procedures establishing minimum requirements in all placement providers' homes for ensuring safety to life in the event of fire. These policies and procedures minimally must ensure:

1. Fire safety features of smoke detectors, fire extinguishers and two (2) alternate means of escape from sleeping rooms in each provider's home; and

2. Training for all providers in developing and implementing evacuation procedures within each provider's home; and

(c) Policies and procedures establishing minimum requirements in all placement providers' homes regarding environmental conditions and services. The policies and procedures must address minimum standards for health and sanitation, adequate furnishings, facilities/services, and food/nutrition for meeting the needs of the person supported in providers' homes.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-13-.02 PROFESSIONAL SERVICES.**

(1) The licensee must provide or procure assistance for persons supported in locating qualified dental, medical, nursing and pharmaceutical care including care for emergencies during hours of the facility's operation.

(2) The licensee must ensure that an annual physical examination is provided or procured for each person supported (unless less often is indicated by the physician of the person supported). Such examinations should include routine screenings (such as vision and hearing) and laboratory examinations (such as Pap smear and blood work) as determined necessary by the physician and special studies where the index of suspicion is high.

(3) The licensee must ensure that an annual dental screening is provided or procured for each person supported.

(4) The licensee must ensure that each person supported is provided with immunizations as required by the Tennessee Department of Health unless contraindicated by a physician's order.

(5) The licensee must ensure that each person supported receives a medical exam within ninety (90) days before or thirty (30) days after admission.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-13-.03 PERSONNEL AND STAFFING.**

(1) The governing body must ensure that no more than three (3) persons supported are residing in an individual home at any given time.

(2) The governing body must ensure that employees and providers practice infection control procedures that will protect persons supported from infectious diseases.

(3) Employees shall be screened or tested for tuberculosis according to the procedures of the Tennessee Department of Health. Documentation of such screening or testing shall be maintained in the employee's personnel file.

(4) Employees and providers must be provided with a basic orientation in the proper management of seizure disorders for persons supported prior to being assigned to work.

(5) Persons supported must never be left unattended during customary sleeping hours.

(6) Employees and providers must be trained in First Aid and Cardiopulmonary Resuscitation (CPR).

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-13-.04 PERSON SUPPORTED RECORDS.**

(1) Each record of the person supported must contain the following information:

(a) A recent photograph and a description of the person supported;

(b) The social security number of the person supported;

(c) The legal competency status of the person supported, including the name of his/her legal representative (conservator, parent, guardian, or legal custodian), if applicable;

(d) The sources of financial support including social security, veteran's benefits and insurance of the person supported;

(e) The sources of coverage for medical care costs of the person supported;

(f) The name, address and telephone number of the physician or healthcare agency providing medical services for the person supported;

(g) Documentation of all medications prescribed or administered by the licensee to the person supported, which indicates date prescribed, type, dosage, frequency, amount and reason;

(h) A discharge summary of the person supported, which states the date of discharge, reasons for discharge and referral for other services, if appropriate;

(i) Report of medical problems, accidents, seizures and illnesses of the person supported, and treatments for such medical problems, accidents, seizures and illnesses;

(j) Report of significant behavior incidents of the person supported, and actions taken;

(k) Report of the use of restrictive behavior management techniques on the person supported;

(l) A list of each individual article of personal property of the person supported valued at fifty dollars ($50.00) or more, including its disposition if it is no longer in use; and

(m) Written accounts of all monies received and disbursed on behalf of the person supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-13-.05 MEDICATION ADMINISTRATION.**

(1) When medications are administered by certified staff to persons supported the licensee must:

(a) Consider the ability and training of the person supported, when supervising the self-administration of medication;

(b) Ensure that prescription medications are taken only by the person supported for whom they are prescribed, and in accordance with the directions of a physician;

(c) Provide storage for medications in a locked container, which ensures proper conditions of security and sanitation, and prevents accessibility to any unauthorized individual;

(d) Assure the disposal of discontinued and outdated medications and containers with worn, illegible or missing labels; and

(e) Report all medication variance (errors), medication reactions, or suspected side effects to the practitioner who prescribed the medication.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-13-.06 HEALTH, HYGIENE, AND GROOMING.**

The governing body must ensure that the person supported receives assistance and training, as needed, with health, hygiene, and grooming practices.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-13-.07 CLOTHING FOR PERSONS SUPPORTED.**

(1) The licensee must assist each person supported with the least restrictive level of support and assistance needed in the selection and purchase of clothing.

(2) Each person supported must be allowed to dress him/herself in his/her own clothes and to change clothes at appropriate times according to his/her abilities.

(3) The licensee must assist each person supported in securing an adequate allowance of personally owned, individualized, clean, and seasonal clothes.

(4) Any marking of clothing belonging to the person supported for identification purposes must be done in an inconspicuous manner.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-13-.08 RECREATIONAL ACTIVITIES.**

The governing body must ensure that opportunities are provided for recreational activities, which are appropriate to and adapted to the needs, interests, and age of the person supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-13-.09 DAY ACTIVITIES.**

(1) The governing body must ensure that day activities are provided or procured. Such day activities must be in accordance with the age level, interests, and abilities of the person supported and in accordance with an ISP.

(2) If the person supported attends an outside school or day program the governing body must ensure that the staff participates with the school personnel in developing an individual education plan or with the day program staff in developing an ISP, as appropriate.

(3) The governing body must ensure that each person supported with significant disabilities, and who uses a wheelchair:

(a) Is assisted by a Direct Support Staff member in spending at least three (3) hours of their waking day out of bed, unless contraindicated by a physician's order;

(b) Is assisted by a Direct Support Staff member in spending a portion of their waking day out of their bedroom area;

(c) Is assisted by a Direct Support Staff member in an exercise period daily; and

(d) Is assisted in being mobile whenever possible by the use of wheelchairs or other mobility devices.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-13-.10 ASSESSMENTS.**

(1) The following assessments of the person supported must be completed prior to the development of his/her ISP:

(a) An assessment of current capabilities in such areas as adaptive behavior and independent living skills;

(b) A basic medical history, information, and determination of the necessity of a medical evaluation, and a copy, where applicable, of the results of the medical evaluation;

(c) A six (6) month history of prescribed medications, frequently used over-the-counter medications, alcohol, and/or other drugs; and

(d) An existing psychological assessment on file, which is updated as recommended by the ISP team.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-13-.11 INDIVIDUAL SUPPORT PLAN (ISP) TEAM.**

(1) The licensee must ensure that an ISP team known as the Circle of Support is identified and provided for each person supported. The team may include the following as determined by the person supported:

(a) The person supported;

(b) The legal representative (conservator, parent, guardian, or legal custodian) of the person supported, if applicable, unless their inability or unwillingness to attend is documented;

(c) Appropriate Provider staff;

(d) Relevant professionals or individuals, unless their inability to attend is documented;

(e) Friends, advocates and other non-paid supports, if applicable; and

(f) The Independent Support Coordinator/Case Manager.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-13-.12 INDIVIDUAL SUPPORT PLAN (ISP) DEVELOPMENT AND IMPLEMENTATION.**

(1) The governing body must ensure that a written ISP is provided and implemented for each person supported. The ISP must meet the following requirements:

(a) Developed within thirty (30) days of the admission of the person supported;

(b) Developed by the ISP team of the person supported;

(c) Includes the date of development of the ISP;

(d) Includes signatures of the person supported, appropriate staff, and, if applicable, the legal representative (conservator, parent, guardian, or legal custodian) of the person supported;

(e) Specifies the needs identified by assessment of the person supported and addresses those needs within the particular service/program component;

(f) Includes personal goals and objectives of the person supported, which are related to the specific needs identified, and specifies which goals and objectives are to be addressed by a particular service/program component; and

(g) Includes methods or activities by which the goals and objectives of the person supported are to be implemented.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-13-.13 INDIVIDUAL SUPPORT PLAN (ISP) MONITORING AND REVIEW.**

(1) Written progress notes must be maintained, which include at least quarterly reviews of progress or changes occurring in the ISP.

(2) Changes relative to health, safety, and implementation of outcome based services must be assessed on an ongoing basis and reflected within the quarterly reviews.

(3) The ISP team must review the ISP annually and revise, as necessary.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-13-.14 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT.**

(1) No procedures shall be used for behavior management which results in physical or emotional harm to the person supported.

(2) Corporal punishment, seclusion, aversive stimuli, chemical restraint, and denial of a nutritionally adequate diet shall not be used.

(3) Restraint (physical holding, mechanical restraint), medications for behavior management, time-out rooms, or other techniques with similar degrees of restriction or intrusion must not be employed except as an integral part of an ISP.

(4) Restrictive or intrusive behavior management procedures must not be used until after less restrictive alternatives for dealing with the problem behavior have been systematically tried or considered and have been determined to be inappropriate or ineffective.

(5) Prior to the implementation of a written program or behavior support plan incorporating the use of a highly restrictive or intrusive technique, the program plan must be reviewed and approved by the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian), with documentation of such approval. A Human Rights Committee must also review and approve the written program.

(6) When procedures such as physical holding, mechanical restraint, and time-out are used in emergency situations to prevent the person supported from inflicting bodily harm, more than three (3) times within six (6) months, a behavioral assessment shall be conducted by an appropriate professional. Recommendations shall be incorporated into a written plan that is part of the ISP.

(7) Behavior management medications may be used only when authorized in writing by a physician for a specific period of time.

(8) The program plan for the use of a mechanical restraint must specify the extent and frequency of the monitoring schedule according to the type and design of the device and the condition of the person supported.

(9) A person supported who is placed in a mechanical restraint must be released for a minimum of ten (10) minutes at least every two (2) hours and provided with an opportunity for freedom of movement, exercise, liquid intake/refreshment, nourishment, and use of the bathroom.

(10) Physical restraint/physical holding may be used only until the person supported is calm.

(11) A person supported who is placed in time-out must be released after a period of not more than sixty (60) minutes.

(12) The ability of a person supported to exit from time-out must not be prevented by means of keyed or other locks, and locations used for time-out must allow for the immediate entry of staff.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**RULES OF TENNESSEE**
**DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**OFFICE OF LICENSURE**

**CHAPTER 0465-02-14**
**MINIMUM PROGRAM REQUIREMENTS FOR**
**INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**RESPITE CARE SERVICES**

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**0465-02-14-.01 POLICIES AND PROCEDURES.**

(1) The written policies and procedures manual must include the following:

(a) Policies and procedures regarding tuberculosis control and the reporting of infectious and communicable diseases as required by the Tennessee Department of Health;

(b) Policies and procedures establishing minimum requirements in all respite care services for ensuring safety to life in the event of fire. These policies and procedures must minimally ensure:

1. Fire safety features of smoke detectors, fire extinguishers and two (2) alternate means of escape from sleeping rooms in each home; and

2. Training for all providers in developing and implementing fire safety precautions and evacuation procedures within each home.

(c) Policies and procedures establishing minimum requirements for environmental quality in each home. Such requirements must include minimum standards for health, sanitation, and adequate furnishings, and equipment for meeting the needs and food/nutrition of the person supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-14-.02 PERSONNEL AND STAFFING.**

(1) The governing body must ensure that no more than three (3) persons are in an individual respite care placement at a time.

(2) Persons supported are never to be left unattended during customary sleeping hours.

(3) Employees shall be screened or tested for tuberculosis according to the procedures of the Tennessee Department of Health. Documentation of such screening or testing shall be maintained in the employee's personnel file.

(4) The governing body must ensure that employees and providers practice infection control procedures that will protect persons supported from infectious diseases.

(5) Employees and providers must be provided with a basic orientation in the proper management of seizure disorders for persons supported prior to being assigned to work.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-14-.03 PERSON SUPPORTED RECORDS.**

(1) The governing body must ensure that the record of each person supported includes the following:

(a) The social security number of the person supported;

(b) The legal competency status of the person supported, including the name of his/her legal representative (conservator, parent, guardian, or legal custodian), if applicable;

(c) Sources of coverage for the medical care costs of the person supported;

(d) The name, address and telephone number of the physician or healthcare agency providing medical services for the person supported;

(e) Documentation of all medications administered to the person supported by the licensee, which

indicates the date prescribed, type, dosage, frequency, amount and reason;

(f) Written accounts of all monies received and disbursed on behalf of the person supported;

(g) Report of medical problems, accidents, seizures and illnesses of the person supported, and treatments for such medical problems, accidents, seizures and illnesses while the person supported is in respite care;

(h) Report of significant behavior incidents of the person supported, and actions taken; and

(i) Report of the use of restrictive behavior management techniques on the person supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-14-.04 MEDICATION ADMINISTRATION.**

(1) When medications are administered by certified staff to persons supported the licensee must:

(a) Consider the ability and training of the person supported, when supervising the self-administration of medication;

(b) Ensure that prescription medications are taken only by the person supported for whom they are prescribed, and in accordance with the directions of a physician;

(c) Provide storage for medications in a locked container, which ensures proper conditions of security and sanitation, and prevents accessibility to any unauthorized individual;

(d) Assure the disposal of discontinued and outdated medications and containers with worn, illegible or missing labels; and

(e) Report all medication variance (errors), medication reactions, or suspected side effects to the practitioner who prescribed the medication.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-14-.05 HEALTH, HYGIENE AND GROOMING.**

The governing body must ensure that all persons supported receive assistance with health, hygiene, and grooming.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-14-.06 DAY ACTIVITIES.**

The governing body must ensure that appropriate day activities are provided or procured, which are in accordance with the age level, interest, and ability of the person supported, and relevant to the length and purpose of his/her stay.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-14-.07 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT.**

(1) No procedures shall be used for behavior management which results in physical or emotional harm to the person supported.

(2) Corporal punishment, seclusion, aversive stimuli, chemical restraint, and denial of a nutritionally adequate diet shall not be used.

(3) Restraint (physical holding, mechanical restraint), medications for behavior management, time-out rooms, or other techniques with similar degrees of restriction or intrusion must not be employed except as an integral part of an ISP.

(4) Restrictive or intrusive behavior management procedures must not be used until after less restrictive alternatives for dealing with the problem behavior have been systematically tried or considered and have been determined to be inappropriate or ineffective.

(5) Prior to the implementation of a written program or behavior support plan incorporating the use of a highly restrictive or intrusive technique, the program plan must be reviewed and approved by the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian), with documentation of such approval. A Human Rights Committee must also review and approve the written program.

(6) When procedures such as physical holding, mechanical restraint, and time-out are used in emergency situations to prevent the person supported from inflicting bodily harm, more than three (3) times within six (6) months, a behavioral assessment shall be conducted by an appropriate professional. Recommendations shall be incorporated into a written plan that is part of the ISP.

(7) Behavior management medications may be used only when authorized in writing by a physician for a specific period of time.

(8) The program plan for the use of a mechanical restraint must specify the extent and frequency of the monitoring schedule according to the type and design of the device and the condition of the person supported.

(9) A person supported who is placed in a mechanical restraint must be released for a minimum of ten (10) minutes at least every two (2) hours and provided with an opportunity for freedom of movement, exercise, liquid intake/refreshment, nourishment, and use of the bathroom.

(10) Physical restraint/physical holding may be used only until the person supported is calm.

(11) A person supported who is placed in time-out must be released after a period of not more than sixty (60) minutes.

(12) The ability of a person supported to exit from time-out must not be prevented by means of keyed or other locks, and locations used for time-out must allow for the immediate entry of staff.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**RULES OF THE TENNESSEE**
**DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**OFFICE OF LICENSURE**

**CHAPTER 0465-02-15**
**MINIMUM PROGRAM REQUIREMENTS FOR**
**INTELLECTUAL DISABILITIES**
**SEMI-INDEPENDENT LIVING SERVICES**

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**0465-02-15-.01 POLICIES AND PROCEDURES.**

(1) The written policies and procedures manual must include the following:

(a) Procedures for tuberculosis control and reporting of infectious and communicable diseases to the Tennessee Department of Health.

(b) Policies and procedures establishing minimum requirements ensuring reasonable safety to life in the event of fire for all dwellings in which persons supported reside. These policies and procedures must require:

1 Fire safety features of smoke detection, fire extinguishers and two (2) alternative routes of escape in each dwelling of the person supported; and

2. Training for each person supported at the time of admission in the proper evacuation of his/her respective dwelling and the use of fire safety features.

(c) Policies and procedures establishing minimum standards of environmental quality in the dwelling of each person supported. These policies and procedures must ensure:

1. The health of the person supported is not threatened by the standard of environmental quality maintained in his/her dwelling; and

2. Each dwelling of the person supported is furnished and equipped in an adequate manner for meeting his/her individual needs and personal life style.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-15-.02 PROFESSIONAL SERVICES.**

(1) The licensee must provide or procure assistance for persons supported in locating qualified dental, medical, nursing, and pharmaceutical care including care for emergencies during hours of the licensee's operation.

(2) The licensee must ensure that an annual physical examination is provided or procured for each person supported (unless less often is indicated by the physician of the person supported). Such examinations should include routine screenings (such as vision and hearing) and laboratory examination (such as Pap smear and blood work), as determined necessary by the physician and special studies where the index of suspicion is high.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-15-.03 PERSONNEL AND STAFFING.**

(1) A primary staff member must be assigned to each person supported. The primary staff member is to be responsible for monitoring and assisting the person supported in the semi-independent living arrangement. A primary staff member must not be responsible for more than twenty (20) persons supported at one time.

(2) Primary staff members or other assigned support staff must be available on call to persons supported on a twenty-four (24) hour per day basis.

(3) The governing body must ensure that employees practice infection control procedures that will protect persons supported from infectious diseases.

(4) Employees shall be screened or tested for tuberculosis according to the procedures of the Tennessee Department of Health. Documentation of such screening or testing shall be maintained in the employee's personnel file.

(5) Employees must be provided with a basic orientation in the proper management of seizure disorders for persons supported prior to being assigned to work.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-15-.04 PERSON SUPPORTED RECORDS.**

(1) The record of each person supported must contain the following:

(a) A recent photograph and a description of the person supported;

(b) The social security number of the person supported;

(c) The legal competency status of the person supported, including the name of his/her legal representative (conservator, parent, guardian, or legal custodian), if applicable;

(d) The sources of financial support including social security, veteran's benefits and insurance of the person supported;

(e) The sources of coverage for medical care costs of the person supported;

(f) The name, address and telephone number of the physician or healthcare agency providing medical services for the person supported;

(g) Documentation of all medications prescribed or administered to the person supported by the licensee, which indicates the date prescribed, type, dosage, frequency, amount and reason;

(h) A discharge summary of the person supported, which states the date of discharge, reasons for discharge and referral for other services, if appropriate;

(i) Report of medical problems, accidents, seizures and illnesses of the person supported, and treatments of such medical problems, accidents, seizures and illnesses;

(j) Report of significant behavior incidents of the person supported, and actions taken;

(k) Report of the use of restrictive behavior-management techniques on the person supported; and

(l) Written accounts of all monies received and disbursed on behalf of the person supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-15-.05 MEDICATION ADMINISTRATION.**

(1) When medications are administered by certified staff to persons supported the licensee must:

(a) Consider the ability and training of the person supported, when supervising the self-administration of medication;

(b) Ensure that prescription medications are taken only by the person supported for whom they are prescribed, and in accordance with the directions of a physician;

(c) Provide storage for medications in a locked container, which ensures proper conditions of security and sanitation, and prevents accessibility to any unauthorized individual;

(d) Assure the disposal of discontinued and outdated medications and containers with worn, illegible or missing labels; and

(e) Report all medication variance (errors), medication reactions, or suspected side effects to the practitioner who prescribed the medication.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-15-.06 DAY ACTIVITIES.**

(1) The governing body must ensure that day activities are provided or procured. Such day activities must be in accordance with the age level, interests, and abilities of the person supported, and in accordance with an ISP.

(2) If the person supported attends an outside school or day program the governing body must ensure that the staff participate with the school personnel in developing an individual education plan or with the day program staff in developing an ISP, as appropriate.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-15-.07 ASSESSMENTS.**

(1) The following assessments of the person supported must be completed prior to the development of an ISP:

(a) An assessment of current capabilities in such areas as adaptive behavior and independent living skills.

(b) A basic medical history, information, and determination of the necessity of a medical evaluation, and a copy, where applicable, of the results of the medical evaluation.

(c) A six (6) month history of prescribed medications, frequently used over-the-counter medications, alcohol, and/or other drugs.

(d) An existing psychological assessment on file, which is updated as recommended by the ISP team.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-15-.08 INDIVIDUAL SUPPORT PLAN (ISP) TEAM.**

(1) The licensee must ensure that an ISP team known as the Circle of Support is identified and provided for each person supported. The team may include the following as determined by the person supported:

(a) The person supported;

(b) The legal representative (conservator, parent, guardian, or legal custodian) of the person supported, if applicable, unless their inability or unwillingness to attend is documented;

(c) Appropriate Provider staff;

(d) Relevant professionals or individuals, unless their inability to attend is documented;

(e) Friends, advocates and other non-paid supports, if applicable; and

(f) The Independent Support Coordinator/Case Manager.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-15-.09 INDIVIDUAL SUPPORT PLAN (ISP) DEVELOPMENT AND IMPLEMENTATION.**

(1) The governing body must ensure that a written ISP is provided and implemented for each person supported. The ISP must meet the following requirements:

(a) Developed within thirty (30) days of the admission of the person supported;

(b) Developed by the ISP team of the person supported;

(c) Includes the date of development of the ISP;

(d) Includes signatures of the person supported, appropriate staff, and, if applicable, the legal representative (conservator, parent, guardian, or legal custodian) of the person supported;

(e) Specifies the needs identified by assessment of the person supported and addresses those needs within the particular service/program component;

(f) Includes personal goals and objectives of the person supported, which are related to the specific needs identified, and specifies which goals and objectives are to be addressed by a particular service/program component; and

(g) Includes methods or activities by which the goals and objectives of the person supported are to be implemented.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-15-.10 INDIVIDUAL SUPPORT PLAN (ISP) MONITORING AND REVIEW.**

(1) Written progress notes must be maintained, which include at least quarterly reviews of progress or changes occurring in the ISP.

(2) Changes relative to health, safety, and implementation of outcome based services must be assessed on an ongoing basis and reflected within the quarterly reviews.

(3) The ISP team must review the ISP annually and revise, as necessary.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-15-.11 ADMISSIONS.**

(1) The governing body must ensure that all persons supported in semi-independent living services must meet the following criteria:

(a) Capable of self-preservation;

(b) Able to care for basic self-help and minor health care needs without assistance;

(c) Able to care for personal possessions and to maintain personal living area in a state of orderliness and cleanliness to the extent it does not constitute a health hazard;

(d) Able to travel independently or secure assistance in traveling to work, training, community activities, or to generic services;

(e) Able to recognize danger or threat to personal safety;

(f) Able to plan and cook simple meals; and

(g) Able to secure assistance in crisis situations by such means as the telephone or contacting neighbors or staff.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-15-.12 SUPPORTIVE SERVICES.**

(1) The governing body must ensure that the following support services are provided for each person supported:

(a) Transportation or assistance with transportation for non-routine events, special appointment, or long distance travel;

(b) Liaison for making appointments and obtaining consultation with professional services;

(c) Maintenance of a current list of the names and telephone numbers, within each dwelling of the person supported, for emergency services and the Direct Support Staff available and on-call;

(d) Counseling for each person supported as needed on the utilization of professional, social and community services, and assistance in the referral process and in making appointments for such services;

(e) Monitoring of food and nutrition to ensure that the person supported is able to plan, shop for, store, and prepare appropriate food and meals;

(f) Counseling, training, and other assistance in procuring and taking prescription and non-prescription drugs;

(g) Aid in the development of homemaking, money management, and socialization skills;

(h) Counseling/Assistance in the use and protection of money; and

(i) Assistance in applying for financial benefits for which the person supported may be eligible.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-15-.13 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT.**

(1) No procedures shall be used for behavior management which results in physical or emotional harm to the person supported.

(2) Corporal punishment, seclusion, aversive stimuli, chemical restraint, and denial of a nutritionally adequate diet shall not be used.

(3) Restraint (physical holding, mechanical restraint), medications for behavior management, time-out rooms, or other techniques with similar degrees of restriction or intrusion must not be employed except as an integral part of an ISP.

(4) Restrictive or intrusive behavior management procedures must not be used until after less restrictive alternatives for dealing with the problem behavior have been systematically tried or considered and have been determined to be inappropriate or ineffective.

(5) Prior to the implementation of a written program or behavior support plan incorporating the use of a highly restrictive or intrusive technique, the program plan must be reviewed and approved by the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian), with documentation of such approval. A Human Rights Committee must also review and approve the written program.

(6) When procedures such as physical holding, mechanical restraint, and time-out are used in emergency situations to prevent the person supported from inflicting bodily harm, more than three (3) times within six (6) months, a behavioral assessment shall be conducted by an appropriate professional. Recommendations shall be incorporated into a written plan that is part of the ISP.

(7) Behavior management medications may be used only when authorized in writing by a physician for a specific period of time.

(8) The program plan for the use of a mechanical restraint must specify the extent and frequency of the monitoring schedule according to the type and design of the device and the condition of the person supported.

(9) A person supported who is placed in a mechanical restraint must be released for a minimum of ten (10) minutes at least every two (2) hours and provided with an opportunity for freedom of movement, exercise, liquid intake/refreshment, nourishment, and use of the bathroom.

(10) Physical restraint/physical holding may be used only until the person supported is calm.

(11) A person supported who is placed in time-out must be released after a period of not more than sixty (60) minutes.

(12) The ability of a person supported to exit from time-out must not be prevented by means of keyed or other locks, and locations used for time-out must allow for the immediate entry of staff.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**RULES OF THE TENNESSEE**
**DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**OFFICE OF LICENSURE**

**CHAPTER 0465-02-16**
**MINIMUM PROGRAM REQUIREMENTS FOR**
**DEVELOPMENTAL DISABILITIES**
**SEMI-INDEPENDENT LIVING SERVICES**

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**0465-02-16-.01 POLICIES AND PROCEDURES.**

(1) The written policies and procedures manual must include the following:

(a) Procedures for tuberculosis control and reporting of infectious and communicable diseases to the Tennessee Department of Health.

(b) A policy ensuring that employees and volunteers practice infection control procedures and standard precautions that will protect people from infectious diseases.

(c) Policies and procedures establishing minimum requirements ensuring reasonable safety to life in the event of fire for all dwellings in which persons supported reside. These policies and procedures must require:

1. Fire safety features of smoke detection, fire extinguishers, and two (2) alternative routes of escape in each dwelling of the person supported; and

2. Training for each person supported at the time of admission in the proper evacuation of his or her respective dwelling and the use of fire safety features.

(d) Policies and procedures establishing minimum standards of environmental quality in the dwelling of each person supported. These policies and procedures must ensure:

1. The health of the person supported is not threatened by the standard of environmental quality maintained in his/her dwelling; and

2. Each dwelling of the person supported is furnished and equipped in an adequate manner for meeting his/her individual needs and personal life style.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-16-.02 PROFESSIONAL SERVICES.**

(1) The licensee must provide or procure assistance for persons supported in locating qualified dental, medical, nursing and pharmaceutical care including care for emergencies during hours of the facility's operation.

(2) The licensee must ensure that an annual physical examination is provided or procured for each person supported (unless less often is indicated by the physician of the person supported). Such examinations should include routine screenings (such as vision and hearing) and laboratory examination (such as Pap smear and blood work), as determined necessary by the physician and special studies where the index of suspicion is high.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-16-.03 PERSONNEL AND STAFFING.**

(1) A primary staff member must be assigned to each person supported. The primary staff member is to be responsible for monitoring and assisting the person supported in the semi-independent living arrangement. A primary staff member must not be responsible for more than twenty (20) persons supported at one time.

(2) Primary staff members or other assigned support staff must be available to persons supported on call on a twenty-four (24) hour per day basis.

(3) The governing body must ensure that employees practice infection control procedures that will protect persons supported from infectious diseases.

(4) Employees shall be screened or tested for tuberculosis according to the procedures of the Tennessee Department of Health. Documentation of such screening or testing shall be maintained in the employee's personnel file.

(5) Employees must be provided with a basic orientation in the proper management of seizure disorders for persons supported prior to being assigned to work.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-16-.04 PERSON SUPPORTED RECORDS.**

(1) The record of each person supported must contain the following:

(a) A recent photograph and a description of the person supported;

(b) The social security number of the person supported;

(c) The legal competency status of the person supported, including the name of his/her legal

representative (conservator, parent, guardian, or legal custodian), if applicable;

(d) The sources of financial support including social security, veteran's benefits and insurance of the person supported;

(e) The sources of coverage for medical care costs of the person supported;

(f) The name, address and telephone number of the physician or healthcare agency providing medical services for the person supported;

(g) Documentation of all medications prescribed or administered by the licensee to the person supported, which indicates the date prescribed, type, dosage, frequency, amount, and reason;

(h) A discharge summary of the person supported, which states the date of discharge, reasons for discharge, and referral for other services, if appropriate;

(i) Report medical problems, accidents, seizures and illnesses of the person supported, and treatments of such medical problems, accidents, seizures and illnesses;

(j) Report of significant behavior incidents of the person supported, and actions taken;

(k) Report of the use of restrictive behavior-management techniques on the person supported; and

(l) Written accounts of all monies received and disbursed on behalf of the person supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-16-.05 MEDICATION ASSISTANCE.**

(1) When medications are taken by persons supported under the supervision of staff, the staff must:

(a) Consider the ability and training of the person supported, when supervising the self-administration of medication;

(b) Ensure that prescription medications are taken only by the person supported for whom they are prescribed, and in accordance with the directions of a physician;

(c) Provide storage for medications in a locked container, which ensures proper conditions of security and sanitation, and prevents accessibility to any unauthorized individual;

(d) Assure the disposal of discontinued and outdated medications and containers with worn, illegible or missing labels; and

(e) Report all medication variance (errors), medication reactions, or suspected side effects to the practitioner who prescribed the medication.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-16-.06 DAY ACTIVITIES.**

(1) The governing body must ensure that day activities are provided or procured. Such day activities must be in accordance with the age level, interests, and abilities of the person supported and in accordance with an ISP.

(2) If the person supported attends an outside school or day program the governing body must ensure that the staff participate with the school personnel in developing an individual education plan or with the day program staff in developing an ISP, as appropriate.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-16-.07 ASSESSMENTS.**

(1) The following assessments of the person supported must be completed prior to the development of an ISP:

(a) An assessment of current capabilities in such areas as adaptive behavior and independent living skills;

(b) A basic medical history, information, and determination of the necessity of a medical evaluation, and a copy, where applicable, of the results of the medical evaluation of the person supported; and

(c) A six (6) month history of prescribed medications, frequently used over-the-counter medications, alcohol, and/or other drugs.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-16-.08 INDIVIDUAL SUPPORT PLAN (ISP) TEAM.**

(1) The licensee must ensure that an ISP team known as the Circle of Support is identified and provided for each person supported. The team may include the following as determined by the person supported:

(a) The person supported;

(b) The legal representative (conservator, parent, guardian, or legal custodian) of the person supported, if applicable, unless their inability or unwillingness to attend is documented;

(c) Appropriate Provider staff;

(d) Relevant professionals or individuals, unless their inability to attend is documented;

(e) Friends, advocates and other non-paid supports, if applicable; and

(f) The Independent Support Coordinator/Case Manager.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-16-.09 INDIVIDUAL SUPPORT PLAN (ISP) DEVELOPMENT AND IMPLEMENTATION.**

(1) The governing body must ensure that a written ISP is provided and implemented for each person supported. The ISP must meet the following:

(a) Developed within thirty (30) days of the admission of the person supported;

(b) Developed by the ISP team of the person supported;

(c) Includes the date of development of the ISP;

(d) Includes signatures of the person supported, appropriate staff, and, if applicable, the legal representative (conservator, parent, guardian, or legal custodian) of the person supported;

(e) Specifies the needs identified by assessment of the person supported and addresses those

needs within the particular service/program component;

(f) Includes personal goals and objectives of the person supported, which are related to the specific needs identified, and specifies which goals and objectives are to be addressed by a particular service/program component; and

(g) Includes methods or activities by which the goals and objectives of the person supported are to be implemented.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-16-.10 INDIVIDUAL SUPPORT PLAN (ISP) MONITORING AND REVIEW.**

(1) Written progress notes must be maintained, which include monthly documentation of progress or changes occurring within the ISP.

(2) The ISP team must review the ISP annually and revise, as necessary.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-16-.11 ADMISSIONS.**

(1) The governing body must ensure that all persons supported in semi-independent living services meet the following criteria:

(a) Capable of self-preservation;

(b) Able to care for basic self-help and minor health care needs without assistance;

(c) Able to care for personal possessions and to maintain personal living area in a state of orderliness and cleanliness to the extent it does not constitute a health hazard;

(d) Able to travel independently or secure assistance in traveling to work, training, community activities, or to generic services;

(e) Able to recognize danger or threat to personal safety;

(f) Able to plan and cook simple meals; and

(g) Able to secure assistance in crisis situations by such means as the telephone or contacting neighbors or staff.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-16-.12 SUPPORTIVE SERVICES.**

(1) The governing body must ensure that the following support services are provided for each person supported:

(a) Transportation or assistance with transportation for non-routine events, special appointments, or long distance travel;

(b) Liaison for making appointments and obtaining consultation with professional services;

(c) Maintenance of a current list of the names and telephone numbers, within each dwelling of the person supported, for emergency services and the Direct Support Staff available and on-call;

(d) Counseling for each person supported as needed on the utilization of professional, social and community services, and assistance in the referral process and in making appointments for such services;

(e) Monitoring of food and nutrition to ensure that the person supported is able to plan, shop for, store, and prepare appropriate food and meals;

(f) Counseling, training, and other assistance in procuring and taking prescription and non-prescription drugs;

(g) Aid in the development of homemaking, money management, and socialization skills;

(h) Counseling/Assistance in the use and protection of money; and

(i) Assistance in applying for financial benefits for which the person supported may be eligible.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-16-.13 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT.**

(1) No procedures shall be used for behavior management which results in physical or emotional harm to the person supported.

(2) Corporal punishment, seclusion, aversive stimuli, chemical restraint, and denial of a nutritionally adequate diet shall not be used.

(3) Restraint (physical holding, mechanical restraint), medications for behavior management, time-out rooms, or other techniques with similar degrees of restriction or intrusion must not be employed except as an integral part of an ISP.

(4) Restrictive or intrusive behavior management procedures must not be used until after less restrictive alternatives for dealing with the problem behavior have been systematically tried or considered and have been determined to be inappropriate or ineffective.

(5) Prior to the implementation of a written program or behavior support plan incorporating the use of a highly restrictive or intrusive technique, the program plan must be reviewed and approved by the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian), with documentation of such approval. A Human Rights Committee must also review and approve the written program.

(6) When procedures such as physical holding, mechanical restraint, and time-out are used in emergency situations to prevent the person supported from inflicting bodily harm, more than three (3) times within six (6) months, a behavioral assessment shall be conducted by an appropriate professional. Recommendations shall be incorporated into a written plan that is part of the ISP.

(7) Behavior management medications may be used only when authorized in writing by a physician for a specific period of time.

(8) The program plan for the use of a mechanical restraint must specify the extent and frequency of the monitoring schedule according to the type and design of the device and the condition of the person supported.

(9) A person supported who is placed in a mechanical restraint must be released for a minimum of ten (10) minutes at least every two (2) hours and provided with an opportunity for freedom of movement, exercise, liquid intake/refreshment, nourishment, and use of the bathroom.

(10) Physical restraint/physical holding may be used only until the person supported is calm.

(11) A person supported who is placed in time-out must be released after a period of not more than sixty (60) minutes.

(12) The ability of a person supported to exit from time-out must not be prevented by means of keyed or other locks, and locations used for time-out must allow for the immediate entry of staff.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**RULES OF THE TENNESSEE**
**DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**OFFICE OF LICENSURE**

**CHAPTER 0465-02-17**
**MINIMUM PROGRAM REQUIREMENTS FOR**
**INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**PERSONAL SUPPORT SERVICES AGENCIES**

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**0465-02-17-.01 SCOPE.**

(1) These rules apply to all agencies or personal support services coordinator who provide personal support services in the permanent or temporary residence of persons supported who meet the criteria specified in Rule 0465-02-01(47).

(2) The following are exempt from licensure under this chapter:

(a) An individual who provides personal support services to only one (1) person supported and who is not in a business arrangement to provide personal support services to any other person supported. This exception shall not apply to an individual who holds themselves out to the public as being in the business of personal support services for compensation;

(b) An individual who provides personal support services only to members of the individual's own family;

(c) An individual who provides only housekeeping services to a person supported and no other assistance with major life activities;

(d) An individual who provides only transportation services and no other assistance with major life activities;

(e) An individual who provides services in homeless shelters;

(f) An individual who provides only delivery services, such as dry-cleaning, food, medication delivery, or medical equipment; and

(g) Home care organizations licensed under T.C.A., Title 68, Chapter 11, Part 2 as a home care organization.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-17-.02 APPLICATION FOR LICENSURE.**

(1) To provide personal support services, an agency needs a license from either the Department of Mental Health and Substance Abuse Services or the Department of Intellectual and Developmental

Disabilities.

(2) An agency licensed by either Department listed in Rule 0465-02-17-.02(1) may provide personal support services to individuals with physical or other disabilities.

(3) An agency seeking an initial license as a personal support service agency must submit a written attestation at the time of application acknowledging the categorization of the majority of its client population base, as described in (a) and (b) below. The written attestation shall be on a form developed by the department to whom application for a license is made.

(a) An agency with 50% or more of its client base being aged and/or having a diagnosis of mental illness and/or substance abuse should obtain a license from the Department of Mental Health and Substance Abuse Services.

(b) An agency with 50% or more of its client base having a diagnosis of developmental disability or intellectual disability should obtain a license from the Department of Intellectual and Developmental Disabilities.

(4) After January 1, 2016, any agency seeking renewal of a personal support services license need only make application with the department that licenses 50% or more of its client base, as described in sections (3)(a) and (b) above. The renewing agency shall submit with the renewal application a written attestation acknowledging the categorization of the majority of its client population base.

(5) No license shall be issued until the appropriate fee or fees are submitted by the agency seeking an initial or renewal license, as set forth in Rule 0465-02-02-.05 Licensure Administration and Procedures, Fees. All fees submitted are non-refundable.

(6) The agency should submit to the licensing department a list of the counties in which they provide services and the address at which the agency maintains its employee and service recipient records.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-17-.03 GOVERNANCE.**

(1) The licensee shall comply with all federal, state, and local laws, ordinances, rules, and regulations.

(2) The licensee shall ensure that the agency is administered and operated in accordance with written policies and procedures including, but not limited to, those specified in Rule 0465-0217-.04.

(3) The licensee shall exercise general direction over the agency and establish policies governing the operation of the agency and the welfare of the person supported.

(4) The licensee shall designate an individual responsible for the operation of the agency.

(5) The licensee shall ensure that the licensed agency supports only persons supported who will not cause the agency to violate its licensed status based on the distinct licensure category.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-17-.04 PERSONNEL AND STAFFING.**

(1) The governing body must ensure that appropriate support and assistance are provided in accordance with the needs of persons supported.

(2) Employees shall be screened or tested for tuberculosis according to the procedures of the Tennessee Department of Health. Documentation of such screening or testing shall be maintained in the employee's personnel file.

(3) Support staff must be provided with a basic orientation in the proper management of seizures for persons supported prior to being assigned to work.

(4) The governing body must ensure that support staff are trained in First Aid and Cardiopulmonary Resuscitation (CPR).

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-17-.05 PERSON SUPPORTED RECORDS.**

(1) The governing body must ensure that each record of the person supported contains the following:

(a) A recent photograph and identifying information of the person supported;

(b) The social security number of the person supported;

(c) The legal competency status of the person supported, including the name of his/her legal representative (conservator, parent, guardian, or legal custodian), if applicable;

(d) The sources of financial support of the person supported, including social security, veterans benefits, and insurance;

(e) The sources of coverage for medical care of the person supported;

(f) The name, address, and telephone number of the physician or healthcare agency providing medical services for the person supported;

(g) Report of medical problems, accidents, seizures, and illnesses of the person supported, and treatments for such medical problems, accidents, seizures, and illnesses as they occur;

(h) Report of significant behavior incidents of the person supported, and of actions taken;

(i) Report of restrictive behavior-management techniques used on the person supported; and

(j) Written accounts of all monies received and disbursed on behalf of the person supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-17-.06 MEDICATION ADMINISTRATION.**

(1) When medications are administered by certified staff to persons supported the licensee must:

(a) Consider the ability and training of the person supported, when supervising the self-administration of medication;

(b) Ensure that prescription medications are taken only by the person supported for whom they are prescribed, and in accordance with the directions of a physician;

(c) Provide storage for medications in a locked container, which ensures proper conditions of security and sanitation, and prevents accessibility to any unauthorized individual;

(d) Assure the disposal of discontinued and outdated medications and containers with worn, illegible or missing labels; and

(e) Report all medication variance (errors), medication reactions, or suspected side effects to the practitioner who prescribed the medication.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-17-.07 ASSESSMENTS.**

(1) The following assessments of the person supported must be completed prior to the development of an ISP:

(a) An assessment of current abilities and preferences; and

(b) A review of relevant medical, medication, and health information.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-17-.08 INDIVIDUAL SUPPORT PLAN (ISP) TEAM.**

(1) The licensee must ensure that an ISP team known as the Circle of Support is identified and provided for each person supported. The team may include the following as determined by the person supported:

(a) The person supported;

(b) The legal representative (conservator, parent, guardian, or legal custodian) of the person supported, if applicable, unless their inability or unwillingness to attend is documented;

(c) Appropriate Provider staff;

(d) Relevant professionals or individuals, unless their inability to attend is documented;

(e) Friends, advocates and other non-paid supports, if applicable; and

(f) The Independent Support Coordinator/Case Manager.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-17-.09 INDIVIDUAL SUPPORT PLAN (ISP) DEVELOPMENT AND IMPLEMENTATION.**

(1) The licensee must ensure that a written ISP is provided and implemented for each person supported. The ISP must meet the following requirements:

(a) Developed within thirty (30) days of the admission of the person supported;

(b) Developed by the ISP team of the person supported;

(c) Includes the date of development of the ISP;

(d) Includes signatures of the person supported, appropriate staff, and, if applicable, the legal representative (conservator, parent, guardian, or legal custodian) of the person supported;

(e) Specifies the needs identified by assessment of the person supported and addresses those needs within the particular service/program component;

(f) Includes personal goals and objectives of the person supported, which are related to the specific needs identified, and specifies which goals and objectives are to be addressed by a particular service/program component; and

(g) Includes methods or activities by which the goals and objectives of the person supported are to be implemented.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-17-.10 INDIVIDUAL SUPPORT PLAN (ISP) MONITORING AND REVIEW.**

(1) Written progress notes must be maintained, which include at least quarterly reviews of progress or changes occurring in the ISP.

(2) Changes relative to health, safety, and implementation of outcome based services must be assessed on an ongoing basis and reflected within the quarterly reviews.

(3) The ISP team must review the ISP annually and revise, as necessary.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-17-.11 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT.**

(1) No procedures shall be used for behavior management which results in physical or emotional harm to the person supported.

(2) Corporal punishment, seclusion, aversive stimuli, chemical restraint, and denial of a nutritionally adequate diet shall not be used.

(3) Restraint (physical holding, mechanical restraint), medications for behavior management, time-out rooms, or other techniques with similar degrees of restriction or intrusion must not be employed except as an integral part of an ISP.

(4) Restrictive or intrusive behavior management procedures must not be used until after less restrictive alternatives for dealing with the problem behavior have been systematically tried or considered and have been determined to be inappropriate or ineffective.

(5) Prior to the implementation of a written program or behavior support plan incorporating the use of a highly restrictive or intrusive technique, the program plan must be reviewed and approved by the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian), with documentation of such approval. A Human Rights Committee must also review and approve the written program.

(6) When procedures such as physical holding, mechanical restraint, and time-out are used in emergency situations to prevent the person supported from inflicting bodily harm, more than three (3) times within six (6) months, a behavioral assessment shall be conducted by an appropriate professional. Recommendations shall be incorporated into a written plan that is part of the ISP.

(7) Behavior management medications may be used only when authorized in writing by a physician for a specific period of time.

(8) The program plan for the use of a mechanical restraint must specify the extent and frequency of the monitoring schedule according to the type and design of the device and the condition of the person supported.

(9) A person supported who is placed in a mechanical restraint must be released for a minimum of ten (10) minutes at least every two (2) hours and provided with an opportunity for freedom of movement, exercise, liquid intake/refreshment, nourishment, and use of the bathroom.

(10) Physical restraint/physical holding may be used only until the person supported is calm.

(11) A person supported who is placed in time-out must be released after a period of not more than sixty (60) minutes.

(12) The ability of a person supported to exit from time-out must not be prevented by means of keyed or other locks, and locations used for time-out must allow for the immediate entry of staff.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**RULES OF THE TENNESSEE**
**DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**OFFICE OF LICENSURE**

**CHAPTER 0465-02-18**
**MINIMUM PROGRAM REQUIREMENTS FOR**
**INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**SUPPORTED LIVING SERVICES**

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**0465-02-18-.01 POLICIES AND PROCEDURES.**

(1) The governing body of the entity providing support and assistance must maintain policies and procedures for control of infectious and communicable diseases.

(2) The governing body of the entity providing support and assistance must maintain policies and procedures establishing minimum requirements ensuring reasonable safety to life in the event of fire for all dwellings in which persons supported reside. These policies and procedures must require:

(a) Fire safety features of smoke detection, fire extinguishers, and two (2) alternative means of escape in each dwelling; and

(b) Training for support staff and persons supported in the proper evacuation from the home and the use of fire safety features.

(3) The governing body must maintain policies and procedures establishing standards ensuring environmental quality in the home of each person supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-18-.02 PERSONNEL AND STAFFING.**

(1) The governing body must ensure that appropriate support and assistance are provided in accordance with the needs of persons supported living in the home.

(2) Support staff must be available on call to persons supported living in the home on a twenty-four (24) hour per day basis.

(3) Employees shall be screened or tested for tuberculosis according to the procedures of the Tennessee Department of Health. Documentation of such screening or testing shall be maintained in the employee's personnel file.

(4) Support staff must be provided with a basic orientation in the proper management of seizures for persons supported prior to being assigned to work.

(5) The governing body must ensure that support staff are trained in First Aid and Cardiopulmonary Resuscitation (CPR).

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-18-.03 PERSON SUPPORTED RECORDS.**

(1) The governing body must ensure that each record of the person supported contains the following:

(a) A recent photograph and identifying information of the person supported;

(b) The social security number of the person supported;

(c) The legal competency status of the person supported, including the name of his/her legal representative (conservator, parent, guardian, or legal custodian), if applicable;

(d) The sources of financial support of the person supported, including social security, veterans benefits, and insurance;

(e) The sources of coverage for medical care of the person supported;

(f) The name, address, and telephone number of the physician or healthcare agency providing medical services for the person supported;

(g) Report of medical problems, accidents, seizures, and illnesses of the person supported, and treatments for such medical problems, accidents, seizures, and illnesses as they occur;

(h) Report of significant behavior incidents of the person supported, and of actions taken;

(i) Report of restrictive behavior-management techniques used on the person supported; and

(j) Written accounts of all monies received and disbursed on behalf of the person supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-18-.04 MEDICATION ADMINISTRATION.**

(1) When medications are administered by certified staff to persons supported the licensee must:

(a) Consider the ability and training of the person supported, when supervising the self-administration of medication;

(b) Ensure that prescription medications are taken only by the person supported for whom they are prescribed, and in accordance with the directions of a physician;

(c) Provide storage for medications in a locked container, which ensures proper conditions of security and sanitation, and prevents accessibility to any unauthorized individual;

(d) Assure the disposal of discontinued and outdated medications and containers with worn, illegible or missing labels; and

(e) Report all medication variance (errors), medication reactions, or suspected side effects to the practitioner who prescribed the medication.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-18-.05 DAY ACTIVITIES.**

(1) The governing body must ensure that daily activities are provided or procured in accordance with the

age level, interests, and abilities of the person supported as specified in the ISP. Such daily activities may include, but are not limited to, part-time and full-time employment, attendance at a day activity center, participation in a vocational rehabilitation program, senior citizens involvement, and regularly scheduled recreational activities.

(2) If the person supported attends an outside school or day program the governing body must ensure that the staff participate with the school personnel in developing an individual education plan or with the day program staff in developing an ISP, as appropriate.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-18-.06 ASSESSMENTS.**

(1) The following assessments of the person supported must be completed prior to the development of an ISP:

(a) An assessment of current abilities and preferences; and

(b) A review of relevant medical, medication, and health information.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-18-.07 SUPPORTIVE SERVICES.**

(1) The governing body must ensure that the following support services are provided for each person supported:

(a) Transportation or assistance with transportation for non-routine events, special appointments, or long distance travel;

(b) Liaison for making appointments and obtaining consultation with professional services;

(c) Maintenance of a current list of names and telephone numbers for emergency services and the direct support staff within each dwelling;

(d) Assistance to each person supported in the utilization of professional, social, and community services, and assistance in the referral process and in making appointments for such services;

(e) Assistance to ensure that a nutritionally adequate diet is available to the person supported;

(f) Counseling, training, and other assistance in procuring and taking prescription and non-prescription drugs;

(g) Assistance in the use and protection of money of the person supported; and

(h) Assistance in applying for financial benefits for which the person supported may be eligible.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-18-.08 PROFESSIONAL SERVICES.**

(1) The governing body must ensure that persons supported are assisted in locating qualified dental, medical, nursing, and pharmaceutical care, as needed, including care for emergencies.

(2) The governing body must ensure that each person supported receives an annual physical examination (unless less often is indicated by the physician of the person supported), which includes

routine screenings (such as vision and hearing) and laboratory examinations (such as Pap smear and blood work) as determined necessary by the physician and special studies where the index of suspicion is high.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-18-.09 INDIVIDUAL SUPPORT PLAN (ISP) TEAM.**

(1) The licensee must ensure that an ISP team known as the Circle of Support is identified and provided for each person supported. The team may include the following as determined by the person supported:

(a) The person supported;

(b) The legal representative (conservator, parent, guardian, or legal custodian) of the person supported, if applicable, unless their inability or unwillingness to attend is documented;

(c) Appropriate Provider staff;

(d) Relevant professionals or individuals, unless their inability to attend is documented;

(e) Friends, advocates and other non-paid supports, if applicable; and

(f) The Independent Support Coordinator/Case Manager.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-18-.10 INDIVIDUAL SUPPORT PLAN (ISP) DEVELOPMENT AND IMPLEMENTATION.**

(1) The licensee must ensure that a written ISP is provided and implemented for each person supported. The ISP must meet the following requirements:

(a) Developed within thirty (30) days of the admission of the person supported;

(b) Developed by the ISP team of the person supported;

(c) Includes the date of development of the ISP;

(d) Includes signatures of the person supported, appropriate staff, and, if applicable, the legal representative (conservator, parent, guardian, or legal custodian) of the person supported;

(e) Specifies the needs identified by assessment of the person supported and addresses those needs within the particular service/program component;

(f) Includes personal goals and objectives of the person supported, which are related to the specific needs identified, and specifies which goals and objectives are to be addressed by a particular service/program component; and

(g) Includes methods or activities by which the goals and objectives of the person supported are to be implemented.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-18-.11 INDIVIDUAL SUPPORT PLAN (ISP) MONITORING AND REVIEW.**

(1) Written progress notes must be maintained, which include at least quarterly reviews of progress or

changes occurring in the ISP.

(2) Changes relative to health, safety, and implementation of outcome based services must be assessed on an ongoing basis and reflected within the quarterly reviews.

(3) The ISP team must review the ISP annually and revise, as necessary.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-18-.12 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT.**

(1) No procedures shall be used for behavior management which results in physical or emotional harm to the person supported.

(2) Corporal punishment, seclusion, aversive stimuli, chemical restraint, and denial of a nutritionally adequate diet shall not be used.

(3) Restraint (physical holding, mechanical restraint), medications for behavior management, time-out rooms, or other techniques with similar degrees of restriction or intrusion must not be employed except as an integral part of an ISP.

(4) Restrictive or intrusive behavior management procedures must not be used until after less restrictive alternatives for dealing with the problem behavior have been systematically tried or considered and have been determined to be inappropriate or ineffective.

(5) Prior to the implementation of a written program or behavior support plan incorporating the use of a highly restrictive or intrusive technique, the program plan must be reviewed and approved by the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian), with documentation of such approval. A Human Rights Committee must also review and approve the written program.

(6) When procedures such as physical holding, mechanical restraint, and time-out are used in emergency situations to prevent the person supported from inflicting bodily harm, more than three (3) times within six (6) months, a behavioral assessment shall be conducted by an appropriate professional. Recommendations shall be incorporated into a written plan that is part of the ISP.

(7) Behavior management medications may be used only when authorized in writing by a physician for a specific period of time.

(8) The program plan for the use of a mechanical restraint must specify the extent and frequency of the monitoring schedule according to the type and design of the device and the condition of the person supported.

(9) A person supported who is placed in a mechanical restraint must be released for a minimum of ten (10) minutes at least every two (2) hours and provided with an opportunity for freedom of movement, exercise, liquid intake/refreshment, nourishment, and use of the bathroom.

(10) Physical restraint/physical holding may be used only until the person supported is calm.

(11) A person supported who is placed in time-out must be released after a period of not more than sixty (60) minutes.

(12) The ability of a person supported to exit from time-out must not be prevented by means of keyed or other locks, and locations used for time-out must allow for the immediate entry of staff.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

RULES OF THE TENNESSEE
DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES
OFFICE OF LICENSURE

CHAPTER 0465-02-19
MINIMUM PROGRAM REQUIREMENTS FOR
INTELLECTUAL AND DEVELOPMENTAL DISABILITIES
SUPPORT COORDINATION AGENCIES

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**0465-02-19-.01 APPLICATION FEES.**

The applicant shall submit a fee or fees with the application to the Office of Licensure and Review of the Department. Each initial and renewal application for licensure shall be submitted with the appropriate fee or fees as set forth in Rule 0465-02-02-.05 Licensure Administration and Procedures, Fees. All fees submitted are non-refundable.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-19-.02 GOVERNANCE.**

(1) The licensee shall comply with all federal, state, and local laws, ordinances, rules, and regulations.

(2) The licensee shall ensure that the agency is administered and operated in accordance with written policies and procedures including, but not limited to, those specified in Rule 0465-02-19-.03.

(3) The licensee shall exercise general direction over the agency and establish policies governing the operation of the agency and the welfare of person supported.

(4) The licensee shall designate an individual responsible for the operation of the agency.

(5) The licensee shall ensure that the licensed agency supports only persons supported who will not cause the agency to violate its licensed status based on the distinct licensure category.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-19-.03 POLICIES AND PROCEDURES.**

(1) The licensee shall maintain a written policies and procedures manual which includes:

(a) An organizational chart which clearly shows or describes the lines of authority;

(b) A policy and procedure which ensure the confidentiality of the information of the person supported, and which includes the following provisions:

1. The staff must comply with applicable confidentiality laws and regulations. (e.g., T.C.A. § 33-3-104) and the Health Insurance Portability and Accountability Act (HIPAA), found at 45 CFR, Part 160, Part 162, Part 164;

2. Persons supported shall not be required to make public statements which acknowledge gratitude to the licensee or for the licensee's services;

3. Persons supported shall not be required to perform in public gatherings; and

4. Identifiable photographs of persons supported shall not be used without the written and signed consent of the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian);

(c) Policy and procedures to be followed in the reporting and investigation of suspected or alleged abuse or neglect of persons supported, or other critical incidents. The procedures shall include provisions for corrective action, if any, to be taken as a result of such reporting and investigation, and reporting to the Office of Risk Management and Licensure of the Department and any authority as required by law;

(d) Policy and procedures to address caseload assignments and the maintenance of caseloads, including at times of a staff vacancy;

(e) Policy and procedures that ensure the staff receive effective guidance, mentoring, and training including all training required by the Department. Effective training must include opportunities to practice support coordination duties in a manner that promotes development and mastery of essential job skills.

(f) The licensee must ensure the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian) is provided information and education regarding:

1. The types of services and programs available in the DIDD system;

2. Rights and responsibilities of persons supported;

3. Resolution processes including reporting abuse/neglect/exploitation, provider conflict resolution, DIDD and TennCare complaint resolution processes, and appeals processes.

(g) A policy ensuring that employees practice infection control procedures and standard precautions that will protect the person supported from infectious diseases; and

(h) Requirements that each employee comply with procedures for detection, prevention, and reporting of communicable diseases according to procedures of the Tennessee Department of Health.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-19-.04 PROFESSIONAL SERVICES.**

(1) The licensee must ensure the support coordinator/case manager arranges and secures all services and supports as described in the ISP; the support coordinator/case manager provides information to potential and current providers, completes service authorization requests, assists with appeals and monitoring and follow-up to ensure that issues and problems are resolved so that the ISP can be implemented as written or amended as necessary.

(2) The assessment process/information gathering must be completed prior to the development of the ISP.

(3) Assessment information to be compiled by the independent support coordinator/case manager in preparation of the ISP for the Planning Meeting consists of the following:

(a) Information about the services a person supported is receiving through all resources, such as DIDD programs, Managed Care Organization, Medicare, or other organizations;

(b) Ideas and suggestions about what things the person supported can and cannot do, what things are important to the person supported, and what things are liked and disliked by the person supported;

(c) Uniform Assessments- Information about the capabilities and support needs of the person supported. Assists in identifying needed services and supports and the activities for which a person may need assistance;

(d) Risk Assessments;

(e) Clinical Assessments;

(f) Medical Assessments; and

(g) Vocational Assessments and Desire for Employment.

(4) Assessments are to assist in identifying the strengths, interests and desired outcomes of the person supported, and aid in determining how to best meet those desired outcomes.

(5) The licensee must ensure that an ISP team known as the Circle of Support is identified and provided for each person supported. The team may include the following as determined by the person supported:

(a) The person supported, unless contraindicated by the ISP team;

(b) The legal representative (conservator, parent, guardian, or legal custodian) of the person supported, if applicable, unless their inability or unwillingness to attend is documented;

(c) Appropriate Provider staff;

(d) Relevant professionals or individuals, unless their inability to attend is documented;

(e) Friends, advocates and other non-paid supports, if applicable, and

(f) The Independent Support Coordinator/Case Manager.

(6) The licensee must ensure that a written ISP is provided and implemented for each person supported. The ISP must meet the following requirements:

(a) Developed within sixty (60) calendar days from the date of initial service provision as determined by TennCare.

(b) Developed by the ISP team of the person supported;

(c) Includes the date of development of the ISP;

(d) Includes the signatures of the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian), and the appropriate staff;

(e) Specifies the needs of the person supported, identified by assessments and to be addressed within the particular service/program component;

(f) Includes outcomes and action steps of the person supported, which are related to his/her specific needs and desires identified, and which are to be addressed by the particular service/program component; and

(g) Includes methods or activities by which the outcomes and action steps of the person supported are to be implemented.

(7) The licensee must ensure that contacts with persons supported include:

(a) One (1) contact shall be completed each calendar month;

(b) One of the contacts each quarter must be face-to-face (pending CMS approval of 1915(c) HCBS waiver amendment, expected in January 2017);

(8) Monthly reviews shall be documented by the licensee. Information contained within the monthly review shall include: ISP implementation status, including progress in completing action steps and achieving outcomes; information gathered from the monthly contact, interviews with the person supported, his/her family members, conservators or guardians. The monthly review shall also contain information from the quarterly progress notes submitted by the residential, day, or personal assistance providers of the person supported.

(09) The Annual ISP meeting must be held prior to the ISP expiration date. The effective date of a new plan can be no more than one (1) year from the effective date of the previous plan.

(10) The ISP must be amended when any of the following occur:

(a) The action steps and outcomes change;

(b) Services or service providers change;

(c) There is a significant change in overall service and support needs of the person supported;

(d) The person supported has made major changes to his/her preferred lifestyle.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-19-.05 PERSONNEL AND STAFFING.**

(1) The licensee shall maintain a personnel file for each support coordinator with the following:

(a) A job description including the employment requirements and job responsibilities for each staff position held; and

(b) Individuals employed as ISC's must meet at least one (1) of the following educational and relevant experience requirements:

1. A Bachelor's degree from an accredited college or university in a human services field;

2. A Bachelor's degree from an accredited college or university in a non-related field, plus one (1) year of relevant experience;

3. An Associate degree, plus two (2) years of relevant experience;

4. A high school diploma or general educational development (GED) certificate, plus four (4) years of relevant experience;

5. Relevant experience is defined as experience in working directly with persons with intellectual disabilities, other developmental disabilities, or mental illness; or

6. Support Coordinators who do not have a Bachelor's degree in a human services field must be supervised by someone who does meet that qualification.

(2) The licensee must ensure a staff member is available to people receiving services at all times, including evening, nights, weekends, and holidays when provider offices are generally closed.

(3) Employees shall be screened or tested for tuberculosis according to the procedures of the Tennessee Department of Health. Documentation of such screening or testing shall be maintained in the employee's personnel file.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-19-.06 PERSON SUPPORTED RECORDS.**

(1) The record of a person supported must contain the following:

(a) A Uniform Assessment;

(b) Reports from medical and other consultants (e.g. therapy consultation reports, specialty physician consult report, psychiatric consult report, etc.);

(c) Clinical service assessment reports;

(d) Medicaid medical eligibility documentation (the PAE packet);

(e) Emergency contact information;

(f) A current photograph of the person supported;

(g) The current ISP;

(h) The current BSP, if applicable;

(i) The Individual Education Plan, if applicable;

(j) Support coordination monthly reviews;

(k) Correspondence, as applicable;

(l) Discharge summaries, if applicable;

(m) Plans of care or treatment for nursing, therapeutic, therapy-related, or dental services; and

(n) Health Care Surrogates, POA, Guardianships (for minors if applicable), Supported Decision Maker forms, and Orders of Conservatorship.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**RULES OF THE TENNESSEE**
**DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**
**OFFICE OF LICENSURE**

**CHAPTER 0465-02-20**
**MINIMUM PROGRAM REQUIREMENTS FOR**
**DEVELOPMENTAL DISABILITIES**
**PRESCHOOL FACILITIES/SERVICES**

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**0465-02-20-.01 POLICIES AND PROCEDURES.**

The licensee must ensure that the written policies and procedures manual include procedures for tuberculosis control and reporting of infectious and communicable diseases to the Tennessee Department of Health.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-20-.02 PROFESSIONAL SERVICES.**

(1) The licensee must provide or procure assistance for the child supported in locating qualified dental, medical, nursing and pharmaceutical care including care for emergencies during hours of the facility's operation.

(2) The licensee must ensure that an annual physical examination is provided or procured for each child supported (unless less often is indicated by the physician of the child supported). Such examinations should include routine screenings (such as vision and hearing) and laboratory examinations (such as blood work), as deemed necessary by the physician and special studies where the index of suspicion is high.

(3) The licensee must require each child supported to show proof of current immunization status within thirty (30) days after admission.

(4) The licensee must require that each child supported receives immunizations as required by the Tennessee Department of Health unless contraindicated by a doctor's written order.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-20-.03 PERSONNEL AND STAFFING.**

(1) The licensee must provide one (1) direct support staff member for every six (6) children present unless a more stringent staffing ratio is required by applicable life safety rules.

(2) The licensee must ensure that employees practice infection control procedures that will protect the child supported from infectious diseases.

(3) Employees must have a regular tuberculosis skin test or screening within thirty (30) days of employment and as required thereafter by current Tennessee Department of Health guidelines.

(4) Employees must be provided with a basic orientation in the proper management of seizure disorders prior to being assigned to work with children with such disorders.

(5) A staff member must be on duty in the facility who is trained in First Aid and Infant/Child Cardiopulmonary Resuscitation (CPR).

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-20-.04 CHILD SUPPORTED RECORDS.**

(1) The record of each child supported must contain the following information:

(a) A recent photograph and a description of the child supported;

(b) The social security number of the child supported;

(c) Name of parent or guardian;

(d) The sources of financial support of the child supported, including social security, veteran's benefits and insurance;

(e) The sources of coverage for medical care costs of the child supported;

(f) The name, address and telephone number of the physician or healthcare agency providing medical services of the child supported;

(g) Documentation of all drugs prescribed or administered by the licensee to the child supported, which indicates date prescribed, type, dosage, frequency, amount and reason;

(h) A discharge summary of the child supported, which states the date of discharge, reasons for discharge and referral for other services, if appropriate;

(i) Report of medical problems, accidents, seizures and illnesses; and treatments for such medical problems, accidents, seizures and illnesses of the child supported;

(j) Report of significant behavior incidents and of actions taken for the child supported; and

(k) Report of the use of restrictive behavior management techniques for the child supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-20-.05 RECREATIONAL ACTIVITIES.**

The licensee must ensure that opportunities are provided for recreational activities, which are appropriate and adapted to the needs, interests, and age of the child supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-20-.06 CHILD SUPPORTED ASSESSMENTS.**

(1) The following assessments of the child supported must be completed prior to the development of an IFSP:

(a) An assessment of current capabilities in such areas as adaptive behavior;

(b) A basic medical history, information, and determination of the necessity of a medical evaluation, and a copy, where applicable, of the result of the medical evaluation;

(c) A six (6) month history of prescribed medications and/or frequently used over-the-counter medications; and

(d) An existing developmental assessment on file which is updated as recommended by the IFSP team.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-20-.07 INDIVIDUAL SUPPORT PLAN (IFSP) TEAM.**

(1) The licensee must ensure that an IFSP team is identified and provided for each child supported. The team may the following:

(a) The parent or guardian of the child supported, if appropriate, unless their inability or unwillingness to participate is documented;

(b) Direct support staff, as appropriate;

(c) Relevant professionals or individuals, unless their inability to participate is documented;

(d) An intellectual and developmental disabilities specialist; and

(e) Other person(s) invited by the legal representative (conservator, parent, guardian, or legal custodian) of the child supported.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-20-.08 INDIVIDUAL FAMILY SUPPORT PLAN (IFSP) DEVELOPMENT AND IMPLEMENTATION.**

(1) The licensee must ensure that a written IFSP is implemented for each child supported. If the IFSP is not provided by TEIS (Tennessee Early Intervention System), then the licensee must develop an IFSP, which meets the following requirements:

(a) Developed within forty-five (45) days of the admission of the child supported to the facility;

(b) Developed by the IFSP team of the child supported;

(c) Includes the date of development of the IFSP;

(d) Includes the signatures of the legal representative (conservator, parent, guardian, or legal custodian) of the child supported and the appropriate staff;

(e) Specifies the needs identified by assessment of the child supported and addresses those needs within the particular service/program component;

(f) Includes personal goals and objectives of the child supported, which are related to the specific needs identified, and specifies which goals and objectives are to be addressed by a particular service/program component; and

(g) Includes methods or activities by which the goals and objectives of the child supported are to be implemented.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-20-.09 INDIVIDUAL SUPPORT PLAN (IFSP) MONITORING AND REVIEW.**

(1) Written progress notes must be maintained, which include monthly documentation of progress or changes occurring within the IFSP.

(2) The IFSP team must review the IFSP annually and revise, as necessary.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

**0465-02-20-.10 USE OF RESTRICTIVE BEHAVIOR MANAGEMENT.**

(1) When a parent or legal guardian is present licensee staff shall not implement restrictive behavior management. In the absence of a parent or legal guardian advanced written permission must be on file before licensee staff implement any of the below:

(a) No procedures should be used for behavior management which results in physical or emotional harm to the child supported;

(b) Corporal punishment, seclusion, aversive stimuli, chemical restraint, and denial of a nutritionally

adequate diet must not be used;

(c) Restraint (physical holding, mechanical restraint), medications for behavior management, time-out rooms, or other techniques with similar degrees of restriction or intrusion must not be employed except as an integral part of his/her IFSP;

(d) Restrictive or intrusive behavior management procedures must not be used until after less restrictive alternatives for dealing with the problem behavior have been systematically tried or considered and have been determined to be inappropriate or ineffective;

(e) Prior to the implementation of a written program incorporating the use of a highly restrictive or intrusive technique, the program must be reviewed and approved by the child supported or his/her legal representative (conservator, parent, guardian, or legal custodian), with documentation of such approval. A Human Rights Committee must also review and approve the written program;

(f) When procedures such as physical holding, mechanical restraint, and time-out are used in emergency situations to prevent the person supported from inflicting bodily harm, more than three (3) times within six (6) months, a behavioral assessment shall be conducted by an appropriate professional. Recommendations shall be incorporated into a written plan that is part of the IFSP;

(g) Behavior management medications may be used only when authorized in writing by a physician for a specific period of time;

(h) The program plan for the use of a mechanical restraint must specify the extent and frequency of the monitoring schedule according to the type and design of the device and the condition of the child supported;

(i) A child supported who is placed in a mechanical restraint must be released for a minimum of ten (10) minutes at least every two (2) hours and provided with an opportunity for freedom of movement, exercise, liquid intake/refreshment, nourishment, and use of the bathroom;

(j) Physical restraint/physical holding may be used only until the child supported is calm;

(k) A child supported who is placed in time-out must be released after a period of not more than sixty (60) minutes; or

(l) The ability of the child supported to exit from time-out must not be prevented by means of keyed or other locks, and locations used for time-out must allow for the immediate entry of staff.

***Authority:*** *T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407.* ***Administrative History:***

* 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 DIDD (board/commission/ other authority) on 06/20/2016 (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: 02/14/2016

Rulemaking Hearing(s) Conducted on: (add more dates). 03/28/2016

Date: 06/20/2016

Signature: Debra K Payne

Name of Officer: Debra K. Payne

Title of Officer: Commissioner of Department of Intellectual and Developmental Disabilities

ERICA T. REED STATE OF TENNESSEE NOTARY PUBLIC RUTHERFORD COUNTY, TENN.

Subscribed and sworn to before me on: 06/20/2016

Notary Public Signature: Erica T. Reed, Notary at Large

My commission expires on: 03/19/2017

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. Slatery III
Attorney General and Reporter

7/5/2016
Date

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Filed with the Department of State on: 7/6/16

Effective on: 10/4/16

Tre Hargett
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Alcoholic Beverage Commission |
| SUBJECT: | Wine in Grocery Stores - Manager's Permit |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Section 57-3-221 |
| EFFECTIVE DATES: | October 5, 2016 through June 30, 2017 |
| FISCAL IMPACT: | A conservative estimate of managers needing the permit is 1,000, and at $200 fee per manager permit issued on a five year basis, a conservative estimate is $200,000 in revenues and a similar amount in costs relating to the issuance of the permits and related regulatory work. |
| STAFF RULE ABSTRACT: | Public Acts of 2014, ch. 554 (commonly referred to as the Wine in Grocery Stores Act) requires that managers of licensed retail food stores, retail package stores, and wineries obtain certain training and be issued a manager permit. This rulemaking hearing rule conforms to the statute and specifies the training that is to be obtained. |

**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.

A copy of a document summarizing Commission responses to public hearing comments is attached.

Tennessee State Government

STATE OF TENNESSEE
ALCOHOLIC BEVERAGE COMMISSION
DAVY CROCKETT TOWER
500 JAMES ROBERTSON PKWY, 3rd FLOOR
NASHVILLE, TENNESSEE 37243-0755

PHONE 615.741.1602 FAX 615.741.0847

MEMO

From: Ginna Winfree, Interim Executive Director

Re: Responses to comments made at public rulemaking hearing

Date: April 01, 2016

On March 9, 2016, a rulemaking hearing was held in accordance with the law. At the hearing, various comments were made regarding proposed new Rule 0100-13 and revisions to Rule 0100-06. Below is a summary of the comments and the Tennessee Alcoholic Beverage Commission's (TABC's) responses to such comments:

(1) LENGTH OF LEGAL TRAINING – Rule 0100-13-.02(3)(b) – Comments were made suggesting that the training regarding applicable laws and rules be changed from 2 hours to one hour with an additional up to one hour open for questions. Upon further review of the proposed rule, while the proposed rule requires a 2 hour training, it specifically states that such training may include a "question and answer session". Thus the suggested change is already reflected in the current proposed rule, and any change in the proposed rule would be unnecessary.

(2) REOCCURANCE OF RESPONSIBLE VENDOR TRAINING - Rule 0100-13-.02(3) - Comments were made suggesting that the Responsible vendor portion of the training Rule 0100-13-.02(3)(a) only be done every two years rather than every year, while the legal portion under Rule 0100-13-.02(3)(b) would still be done every year since the applicable laws and rules may change on a yearly basis. Pending Rule 0100-12-.02(5)(b)(2) regarding the Responsible Wine Vendor Program requires that such training be done annually for certified clerks. Due to their nature as managers and their potential need to also act as certified clerks, the TABC deems that it is proper for such training to be performed on an annual basis

(3) CONFLICTS OF INTERESTS – Rule 0100-06-.05(1) – Comments were made suggesting that the proposed rules be revised to allow a manager's permitee to also possess a server and/or employee (for retail package store) permit. The TABC agrees and the proposed rules have been modified to reflect such change.

(4) REASSIGNING OF PERMIT – Rule 0100-10-.01 and Pending Rule 0100-11-.03(9) – A comment was made proposing the addition of a new rule in Rule 0100-10-.01 regarding the reassignment of manager permitee's. This proposal is already covered by Pending

Rule 0100-11-.03(9)(b) which states: "A designated permitted manager of a retail food store may transfer his or her permit to another retail food store wine licensee by notifying the Commission in writing of the effective date of the transfer. All transfer notifications must be made prior to the designated permitted manager(s) involvement in the placement of wine orders at the new retail food store wine licensee's location." This pending rule already addresses the issue raised by said comment.

Sincerely,

Ginna Winfree

Ginna Winfree
Interim Executive Director
Tennessee Alcoholic Beverage Commission
(615)741-7628

**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.

Public Acts 2014, ch. 554 (commonly referred to as the Wine in Grocery Stores Act) requires that managers of licensed retail food stores, retail package stores, and wineries obtain certain training and be issued a manager permit. This rule conforms to the statute and specifies the training that is to be obtained. The rule benefits small businesses by ensuring and providing proper training for managers of such small businesses to ensure proper compliance with the applicable laws and rules. An exact number of such small businesses affected is impossible to estimate at this time, but is expected to be substantial and significant. The requirements specified in the rule are designed to effectuate the purpose and requirements of Public Acts 2014, ch. 554, and any other applicable statute, and there are no less burdensome, intrusive, or costly method for effectuating such purpose and requirements. There are no state or federal counterparts for which this rule can be effectively compared to. The exemption of small businesses from this rule would be detrimental to the small businesses of this state and would be contrary to statute.

**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 is not projected to have any direct 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;

Public Acts 2014, ch. 554 (commonly referred to as the Wine in Grocery Stores Act) requires that managers of licensed retail food stores, retail package stores, and wineries obtain certain training and be issued a manager permit. This rule conforms to the statute and specifies the training that is to be obtained.

**(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. § 57-3-221 as passed by the Public Acts 2014, ch. 554 (commonly referred to as the Wine in Grocery Stores Act) which requires the issuing of manager permits along with certain training.

**(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;

Licensed retail food stores, retail package stores, and wineries and their managers. To the knowledge of the TABC, except as may be specified in comments made at the rulemaking hearing, there is no objection to this rule.

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

At the time of this filing, there are no such opinions or rulings directly relating to 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;

A conservative estimate of managers needing the permit is 1,000, and at $200 fee per manager permit issued on a five year basis, a conservative estimate is $200,000 in revenues and a similar amount in costs relating to the issuance of the permits and related regulatory work.

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

Interim Executive Director Ginna Winfree and Staff Attorney Joshua Stepp

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

Staff Attorney Joshua Stepp

**(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

Staff Attorney Joshua Stepp – 615-741-8916 – Joshua.Stepp@tn.gov
Davy Crockett Tower
500 James Robertson Pkwy - 3rd Floor
Nashville, TN 37243-0755

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

| |
|---|
| At the time of filing, no such request has been made. |

9

**Department of State**
**Division of Publications**
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Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

MAY 27 2016

**For Department of State Use Only**

Sequence Number: 07-12-16
Rule ID(s): 6244-6245
File Date: 7/7/16
Effective Date: 10/5/16

# 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 Alcoholic Beverage Commission |
| **Division:** | |
| **Contact Person:** | Ginna Winfree, Interim Director (also disc acquisition contact)/ or Staff Attorney, Joshua Stepp |
| **Address:** | Davy Crockett Tower, 500 James Robertson Parkway, 3rd Floor, Nashville, TN |
| **Zip:** | 37243 |
| **Phone:** | 615-741-7628 (G.Winfree) or 615-741-8916 (J.Stepp) |
| **Email:** | Ginna.Winfree@tn.gov ; or Joshua.Stepp@tn.gov |

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

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

| **Chapter Number** | **Chapter Title** |
|---|---|
| 0100-06 | Intra-Industry Conduct And Regulations |
| **Rule Number** | **Rule Title** |
| 0100-06-.05 | Dual Permits Prohibited |
| 0100-06-.07 | Retail Employee Permits |
| | |

| **Chapter Number** | **Chapter Title** |
|---|---|
| 0100-13 | Rules for Manager Permits |
| **Rule Number** | **Rule Title** |
| 0100-13-.01 | Manager's Permits |
| 0100-13-.02 | Obtaining a Manager's Permit |
| | |
| | |

RED-LINE VERSION

**0100-06-.05(1) amended by deleting paragraph in entirety and by substituting instead, the following language.**

**0100-06-.05 DUAL PERMITS PROHIBITED**

(1) No person shall be issued more than one of the following permits:

(a) Manufacturer or importer representative permit,

(b) Wholesale salesman or representative permit,

(c) Wholesale employee's permit,

(d) Off premises retail employee's permit,

(e) On premises retail employee's permit,

(f) Manager's permit.

(2) Notwithstanding the provisions of 0100-06-.05(1) above, any individual may be issued ~~both~~ an off-premise retail employee permit, ~~and~~ an on-premise server permit, ~~if that individual has completed and submitted the appropriate applications~~ and a manager's permit, or any combination thereof, if that individual has completed and submitted the appropriate applications. Further, that person must qualify for and meet all the requirements to obtain each permit.

(3) In all cases, the industry member is responsible for the actions of their employees and/or representatives when such employee and/or representative is acting within the scope of their employment.

***Authority:*** *T.C.A. §§57-1-201, ~~and~~ 57-1-209, and* ***57-3-104(c)(4).*** ***Administrative History:***

---

**Rule 0100-06-.07 is amended by adding the following language as a new paragraph (4):**

(4) After the conclusion of business on June 30, 2016, no permit issued pursuant to T.C.A. § 57-3-204(c) shall be issued by the Commission. Any permit issued by such time shall remain in effect and be valid for five years after the permits issuance, and any employee of a retail package store who has a valid permit under § 57-3-204(c) on July 1, 2016, shall not be required to be a certified clerk pursuant to T.C.A. § 57-3-818 until that permit expires.

***Authority:*** *T.C.A. §§ 57-1-201, 57-1-209, 57-3-104(c)(4), 57-3-204(c), and 57-3-709.* ***Administrative History:***

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Rules 0100 are amended by adding the following language as a new chapter 13:

# RULES
# OF
# TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

## CHAPTER 0100-13
## RULES FOR MANAGER PERMITS

## TABLE OF CONTENTS


0100-13-.01 Manager's Permits 0100-13-.02 Obtaining a Manager's Permit


### 0100-13-.01 MANAGER'S PERMITS

(1) A manager's permit shall be required of any individual operating, supervising or managing a retail package store licensed pursuant to T.C.A. § 57-3-204, a retail food store licensed pursuant to T.C.A. § 57-3-801, *et seq.*, or a winery involved in retail sales licensed pursuant to T.C.A. § 57-3-207.

(2) Notwithstanding the provisions of 0100-06-.05(1) above, any individual may be issued both an off-premise retail employee permit and an on-premise server permit if that individual has completed and submitted the appropriate applications. Further, that person must qualify for and meet all the requirements to obtain each permit.

(3) An individual licensed as a sole proprietorship pursuant to T.C.A. §§ 57-3-204, 57-3-207 or 57-3-801 *et seq.*, shall be authorized to engage in the activities outlined herein without the requirement of a manager's permit.

(4) A manager's permit may be suspended or revoked by the Commission for any violation of Title 57 of the Tennessee Code and/or the rules and regulations of the Commission committed by the holder of the manager's permit or by any person operating under the supervision of the holder of the manager's permit.

***Authority:*** *T.C.A. §§57-1-209, 57-3-104(c)(4), and 57-3-221.* ***Administrative History:***

### 0100-13-.02 OBTAINING A MANAGER'S PERMIT

(1) Any individual seeking a manager's permit shall complete the application form established by the Commission, along with a completed declaration of citizenship (Form AB-0116) and any other information that the Tennessee Alcoholic Beverage Commission may request.

(2) Any applicant for a manager's permit shall pay the permit fee to the Commission prior to being issued the permit. This permit fee is fixed at $200.00 pursuant to § 57-3-221(c);

(3) Any individual who either has a manager's permit or is seeking a manager's permit shall annually attend:

(a) Either a responsible beer vendor training program pursuant to Rules 0100-08 or a responsible wine vendor training program pursuant to Rules 0100-12; and

(b) A two (2) hour course taught by the Commission or by an entity authorized by the Commission, at such place and time as may be specified by the Commission. Such two (2) hour course may cover any material deemed appropriate by the Commission and may include, but not necessarily be limited to, a review of recent changes in the law, a review of certain statutes, rules, and regulations as decided upon by the Commission, and an opportunity for a question and answer session.

(4) Any individual applying for a manager's permit shall attend, and provide proof of attendance

to, the training program and the training course required by paragraph (3) of this rule prior to the issuance of a manager's permit to such individual. Any such training shall be valid for only one year, and any such training attended more than one year from the date of application for a manager's permit shall not be sufficient to satisfy the requirements of this rule.

***Authority:*** *T.C.A. §§57-1-209, 57-3-104(c)(4), and 57-3-221.* ***Administrative History:***

* 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) |
|---|---|---|---|---|---|
| Mary McDaniel | ✓ | | | | Mary McDaniel |
| John Jones | John A Jones | | | | John A Jones |
| Bryan Kaegi | ✓ | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Alcoholic Beverage Commission (board/commission/ other authority) on 04/26/2016 (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: 01/13/2016

Rulemaking Hearing(s) Conducted on: (add more dates). 03/09/2016

Date: 4.26.16

Signature: Ginna Winfree

Name of Officer: Ginna Winfree

Title of Officer: TABC Interim Executive Director

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Subscribed and sworn to before me on: April 26, 2016

Notary Public Signature: Rosemary S. Adams

My commission expires on: 8/8/2019

ROSEMARY S. ADAMS
STATE OF TENNESSEE
NOTARY PUBLIC
My Commission Expires JAN 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

6/16/2016
Date

**Department of State Use Only**

Filed with the Department of State on: 7/7/16

Effective on: 10/5/16

Tre Hargett

Tre Hargett

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Department of Commerce and Insurance |
| DIVISION: | Tennessee Motor Vehicle Commission |
| SUBJECT: | Protest Procedures for Termination or Non-Renewal of Existing Motor Vehicle Dealer Franchises |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Sections 55-17-107 and 55-17-114. |
| EFFECTIVE DATES: | October 5, 2016 through June 30, 2017 |
| FISCAL IMPACT: | Minimal |
| STAFF RULE ABSTRACT: | This proposed rule clarifies protest procedures regarding the termination or non-renewal of the franchise of an existing motor vehicle dealer. The rule allows the affected dealer the right, within the 60-day period following receipt of notice or action, to petition the Tennessee Motor Vehicle Commission for a declaratory order in accordance with T.C.A. § 4-5-223. Upon filing the petition, the Tennessee Motor Vehicle Commission shall convene a contested case hearing. The manufacturer or distributor thereof shall be served with the petition and shall be a party to the contested case hearing. |

**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.

**Statements:**

(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.

It is believed that clarifying the availability of the protest process for a motor vehicle dealer will directly benefit franchised motor vehicle dealers. There are approximately 414 licensed franchised motor vehicle dealers in Tennessee that will be substantially impacted by this rule in a positive way.

(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.

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

This rule is expected to have a positive impact on small businesses by providing clarification regarding protests of terminations.

(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.

Federal law allows dealer suit against manufacturer under 15 U.S.C. § 1222. No known state counterpart.

(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, as existing standards are either stricter or less clear.

**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 is proposed in order to clarify protest procedures regarding the termination or non-renewal of the franchise of an existing motor vehicle dealer.

**(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 is not mandated by any federal or state law or regulation.

**(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;

Motor vehicle dealers and manufacturers are most directly affected by these rules. Manufacturers may urge rejection of this rule or may remain neutral. Dealers will urge adoption.

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

The creation of this rule was prompted by the Davidson County Chancery Court's decision in *Kia Motors America, Inc. v. Tennessee Motor Vehicle Commission, et al.,* case no. 13-860-II, which cast doubt on the Commission's authority to hear a request for declaratory relief from a local Kia dealership, which contended that its franchise was being terminated or threatened with termination in violation of Tenn. Code Ann. § 55-17-114(c)(3) and (21). The local dealership and the manufacturer ultimately settled the lawsuit, but the court's ruling prompted the Commission to create a rule clarifying the procedure to be followed by any dealer contending that a manufacturer's termination or threatened termination of the dealer's franchise violated the statute.

**(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 is no expected substantial impact on state or local government revenue and expenditures.

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

| | |
|---|---|
| Paula Shaw<br>500 James Robertson Parkway<br>Davy Crockett Tower 5th Floor<br>Nashville, TN 37243<br>(615) 741-2711 | Matthew Reddish<br>500 James Robertson Parkway<br>Davy Crockett Tower 5th Floor<br>Nashville, TN 37243<br>(615) 770-0089 |

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

Paula Shaw, Executive Director, Motor Vehicle Commission
Matthew Reddish, Assistant 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

| | |
|---|---|
| Paula Shaw<br>500 James Robertson Parkway<br>Davy Crockett Tower 5th Floor<br>Nashville, TN 37243<br>(615) 741-2711 | Matthew Reddish<br>500 James Robertson Parkway<br>Davy Crockett Tower 5th Floor<br>Nashville, TN 37243<br>(615) 770-0089 |

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

None

(11)

**Department of State**
**Division of Publications**
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Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 07-14-16
Rule ID(s): 6247
File Date: 7/7/16
Effective Date: 10/5/16

# 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).*

| | |
|---|---|
| **Agency/Board/Commission:** | Tennessee Motor Vehicle Commission |
| **Division:** | Department of Commerce and Insurance |
| **Contact Person:** | Matthew Reddish |
| **Address:** | 500 James Robertson Parkway, Nashville, TN |
| **Zip:** | 37243 |
| **Phone:** | 615-741-3072 |
| **Email:** | Matthew.E.Reddish@tn.gov |

**Revision Type (check all that apply):**
x 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** |
|---|---|
| 0960-01 | General Rules |
| **Rule Number** | **Rule Title** |
| 0960-01-.06(2) | Notice of Termination, Cancellation or Non-Renewal |

Chapter 0960-01
General Rules
Amendments

Rule 0960-01-.06 [NOTICE OF TERMINATION, CANCELLATION OR NON-RENEWAL] is amended by adding the following language as a new paragraph (2) and renumbering the existing paragraph (2) as paragraph (3) so that, as amended, the rule shall read:

(1) In the event that a manufacturer, distributor, manufacturer or distributor branch or manufacturer or distributor representative determines that the franchise of an existing motor vehicle dealer should be terminated or cancelled or should not be renewed, it shall give written notice to the dealer and to the Tennessee Motor Vehicle Commission at least sixty (60) days prior to the effective date of the termination, cancellation or non-renewal. This notice shall contain a concise statement of the reasons for the termination, cancellation or non-renewal of the franchise. Upon application of the person cancelling, terminating or failing to renew a franchise and with notice to the dealer affected thereby, the Commission may permit a cancellation, termination or non-renewal of a franchise upon less than sixty (60) days notice, if it determines in writing that a lesser notice period is justified in light of the circumstances surrounding the cancellation, termination or non-renewal.

(2) Where a manufacturer, distributor, manufacturer or distributor branch or manufacturer or distributor representative has issued the notice of termination or non-renewal as provided above, has taken such action without issuing the notice, or has otherwise threatened to terminate the dealership, the affected dealer shall have the right, within the 60 day period following receipt of the notice or action, to petition the Tennessee Motor Vehicle Commission for a declaratory order in accordance with T.C.A. § 4-5-223 as to the applicability of T.C.A. § 55-17-114(c)(3) and/or (c)(21) to the proposed or threatened termination. Upon the filing of such petition, the Tennessee Motor Vehicle Commission shall convene a contested case hearing for the purpose of determining whether the action of the manufacturer or distributor is (a) unfair, (b) without due regard to the equities, or (c) without just provocation as provided within T.C.A. § 55-17-114(c)(3) and/or (c)(21). The manufacturer or distributor thereof shall be served with the petition and shall be a party to the contested case hearing.

~~(2)~~(3) Failure of a manufacturer, distributor, manufacturer or distributor branch or manufacturer or distributor representative to give adequate notice pursuant to Rule 0960-01-.06(1) or to keep the franchise in full force and effect pending a final determination by the Commission or to abide by the Commission's final order may result in the Commission's refusal to issue a motor vehicle dealer's license to another dealership selling the same trade name and line-make of motor vehicles as the affected dealer or doing business in the same relevant market area as the affected dealer. This remedy is in addition to any other remedy provided in T.C.A. § 55-17-101 et seq.

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

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

| Board Member (if required) | Aye | No | Abstain | Absent | Signature |
|---|---|---|---|---|---|
| Eddie Roberts | X | | | | |
| Stan Norton | X | | | | |
| Ronnie Fox | X | | | | |
| Nathaniel Jackson | X | | | | |
| Don Parr | X | | | | |
| Steve Tomaso | | | X | | |
| Lynn Webb | X | | | | |
| B. Joe Clayton | | | | X | |
| Ronald Fox | 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 Motor Vehicle Commission on 01/11/2016, 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: 6-10-16

Signature: Matt Reddish

Name of Officer: Matthew Reddish

Title of Officer: Assistant General Counsel

VANESSA HUNTSMAN
STATE OF TENNESSEE NOTARY PUBLIC
SUMNER COUNTY
MY COMMISSION EXPIRES 11-21-2017

Subscribed and sworn to before me on: June 10, 2016

Notary Public Signature: Vanessa Huntsman

My commission expires on: Nov. 21, 2017

Rules of the Tennessee Motor Vehicle Commission
Chapter 0960-01 General Rules
Rule 0960-01-.06 Notice of Termination, Cancellation or Non-Renewal

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
Attorney General and Reporter

6/28/2016
Date

**Department of State Use Only**

Filed with the Department of State on: 7/7/16

Effective on: 10/5/16

Tre Hargett
Secretary of State

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SECRETARY OF STATE
PUBLICATIONS

**Regulatory Flexibility Addendum**
Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

**Statements:**

(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.

It is believed that clarifying the availability of the protest process for a motor vehicle dealer will directly benefit franchised motor vehicle dealers. There are approximately 414 licensed franchised motor vehicle dealers in Tennessee that will be substantially impacted by this rule in a positive way.

(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.

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

This rule is expected to have a positive impact on small businesses by providing clarification regarding protests of terminations.

(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.

Federal law allows dealer suit against manufacturer under 15 U.S.C. § 1222. No known state counterpart.

(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, as existing standards are either stricter or less clear.

**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 is proposed in order to clarify protest procedures regarding the termination or non-renewal of the franchise of an existing motor vehicle dealer.

**(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 is not mandated by any federal or state law or regulation.

**(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;

Motor vehicle dealers and manufacturers are most directly affected by these rules. Manufacturers may urge rejection of this rule or may remain neutral. Dealers will urge adoption.

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

The creation of this rule was prompted by the Davidson County Chancery Court's decision in *Kia Motors America, Inc. v. Tennessee Motor Vehicle Commission, et al.,* case no. 13-860-II, which cast doubt on the Commission's authority to hear a request for declaratory relief from a local Kia dealership, which contended that its franchise was being terminated or threatened with termination in violation of Tenn. Code Ann. § 55-17-114(c)(3) and (21). The local dealership and the manufacturer ultimately settled the lawsuit, but the court's ruling prompted the Commission to create a rule clarifying the procedure to be followed by any dealer contending that a manufacturer's termination or threatened termination of the dealer's franchise violated the statute.

**(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 is no expected substantial impact on state or local government revenue and expenditures.

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

| | |
|---|---|
| Paula Shaw<br>500 James Robertson Parkway<br>Davy Crockett Tower 5th Floor<br>Nashville, TN 37243<br>(615) 741-2711 | Matthew Reddish<br>500 James Robertson Parkway<br>Davy Crockett Tower 5th Floor<br>Nashville, TN 37243<br>(615) 770-0089 |

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

Paula Shaw, Executive Director, Motor Vehicle Commission
Matthew Reddish, Assistant 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

| | |
|---|---|
| Paula Shaw<br>500 James Robertson Parkway<br>Davy Crockett Tower 5th Floor<br>Nashville, TN 37243<br>(615) 741-2711 | Matthew Reddish<br>500 James Robertson Parkway<br>Davy Crockett Tower 5th Floor<br>Nashville, TN 37243<br>(615) 770-0089 |

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

None

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Department of Commerce and Insurance |
| DIVISION: | Tennessee Motor Vehicle Commission |
| SUBJECT: | Disclosure of Salvage Title, Rebuilt Title, or Salvage History |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Sections 55-17-101, 55-17-107, and 55-17-114 |
| EFFECTIVE DATES: | October 5, 2016 through June 30, 2017 |
| FISCAL IMPACT: | Minimal |
| STAFF RULE ABSTRACT: | This proposed rule (Rule 0960-01-.29 Disclosure of rebuilt or salvage motor vehicles) is created to include definitions for rebuilt title, salvage title, and salvage history. The rule explicitly states that a motor vehicle dealer or salesperson who sells a motor vehicle with a salvage title, rebuilt title, or salvage history must disclose the salvage title, rebuilt title, or salvage history to the consumer on the included form. |

**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, or directly benefit from the proposed rule.

Requiring motor vehicle dealers to disclose that a motor vehicle has a salvage history, salvage title or rebuilt title will only affect small businesses that buy and sell motor vehicles that have previously been rebuilt or salvaged. The cost of compliance with the rule will be minimal, while motor vehicle dealers will benefit by reducing the potential for Motor Vehicle Commission complaints and negative interactions with unhappy consumers.

There are approximately 3,802 licensed motor 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 motor vehicle dealers in Tennessee would qualify as a small business and, therefore, this rule will impact substantially all of those identified above.

(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.

The rule is not expected to have any substantial reporting, recordkeeping or other administrative costs. Motor vehicle dealers already are required to keep a file of certain documents pertaining to each transaction. When the motor vehicle dealer sells a motor vehicle that the dealer knows has a salvage history, salvage title or rebuilt title, the dealer will have one additional form to print and retain. The skills necessary for preparation of the document are the ability to print the form, present the form to purchasers for signature, and internally file the form with other relevant documentation.

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

The rule is expected to have a positive impact on small businesses by creating a document that allows small businesses to produce evidence of a purchaser's knowledge regarding a material fact should a consumer allege they were deceived.

The rule is expected to have a positive impact on consumers because the rule will create a requirement that motor vehicle dealers notify a consumer when the consumer is about to purchase a motor vehicle with a salvage history, salvage title or rebuilt title. By requiring this disclosure, consumers are made aware of a material fact that often reduces the value of, increases the difficulty of insuring, and may indicate the potential for future mechanical issues for a motor vehicle.

(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 only requires the motor vehicle dealer to disclose what they have knowledge of; therefore, the Commission believes that these changes are 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.

Several states, such as North Carolina, Michigan and Virginia, among others, require a disclosure when a motor vehicle dealer sells a motor vehicle with a salvage history, salvage title or rebuilt title. There are no known federal

counterparts to this rule.

(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 rule for small business would not be expected to be beneficial.

**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;

Rule 0960-01-.29 [DISCLOSURE OF REBUILT OR SALVAGE MOTOR VEHICLES] is created to include definitions for rebuilt title, salvage title and salvage history. The rule paragraphs explicitly state that a motor vehicle dealer or salesperson who sells a motor vehicle with a salvage title, rebuilt title or salvage history must disclose the salvage title, rebuilt title or salvage history to the consumer on the included form.

**(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 is not mandated by any federal or state law or regulation.

**(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;

Used motor vehicle dealers and motor vehicle consumers are most directly affected by this rule. The Tennessee Automotive Association provided input in the drafting of this rule and will support the rule.

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

There are no opinions of the Attorney General and Reporter or any other judicial ruling that directly relates to 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;

There is no expected substantial impact on state or local government revenue and expenditures.

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

| | |
|---|---|
| Paula Shaw<br>500 James Robertson Parkway<br>Davy Crockett Tower 5th Floor<br>Nashville, TN 37243<br>(615) 741-2711 | Matthew Reddish<br>500 James Robertson Parkway<br>Davy Crockett Tower 5th Floor<br>Nashville, TN 37243<br>(615) 770-0089 |

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

Paula Shaw, Executive Director, Motor Vehicle Commission
Matthew Reddish, Assistant 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

| | |
|---|---|
| Paula Shaw<br>500 James Robertson Parkway<br>Davy Crockett Tower 5th Floor<br>Nashville, TN 37243<br>(615) 741-2711 | Matthew Reddish<br>500 James Robertson Parkway<br>Davy Crockett Tower 5th Floor<br>Nashville, TN 37243<br>(615) 770-0089 |

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

None

(10)

**Department of State**
**Division of Publications**
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Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 07-13-16
Rule ID(s): 6246
File Date: 7/7/16
Effective Date: 10/5/16

# 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).*

| | |
|---|---|
| **Agency/Board/Commission:** | Tennessee Motor Vehicle Commission |
| **Division:** | Department of Commerce and Insurance |
| **Contact Person:** | Matthew Reddish |
| **Address:** | 500 James Robertson Parkway, Nashville, TN |
| **Zip:** | 37243 |
| **Phone:** | 615-741-3072 |
| **Email:** | Matthew.E.Reddish@tn.gov |

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

___ Amendment
_x_ New
___ Repeal

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

| **Chapter Number** | **Chapter Title** |
|---|---|
| 0960-01 | General Rules |
| **Rule Number** | **Rule Title** |
| 0960-01-.29 | Disclosure of Rebuilt or Salvage Motor Vehicles |

Chapter 0960-01
General Rules
New Rule

Chapter 0960-01 Table of Contents is amended by adding new rule 0960-01-.29 Disclosure of Rebuilt Motor Vehicles so that the Table of Contents will read as follows:

TABLE OF CONTENTS


0960-01-.01 Definitions
0960-01-.02 Warranty Service
0960-01-.03 Warranty Charges and Sales Incentive Audits
0960-01-.04 Computation of Warranty Charges
0960-01-.05 Approval of Requested Labor Rates
0960-01-.06 Notice of Termination, Cancellation
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-.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 for Estate Sales and for Nursing or Health Care Home Expenses
0960-01-.19 Compliance with State and Federal Laws and Regulations
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-.23 Mail from Commission and Complaints
0960-01-.24 Sales Tax Identification Number
0960-01-.25 Business License
0960-01-.26 Salesperson Licenses
0960-01-.27 Lemon Law
0960-01-.28 Military Applicants – Spouses - Expedited Licensure
0960-01-.29 Disclosure of Rebuilt or Salvage Motor Vehicles


Rule 0960-01-.29 [DISCLOSURE OF REBUILT OR SALVAGE MOTOR VEHICLES] is created by adding the following language as 4 new paragraphs so that, as created, the rule shall read:

(1) The motor vehicle dealer or salesperson who knows that a motor vehicle has a salvage history, or that a motor vehicle's title was previously branded as rebuilt or salvage, shall disclose, acknowledged in writing by the purchaser prior to the consummation of the sale, that the motor vehicle has a rebuilt title, salvage title or salvage history.

(2) The disclosure in writing as required by subsection (a) shall be completed on a form prescribed by the Commission which states the following:

NOTICE
DISCLOSURE OF REBUILT OR SALVAGE VEHICLE

Pursuant to Tenn. Comp. R. & Regs. 0960-01-.29, the following disclosure is required prior to the sale of any vehicle with a rebuilt title, salvage title or salvage history along with the signature of the purchaser acknowledging such disclosure.

The motor vehicle you are purchasing has a rebuilt title, salvage title, or salvage history. The value of this vehicle may be significantly less than a similar vehicle that is not branded with a rebuilt title, salvage title, or does not have a salvage history.

(Purchaser's Printed Name) _____

(Purchaser's Signature)_____ (Date) _____

(Dealer or Authorized Representative's Printed Name) _____

(Dealer or Authorized Representative's Signature) _____

(Dealer's Business Name and License Number) _____

Year_____Make_____Model_____VIN_____

_____

"Rebuilt title" means the passenger motor vehicle ownership document issued by any state to the owner of a rebuilt vehicle. Ownership of the passenger motor vehicle may be transferred on a rebuilt title, and a passenger motor vehicle for which a rebuilt title has been issued may be registered for use on the roads and highways. A rebuilt title shall be conspicuously labeled with the words "Rebuilt Vehicle--Anti-theft Inspections Passed" across the front (T.C.A. § 55-3-211(6)).

"Salvage title" means a passenger motor vehicle ownership document issued by any state to the owner of a salvage vehicle. Ownership of the passenger motor vehicle may be transferred on a salvage title; however, a passenger motor vehicle for which a salvage title has been issued shall not be registered for use on the roads or highways unless it has been issued a rebuilt title. A salvage title shall be conspicuously labeled with the word "Salvage" across the front (T.C.A. § 55-3-211(8)).

"Salvage history" means:

(a) Any passenger motor vehicle which has been wrecked, destroyed, or damaged to the extent that the total estimated or actual cost of parts and labor to rebuild or reconstruct the passenger motor vehicle to its pre-accident condition and for legal operation on the roads or highways exceeds seventy-five percent (75%) of the retail value of the passenger motor vehicle, as set forth in a current edition of any nationally recognized compilation (to include automated databases) of retail values, or

(b) Without regard to whether such passenger motor vehicle meets the seventy-five percent (75%) threshold specified in subparagraph (a), any passenger motor vehicle which the owner may wish to designate as a salvage vehicle by obtaining a salvage title, without regard to the extent of the passenger motor vehicle's damage and repairs. This designation by the owner shall not impose on the insurer of the passenger motor vehicle or on an insurer processing a claim made by or on behalf of the owner of the passenger motor vehicle any obligations or liabilities (Pursuant to Tenn. Comp. R. & Regs. 0960-01-.29(3)).

(3) For purposes of this rule, "salvage history" means:

(a) Any passenger motor vehicle which has been wrecked, destroyed, or damaged to the extent that the total estimated or actual cost of parts and labor to rebuild or reconstruct the passenger motor vehicle to its pre-accident condition and for legal operation on the roads or highways exceeds seventy-five percent (75%) of the retail value of the passenger motor vehicle, as set forth in a current edition of any nationally recognized compilation (to include automated databases) of retail values, or

(b) Without regard to whether such passenger motor vehicle meets the seventy-five percent (75%) threshold specified in subparagraph (a), any passenger motor vehicle which the owner may wish to designate as a salvage vehicle by obtaining a salvage title, without regard to the extent of the passenger motor vehicle's damage and repairs. This designation by the owner shall not impose on the insurer of the passenger motor vehicle or on an insurer processing a claim made by or on behalf of the owner of the passenger motor vehicle any obligations or liabilities.

(4) Compliance with subparagraphs (1)-(3) may not be waived by the purchaser.

Authority: §§ 55-17-101; 55-17-107; 55-17-114.

* 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 | | | | |
| Nathaniel Jackson | x | | | | |
| Reed Trickett | x | | | | |
| John Murrey | x | | | | |
| Stan McNabb | x | | | | |
| Steve Tomaso | x | | | | |
| B. Joe Clayton | x | | | | |
| Ronald Fox | x | | | | |
| Lynn Webb | x | | | | |
| Don Parr | | | | x | |
| Stan Norton | | | | x | |
| Ian Leavy | | | | x | |
| Jim Galvin Jr. | x | | | | |
| John S. Murrey | x | | | | |
| Donnie Hatcher | | | | x | |
| Farrar Schaeffer Vaughan | x | | | | |

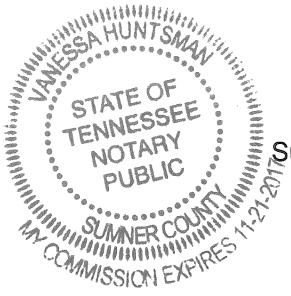
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Commission on 10/06/2015, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being 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: 5-4-16

Signature: [signature]

Name of Officer: Matthew Reddish

Title of Officer: Assistant General Counsel, Regulatory Boards




Subscribed and sworn to before me on: May 4, 2016

Notary Public Signature: Vanessa Huntsman

My commission expires on: Nov. 21, 2017

Rules of the Tennessee Motor Vehicle Commission
Chapter 0960-01 General Rules
Rule 0960-01-.29 Disclosure of Rebuilt or Salvage Motor Vehicles

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
Attorney General and Reporter

6/28/2016
Date

**Department of State Use Only**

Filed with the Department of State on: 7/7/16

Effective on: 10/5/16

Tre Hargett
Secretary of State

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PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Commerce and Insurance |
| DIVISION: | Tennessee Motor Vehicle Commission |
| SUBJECT: | Surety Bonds |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Section 55-17-111(g)(1) |
| EFFECTIVE DATES: | October 20, 2016 through June 30, 2017 |
| FISCAL IMPACT: | Minimal |
| STAFF RULE ABSTRACT: | This proposed rule amends Rule 0960-01-.22 [SURETY BONDS] by allowing for injured consumers to be the beneficiary to a dealer's surety bond. |

**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.

**Statements:**

(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.

There are approximately 3,700 licensed motor vehicle dealers in Tennessee that will be substantially impacted by this rule. There will be nominal costs for these dealers and the dealers as a whole should benefit due to a reduction in the needless litigation that is currently required for an injured consumer to collect from the dealer's surety bond.

(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 may result in additional administrative costs due to a potential need to update current surety bonds.

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

This rule is expected to have a positive impact on small businesses by reducing lawsuits filed in attempts to collect on dealer's surety bond.

(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.

There exists no known state or federal counterpart.

(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, as existing standards are less clear.

**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;

Rule 0960-01-.22 [SURETY BONDS] is amended by allowing for injured consumers to be the beneficiary to a dealer's surety bond.

**(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 is not mandated by any federal or state law or regulation. T.C.A. § 55-17-111(g)(1) does provide some guidelines relevant to 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;

This rule affects all licensed motor vehicle dealers.

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

There are no opinions of the Attorney General and Reporter or any other judicial ruling that directly relates to 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;

There is no expected substantial impact on state or local government revenue and expenditures.

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

| | |
|---|---|
| Paula Shaw<br>500 James Robertson Parkway<br>Davy Crockett Tower 5th Floor<br>Nashville, TN 37243<br>(615) 741-2711 | Matthew Reddish<br>500 James Robertson Parkway<br>Davy Crockett Tower 5th Floor<br>Nashville, TN 37243<br>(615) 770-0089 |

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

Paula Shaw, Executive Director, Motor Vehicle Commission
Matthew Reddish, Assistant 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

| | |
|---|---|
| Paula Shaw<br>500 James Robertson Parkway<br>Davy Crockett Tower 5th Floor | Matthew Reddish<br>500 James Robertson Parkway<br>Davy Crockett Tower 5th Floor |

| | |
|---|---|
| Nashville, TN 37243<br>(615) 741-2711 | Nashville, TN 37243<br>(615) 770-0089 |

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

None

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Nashville, TN 37243
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Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 07-31-16
Rule ID(s): 6268
File Date: 7/22/16
Effective Date: 10/20/16

# 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).*

| | |
|---|---|
| **Agency/Board/Commission:** | Tennessee Motor Vehicle Commission |
| **Division:** | Department of Commerce and Insurance |
| **Contact Person:** | Matthew Reddish |
| **Address:** | 500 James Robertson Parkway, Nashville, TN |
| **Zip:** | 37243 |
| **Phone:** | 615-741-3072 |
| **Email:** | Matthew.E.Reddish@tn.gov |

**Revision Type (check all that apply):**
x 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** |
|---|---|
| 0960-01 | General Rules |
| **Rule Number** | **Rule Title** |
| 0960-01-.22(1) | Surety Bonds |

Rule 0960-01-.22 [SURETY BONDS.] is amended by deleting the phrase "and must name the Tennessee Motor Vehicle Commission as beneficiary" in paragraph (1) of the rule so that, as amended, the rule shall read:

(1) The surety bond required by T.C.A. Title 55, Chapter 17, Section 111(g) must remain and continue in force for as long as the licensee remains licensed ~~and must name the Tennessee Motor Vehicle Commission as beneficiary~~. 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.

(2) Any surety is required to provide sixty (60) days notice of cancellation to the Commission.

Authority: T.C.A. §§ 55-17-107, 55-17-111 and 55-17-114.

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

| Board Member (if required) | Aye | No | Abstain | Absent | Signature |
|---|---|---|---|---|---|
| Eddie Roberts | X | | | | |
| Stan Norton | X | | | | |
| Ian Leavy | X | | | | |
| Nathaniel Jackson | X | | | | |
| Don Parr | | | | X | |
| Steve Tomaso | | | | X | |
| Lynn Webb | X | | | | |
| B. Joe Clayton | X | | | | |
| Ronald Fox | X | | | | |
| Stan McNabb | | | | X | |
| Reed Trickett | X | | | | |
| Jim Galvin Jr. | | | | X | |
| John S. Murrey | X | | | | |
| Donnie Hatcher | | | | | |
| Farrar Schaeffer Vaughan | X | | | | |

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Commission on 04/25/2016, 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: 6-20-16

Signature: Matt Reddish

Name of Officer: Matthew Reddish

Title of Officer: Assistant General Counsel

VANESSA HUNTSMAN STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY MY COMMISSION EXPIRES 11-21-17

Subscribed and sworn to before me on: June 20, 2016

Notary Public Signature: Vanessa Huntsman

My commission expires on: Nov. 21, 2017

Rules of the Tennessee Motor Vehicle Commission
Chapter 0960-01 General Rules
Rule 0960-01-.22 Surety Bonds

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
Attorney General and Reporter

7/18/2016
Date

**Department of State Use Only**

Filed with the Department of State on: 7/22/16

Effective on: 10/20/16

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 – Employment and Community First (ECF) CHOICES Program |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Sections 4-5-208, 71-5-105, and 71-5-109 |
| EFFECTIVE DATES: | July 1, 2016 through December 28, 2016 |
| 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: | The Bureau of TennCare is promulgating these emergency rules to provide for the implementation of the Employment and Community First (ECF) CHOICES program. |

**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 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 allow 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 T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109. |

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

| |
|---|
| The persons and entities most directly affected by these Rules are the TennCare enrollees, 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;

| |
|---|
| 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<br>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<br>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<br>Nashville, TN 37243<br>(615) 507-6852<br>donna.tidwell@tn.gov |

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

GW10116152ab.pk.km

(5)

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Sequence Number: 07-08-16
Rule ID(s): 6221
File Date (effective date): 7/1/16
End Effective Date: 12/28/16

# Emergency Rule Filing Form

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

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

**Rule Type:**
X Emergency Rule

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

**Statement of Necessity:**

The Bureau of TennCare is making changes to certain aspects of its long term care program. These changes will enable the Bureau to implement the Employment and Community First (ECF) CHOICES program that provides managed long-term services and supports (MLTSS) to promote and support integrated, competitive employment and independent, integrated community living.

ECF CHOICES provides coverage for home and community based services (HCBS) and other services for individuals with intellectual or developmental disabilities (I/DD), as defined by the State. This includes HCBS for individuals currently on the waiting list for receiving services under the State's 1915(c) waiver that serves individuals with I/DD and other individuals who meet the financial and other applicable requirements for such services. ECF CHOICES also provides coverage for individuals with I/DD who are at risk of institutionalization.

On February 2, 2016, the Bureau received approval from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) to amend the TennCare II section 1115 demonstration (Project No. 11-W-001514) through Amendment 27 to implement the ECF CHOICES program.

Pursuant to T.C.A. § 4-5-208, the Bureau of TennCare is authorized to adopt an emergency rule when the agency finds that it is required by an agency of the federal government and the adoption of the rules through ordinary procedures might jeopardize the loss of a federal program funds.

Based upon the above information, I have made the finding that the emergency adoption of these rules is required in order to achieve implementation of the ECF CHOICES program by July 1, 2016.

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

Darin J. Gordon
Director, Bureau of TennCare
Tennessee Department of Finance and Administration

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

| **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-.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.)

(~~b~~c) 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.

(#) 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; and

(xiv) Repairs of equipment are 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.

(#) 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 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 is (a) a family member or is unrelated to the member but has a close, personal relationship with the member and (b) routinely involved in providing unpaid support and assistance to the member. A caregiver 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 and not participating in employment or employment services, the option to pursue employment should be discussed at least semi-annually.

(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 shall not be used for purposes of evaluating functional deficits described in 1200-13-01-.10, or in determining an Individual Acuity Score or an Applicants total score on the NF LOC Acuity Scale.

(#) 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. The ECF CHOICES program will begin implementation at a date to be determined by TennCare, but no sooner than July 1, 2016.

(#) 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 of NF placement;" 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 of NF placement," 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" of nursing facility placement. 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, 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 for ECF CHOICES, 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 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.

(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 prevent the person from

being able to work, 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.

(#) 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 ECF CHOICES, the PCSP is a written plan developed by the Support 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 unless he or she has a court-appointed guardian or conservator, 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. 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 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. (A member shall choose to receive Respite as either a daily or hourly service; the 2 limits cannot be combined in a calendar year.) 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.

(c) 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 on-going 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 ~~DHS~~TennCare. 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 "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 I nability 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;

(xii) 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;

(xiii) 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 home 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)(l)~~ 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 ~~N~~nursing ~~F~~facility or to delay or prevent placement in a Nnursing ~~N~~facility. Only certain CHOICES HCBS are eligible for Consumer Direction. CHOICES HCBS do not include ~~H~~home ~~H~~health or ~~P~~private ~~D~~duty ~~N~~nursing ~~S~~services or any other HCBS that are covered by Tennessee's Title XIX State Plan or under the TennCare demonstration for all eligible ~~E~~enrollees, although such services are subject to estate recovery and shall be counted for purposes of determining whether a CHOICES Group 2 ~~M~~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) CBRAs 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 5and 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 ~~M~~member participating in ~~CD~~consumer direction of ~~E~~eligible CHOICES or ECF CHOICES HCBS or a representative designated by the ~~M~~member to assume the ~~CD~~ consumer direction of ~~E~~eligible CHOICES or ECF CHOICES HCBS functions on the ~~M~~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 HCBS, 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 M~~m~~embers participating in ~~CD~~ consumer direction of ~~E~~eligible CHOICES or ECF CHOICES HCBS. The FEA provides both financial administration and supports brokerage functions for CHOICES and ECF CHOICES ~~M~~members participating in ~~CD~~ consumer direction of ~~E~~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 ~~M~~members 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.~~

(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.

(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 ~~M~~members, a ~~individual~~ person who is at least eighteen (18) years of age and is authorized by the ~~M~~member to participate in care or support planning and implementation and to speak and/or make decisions on the ~~M~~member'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 ~~E~~eligible CHOICES or ECF CHOICES HCBS, a ~~Representative~~ person ~~is an individual~~ who is authorized by the ~~M~~member to direct and manage the M~~m~~ember's worker(s), and signs a ~~R~~representative ~~A~~agreement. The ~~R~~representative for ~~CD~~ consumer direction of ~~E~~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 ~~M~~member electing ~~CD~~ consumer direction of eligible CHOICES or ECF CHOICES HCBS who has a ~~R~~representative direct and manage the ~~Member's~~ consumer's ~~W~~worker(s) and the ~~M~~member's ~~R~~representative that specifies the roles and responsibilities of the ~~M~~member and the ~~M~~member's ~~R~~representative.

(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.(i)(II) and 1200-13-01-.10(4)(b)2.(ii)(II)).

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;

~~(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. ~~o~~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 ~~M~~member electing ~~CD of Eligible CHOICES~~ consumer direction of HCBS (or the ~~M~~member's ~~R~~representative) and the ~~M~~member's consumer-directed worker that specifies the roles and responsibilities of the Mmember (or the ~~M~~member's ~~R~~representative) 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), 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), 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;~~,~~ 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, ~~D~~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, will help to minimize the child's risk of risk of 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;~~,~~ 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)).

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 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 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

(p) Community Based Residential Alternatives (CBRAs)

~~5. Requirements for Community Living Supports (CLS).~~

(i) Providers of CLS services in the CHOICES program shall:

(I) Be contracted with the Member's MCO for the provision of CLS services, and licensed by the DIDD 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 DIDD 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:

(I) Be contracted with the Member's MCO for the provision of CLS-FM services, and licensed by the DIDD in accordance with T.C.A. Title 33 and TDMHSAS Rule 0940-5-26~~, and contracted by the DIDD to provide residential services pursuant to an approved Section 1915(c) waiver~~;

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-.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 the TennCare MCOs under contract with the Bureau. The 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 defined 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 defined 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 eligible 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;

(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 defined in Section 200-13-01-.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, and qualify in one of the following eligibility categories:

(I) SSI eligible, who are determined eligible for SSI by the Social Security Administration. SSI eligible 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.

(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 is reached, any persons enrolled in excess of the Enrollment Target in accordance with this Rule must receive the first available slots. Only after all persons enrolled in excess of the Enrollment Target have been moved under the Enrollment Target can additional persons be enrolled into ECF CHOICES.

(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 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) 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. 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. Only an MCO may submit to TennCare a request to transition a Member 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. 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 move 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 the criteria for ECF CHOICES eligibility, 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 the criteria for ECF CHOICES eligibility, 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.

| Service | Benefits for ECF CHOICES Members | Benefits for Consumer Direction<br><br>("Eligible ECF CHOICES HCBS") |
|---|---|---|
| 1. Adult Dental Services | Covered for adults age 21 and older in accordance with limitations specified in Rule 1200-13-01-.02.<br><br>Orthodontic services are excluded from coverage.<br><br>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. | No |
| 2. Assistive Technology, Adaptive Equipment and Supplies | Covered with a limit of five thousand dollars ($5,000) per person per calendar year.<br><br>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.). | No |

| Service | Benefits for ECF CHOICES Members | Benefits for Consumer Direction<br><br>("Eligible ECF CHOICES HCBS") |
|---|---|---|
| 3. Community Integration Support Services | Covered in accordance with limitations specified in Rule 1200-13-01-.02.<br><br>Not covered as a separate service for persons receiving CLS or CLS-FM.<br><br>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.<br><br>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.<br><br>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.<br><br>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.<br><br>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. | No |

| Service | Benefits for ECF CHOICES Members | Benefits for Consumer Direction<br><br>("Eligible ECF CHOICES HCBS") |
|---|---|---|
| 4. Community Living Supports (CLS) and Community Living Supports—Family Model (CLS-FM) | Covered only for adults age 21 and older enrolled in ECF CHOICES Group 5 or 6. | No |
| 5. Community Support Development, Organization and Navigation | Covered only for Members enrolled in ECF CHOICES Group 4. | No |
| 6. Community Transportation | 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.<br><br>Shall not supplant NEMT available for medical appointments.<br><br>Limited to $225 per month for Members electing to receive this benefit through Consumer Direction. | Yes |
| 7. Conservatorship Counseling and Assistance | Covered. Limited to five hundred dollars ($500) in one-time assistance per member.<br><br>Legal or court fees may be reimbursed only upon completion of counseling services to protect and preserve individual rights and freedoms. | No |
| 8. Family Caregiver Education and Training | Covered only for Members enrolled in ECF CHOICES Group 4 when approved in advance by the Member's MCO.<br><br>Limited to five hundred dollars ($500) per calendar year. | No |
| 9. Family Caregiver Stipend in lieu of SHC | Covered only for Members enrolled in ECF CHOICES Group 4 and only when supports for employment and community integration are provided.<br><br>For a child under age eighteen (18), the Family Caregiver Stipend shall be limited to five hundred dollars ($500) per month.<br><br>For an adult age eighteen (18) or older, the Family Caregiver Stipend shall be no more than one thousand dollars ($1,000) per month. | No |
| 10. Family-to-Family Support | Covered only for Members enrolled in ECF CHOICES Group 4. | No |

| Service | Benefits for ECF CHOICES Members | Benefits for Consumer Direction<br><br>("Eligible ECF CHOICES HCBS") |
|---|---|---|
| 11. Health Insurance Counseling/Forms Assistance | Covered only for Members enrolled in ECF CHOICES Group 4.<br><br>Limited to fifteen (15) hours per person per calendar year. | No |
| 12. Independent Living Skills Training | Covered in accordance with limitations specified in Rule 1200-13-01-.02.<br><br>Not covered as a separate service for persons receiving CLS or CLS-FM.<br><br>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.<br><br>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.<br><br>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.<br><br>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. | No |
| 13. Individual Education and Training Services | Covered only for Members enrolled in ECF CHOICES Group 5 or 6 when approved in advance by the Member's MCO.<br><br>Limited to five hundred dollars ($500) per Member per calendar year. | No |

| Service | Benefits for ECF CHOICES Members | Benefits for Consumer Direction<br><br>("Eligible ECF CHOICES HCBS") |
|---|---|---|
| 14. Integrated Employment Path Services (time limited prevocational training) | Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02.<br><br>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.<br><br>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. | No |
| 15. Minor Home Modifications | 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. | No |
| 16. Peer-to-Peer Support and Navigation for Person-Centered Planning, Self-Direction, Integrated Employment/Self-Employment and Independent Community Living | Covered only for Members enrolled in ECF CHOICES Group 5 or 6.<br><br>Limited to one thousand five hundred dollars ($1,500) per person per lifetime. | No |
| 17. Personal Assistance | Covered only for ECF CHOICES Members enrolled in Group 5 or 6.<br><br>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. | Yes |

| Service | Benefits for ECF CHOICES Members | Benefits for Consumer Direction<br><br>("Eligible ECF CHOICES HCBS") |
|---|---|---|
| 18. Respite | Covered with limitations as follows:<br><br>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.<br><br>The two (2) limits cannot be combined in a calendar year. | Yes |
| 19. Specialized Consultation and Training | Covered only for adults age 21 or older enrolled in ECF CHOICES Group 5 or 6.<br><br>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.<br><br>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. | No |
| 20. Supportive Home Care (SHC) | Covered only for Members enrolled in ECF CHOICES Group 4. | Yes |
| 21. Supported Employment Individual Employment Support | 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: | No |

| Service | Benefits for ECF CHOICES Members | Benefits for Consumer Direction<br><br>("Eligible ECF CHOICES HCBS") |
|---|---|---|
| | **Exploration** – Covered for persons age 14 or older in accordance with limitations specified in Rule 1200-13-01-.02.<br><br>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. | No |

| Service | Benefits for ECF CHOICES Members | Benefits for Consumer Direction<br><br>("Eligible ECF CHOICES HCBS") |
|---|---|---|
| | **Benefits Counseling** – Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02.<br><br>Limited to people receiving individual employment supports. Persons receiving small group employment supports are not eligible for this benefit.<br><br>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).<br><br>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.<br><br>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.<br><br>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. | No |

| Service | Benefits for ECF CHOICES Members | Benefits for Consumer Direction<br><br>("Eligible ECF CHOICES HCBS") |
|---|---|---|
| | **Discovery** - Covered for persons age 14 or older in accordance with limitations specified in Rule 1200-13-01-.02.<br><br>Limited to no more than ninety (90) calendar days from the date of service initiation. | No |
| | **Situational Observation and Assessment** – Covered for persons age 14 or older in accordance with limitations specified in Rule 1200-13-01-.02.<br><br>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. | No |
| | **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.<br><br>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.<br><br>Medicaid funds may not be used to defray the capital expenses associated with starting a business. | No |

| Service | Benefits for ECF CHOICES Members | Benefits for Consumer Direction<br><br>("Eligible ECF CHOICES HCBS") |
|---|---|---|
| | **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.<br><br>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. | No |
| | **Job Coaching** – Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02.<br><br>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.<br><br>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. | No |

| Service | Benefits for ECF CHOICES Members | Benefits for Consumer Direction<br><br>("Eligible ECF CHOICES HCBS") |
|---|---|---|
| | **Co-Worker Supports** – Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02.<br><br>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.<br><br>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. | No |
| | **Career Advancement** – Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02.<br><br>This service shall not be authorized retroactive to a promotion or second job being made available to a person.<br><br>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). | No |

| Service | Benefits for ECF CHOICES Members | Benefits for Consumer Direction<br><br>("Eligible ECF CHOICES HCBS") |
|---|---|---|
| 22. Supported Employment Small Group Supports | Covered for persons age 16 or older in accordance with limitations specified in Rule 1200-13-01-.02.<br><br>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. | No |

(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) Respite.

(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, with the exception of daily Respite services, 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. Rates of reimbursement for daily Respite services are established by TennCare, and additional units of Respite service beyond that specified in the PCSP shall not be reimbursed.

(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, unless such action is determined to be consistent with the Member's needs and is reflected in an amended PCSP and authorized budget for each applicable Eligible ECF CHOICES HCBS.

(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 (applicable to hourly Respite) or days of service (applicable to daily Respite), as applicable remaining in a Member's annual budget for 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) 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.

(V) A Member shall only purchase Community Transportation up to the amount of the authorized monthly budget for that service.

(VI) The Member's monthly Community Transportation budget shall be reimbursed only for documented purchases of Community Transportation services submitted to the MCO.

(VII) A Member shall not be reimbursed for Community Transportation services in excess of the authorized monthly budget for that service.

(VIII) 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.

(IX) 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 shall choose whether to receive up to 216 hours per year of Respite services or up to 30 days per year of Respite services.

(III) A Member shall only receive Respite as an hourly or daily service. The two limits cannot be combined during any calendar year.

(IV) 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.

(V) 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.

(VI) A Member shall not ask or allow a CD Worker to provide services in excess of the authorized annual budget for that service.

(VII) 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.

(VIII) 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 Respite Services.

(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) Pass 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) Complete all required training.

(vi) Complete all required applications to become a TennCare provider.

(vii) Sign an abbreviated Medicaid agreement.

(viii) Be assigned a Medicaid provider ID number.

(ix) Sign a Service Agreement.

(x) 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. The following findings shall disqualify a person from serving as a Worker:

(i) Identification on the abuse registry.

(ii) Identification on the State or national sexual offender registry.

(iii) Identification that the person has 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;

(iv) Failure to have a required license.

(v) Refusal to cooperate with a background check.

4. Exception to a failed background check of a Consumer-Directed Worker. If a Worker fails the background check, the potential Worker may request an individualized assessment that will be conducted by the Member with the help of the Contractor. After considering the individualized assessment and any other evidence submitted by the potential Worker, the Member can decide not to hire the potential Worker or may grant an exception to the potential Worker. Should the Member decide to grant the criminal history exception and hire the Worker, the Contractor shall notify the Member's MCO and collaborate with that MCO to ensure the Member's PCSP addresses the Member voluntarily choosing to take on the risk associated with hiring an individual with a criminal history and is solely responsible for any negative consequences stemming from that decision.

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 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.

(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.

(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.

(I) 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.

(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.

12. A Potential Applicant may submit additional information at any time that may affect his or her Category on the ECF CHOICES referral list.

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))

GW10116152redline

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

Date: 6/27/2016

Signature:

Name of Officer: Darin J. Gordon

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

ROBIN A. PAGE
STATE OF TENNESSEE NOTARY PUBLIC
WILLIAMSON COUNTY

Subscribed and sworn to before me on: 6/27/2016

Notary Public Signature: Robin A Page

My commission expires on: 10/18/2016

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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

July 1 2016
Date

**Department of State Use Only**

Filed with the Department of State on: 7/1/16

Effective for: 180 *days

Effective through: 12/28/16

** 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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PUBLICATIONS

## 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, Section 4-5-208, 71-5-105, and 71-5-109 |
| EFFECTIVE DATES: | July 1, 2016 through December 28, 2016 |
| FISCAL IMPACT: | 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. |
| STAFF RULE ABSTRACT: | This emergency rule revises provisions relating to Enhanced Respiratory Care Reimbursement and Tracheal Suctioning Reimbursement under TennCare's long-term care programs for the purpose of ensuring that expenditures do not exceed appropriations for the TennCare program. |

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

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

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

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

The promulgation of these emergency rules clarifies 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 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 T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

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

The persons and entities most directly affected by these Rules are 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;

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
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.

GW10116172dt.pk

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Sequence Number: 07-09-16
Rule ID(s): 6222
File Date (effective date): 7/1/16
End Effective Date: 12/28/16

# Emergency Rule Filing Form

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

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

**Rule Type:**
X Emergency Rule

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

**Statement of Necessity:**

The Appropriations Act, Public Chapter Number 758, Section 48, Item 8, effective April 21, 2016, authorizes the Commissioner to mandate standardized reimbursement levels in the TennCare Program as necessary to control program expenditures in the fiscal years ending June 30, 2016, and June 30, 2017. Item 7 authorizes the promulgation of emergency rules for the state to fiscally function within the appropriations provided for the TennCare program. This emergency rule amendment clarifies 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 program.

T.C.A. § 4-5-208 permits an agency to adopt an emergency rule when it is required by enactment of the general assembly to implement rules within a prescribed period of time that precludes utilization of rulemaking procedures for promulgation of permanent rules.

Based upon the above information, I have made the finding that the emergency adoptions of these rules are required in order to achieve immediate implementation.

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

Darin J. Gordon
Director, Bureau of TennCare
Tennessee Department of Finance and Administration

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

| **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 (LOC) 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.

(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 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, as applicable, to meet specified medical eligibility or medical necessity criteria, as applicable, 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.

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 ~~r~~Reimbursement shall be provided only for beds that are certified for 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 to the NF's established Level 2 per diem rate (or the NF's blended per diem rate, when established) for each of the specified levels of reimbursement (i.e., Ventilator Weaning, Chronic Ventilator Care, and Tracheal Suctioning, including Sub-Acute and Secretion Management) 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 (i.e., Ventilator Weaning, Chronic Ventilator Care, and Tracheal Suctioning, including Sub-Acute and Secretion Management) 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 1200-13-01-.03(5), 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 specified in 1200-13-01-.03(5), or for any Enhanced Respiratory Care services provided in excess of the facility's licensed capacity to provide such services, regardless of payer source.

(e) A NF shall be eligible for Enhanced Respiratory Care Reimbursement only if such 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 (i.e., Ventilator Weaning, Chronic Ventilator Care, and Tracheal Suctioning, including Sub-Acute and Secretion Management) 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 Care services and/or ~~t~~Tracheal ~~s~~Suctioning including Sub-Acute and Secretion Management, in a ~~Level 2~~ 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 contract with any NF for Enhanced Respiratory Care Reimbursement specifically.

2. Unless an exception is granted, a TennCare MCO shall not contract with any NF for Enhanced Respiratory Care Reimbursement unless such NF was contracted by the MCO for Enhanced Respiratory Care Reimbursement prior to July 1, 2016. An MCO may request an exception from TennCare to the moratorium on new contracts with a NF for Enhanced Respiratory Care Reimbursement upon the MCO's demonstration of the need for additional capacity 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 Rule 1200-13-01-.03(5).

(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 ~~R~~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.

~~1~~2. 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.

~~2~~3. 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 (c)(1) above ~~a pulmonologist or a physician with experience in ventilator care~~.

~~3~~4. 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.

~~4~~5. End tidal carbon dioxide (etCO2) or transcutaneous monitoring of carbon dioxide and oxygen (tcCO2) 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, end tidal Carbon Dioxide (etCO2) and pulse oximetry measurements shall be provided no less than every four (4) hours, and within one (1) hour following all vent parameter changes.

~~Arterial Blood Gas (ABG) shall be readily available in order to document the resident's acid base status and/or End Tidal Carbon Dioxide (etCO2) and continuous pulse oximetry measurements should be performed in lieu of ABG studies.~~

~~5~~6. 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.

~~6~~7. Ventilator equipment (and ideally physiologic monitoring equipment) shall be connected ~~to electrical outlets connected~~ to back-up generator power via clearly marked wall outlets.

~~7~~8. 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.

~~8~~9. 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).

~~9~~10. The facility shall have an emergency preparedness plan specific to residents receiving Enhanced Respiratory Care 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).

(d) A NF contracted with one or more TennCare MCOs to receive Enhanced Respiratory Care (i.e., 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 Enhanced Respiratory Care (i.e., 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 as of January 1, 2017, must be operating in compliance with all of the conditions specified in Subparagraph (c) in order to be eligible for Enhanced Respiratory Care (i.e., 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) NFs receiving 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(7), 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(7). (Medical direction, including POC development and oversight for persons receiving Sub-Acute Tracheal Suctioning shall be conducted in accordance with Subparagraph (c) above.)

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 documentation regarding the clinical evaluation of each resident who will receive Secretion Management Tracheal Suctioning for appropriateness of placement in the facility prior to admission.

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 (etCO2) measurements at least every 12 hours. Transcutaneous (tcCO2) 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 (at a minimum) alarm response, positioning and transfers, care within licensure scope, and rescue breathing.

10. When a facility establishes a "Tracheostomy Unit" (i.e., accepts 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 Section (e)(1) above shall be on site a minimum of daily for assessment, care management, and care planning of residents receiving Tracheal Suctioning.

(g) 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.

Paragraph (8) of Rule 1200-13-01-.03 Nursing Facility (NF) Provider Reimbursement is deleted in its entirety and

replaced with a new Paragraph (8) which shall read as follows:

(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 to the NF's established Level 2 per diem rate (or the NF's blended per diem rate, when established) for each of the specified levels of reimbursement (i.e., Ventilator Weaning, Chronic Ventilator Care, and Tracheal Suctioning, including Sub-Acute and Secretion Management) 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 (i.e., Ventilator Weaning, Chronic Ventilator Care, and Tracheal Suctioning, including Sub-Acute and Secretion Management) 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.

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.

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.

GW10116172redline

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

Date: 6/29/2016

Signature: [signature]

Name of Officer: Darin J. Gordon

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

KATHY CROCKAREL
STATE OF TENNESSEE
NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: 6/29/16

Notary Public Signature: [signature]

My commission expires on: 1/8/2019

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.

[signature]
Herbert H. Slatery III
Attorney General and Reporter

July 1 2016
Date

**Department of State Use Only**

Filed with the Department of State on: 7/1/16

Effective for: 180 *days

Effective through: 12/28/16

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

[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 Standard – CHOICES Program |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Sections 4-5-208, 71-5-105, and 71-5-109. |
| EFFECTIVE DATES: | July 1, 2016, through December 28, 2016 |
| 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 twenty-four million, one hundred seventy-nine thousand, four hundred dollars ($24,179,400). |
| STAFF RULE ABSTRACT: | These emergency rules are being promulgated to allow for the implementation of the Employment and Community First (ECF) CHOICES program. |

**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 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 allow 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 T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

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

The persons and entities most directly affected by these Rules are the TennCare enrollees, 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;

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

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

GW10116161ab.dkt.cer

(4)

**Department of State**
**Division of Publications**
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Email: publications.information@tn.gov

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Sequence Number: 07-07-16
Rule ID(s): 6220
File Date (effective date): 7/1/16
End Effective Date: 12/28/16

# Emergency Rule Filing Form

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

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

**Rule Type:**
X Emergency Rule

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

**Statement of Necessity:**

The Bureau of TennCare is making changes to certain aspects of its long term care program. These changes will enable the Bureau to implement the Employment and Community First (ECF) CHOICES program that provides managed long-term services and supports (MLTSS) to promote and support integrated, competitive employment and independent, integrated community living.

ECF CHOICES provides coverage for home and community based services (HCBS) and other services for individuals with intellectual or developmental disabilities (I/DD), as defined by the State. This includes HCBS for individuals currently on the waiting list for receiving services under the State's 1915(c) waiver that serves individuals with I/DD and other individuals who meet the financial and other applicable requirements for such services. ECF CHOICES also provides coverage for individuals with I/DD who are at risk of institutionalization.

On February 2, 2016, the Bureau received approval from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) to amend the TennCare II section 1115 demonstration (Project No. 11-W-001514) through Amendment 27 to implement the ECF CHOICES program.

Pursuant to T.C.A. §4-5-208, the Bureau of TennCare is authorized to adopt an emergency rule when the agency finds that it is required by an agency of the federal government and the adoption of the rules through ordinary procedures might jeopardize the loss of a federal program funds.

Based upon the above information, I have made the finding that the emergency adoption of these rules is required in order to achieve implementation of the ECF CHOICES program by July 1, 2016.

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

Darin J. Gordon
Director, Bureau of TennCare
Tennessee Department of Finance and Administration

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

| **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.

1200-13-14-.02 Eligibility.

(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 the "at risk" 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 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 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.

(10~~8~~) Redetermination of eligibility in TennCare Standard (other than CHOICES 217-Like Group, ECF CHOICES 217-Like Group, and Interim ECF CHOICES At-Risk Group).

(12~~10~~) 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).

(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. 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.

1200-13-14-.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 in accordance with Rule 1200-13-01-.05 and ECF CHOICES services and benefits 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, 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, 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 in accordance with Rule 1200-13-01-.05 or 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. Enrollees 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 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.

GW10116161ab.redline

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

Date: 6/27/2016

Signature: [signature]

Name of Officer: Darin J. Gordon

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

ROBIN A. PAGE
STATE OF TENNESSEE NOTARY PUBLIC
WILLIAMSON COUNTY, TN

Subscribed and sworn to before me on: 6/27/2016

Notary Public Signature: Robin A Page

My commission expires on: 10/18/2016

---

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

July 1 2016
Date

**Department of State Use Only**

Filed with the Department of State on: 7/1/16

Effective for: 180 *days

Effective through: 12/28/16

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

Tre Hargett
Secretary of State

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PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Finance and Administration |
| DIVISION: | Bureau of TennCare |
| SUBJECT: | TennCare Medicaid – CHOICES Program |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Section 4-5-208, 71-5-105, and 71-5-109 |
| EFFECTIVE DATES: | July 1, 2016 through December 28, 2016 |
| 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 emergency rules are being promulgated to allow for the implementation of the Employment and Community First (ECF) CHOICES program. |

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

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

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**(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 allow 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 T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109. |

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

| |
|---|
| The persons and entities most directly affected by these Rules are the TennCare enrollees, 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;

| |
|---|
| 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<br>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<br>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<br>Nashville, TN 37243<br>(615) 507-6852<br>donna.tidwell@tn.gov |

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

GW10216161ab

(7)

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

Sequence Number: 07-10-16
Rule ID(s): 6223
File Date (effective date): 7/1/16
End Effective Date: 12/28/16

# Emergency Rule Filing Form

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

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

**Rule Type:**
X Emergency Rule

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

**Statement of Necessity:**

The Bureau of TennCare is making changes to certain aspects of its long term care program. These changes will enable the Bureau to implement the Employment and Community First (ECF) CHOICES program that provides managed long-term services and supports (MLTSS) to promote and support integrated, competitive employment and independent, integrated community living.

ECF CHOICES provides coverage for home and community based services (HCBS) and other services for individuals with intellectual or developmental disabilities (I/DD), as defined by the State. This includes HCBS for individuals currently on the waiting list for receiving services under the State's 1915(c) waiver that serves individuals with I/DD and other individuals who meet the financial and other applicable requirements for such services. ECF CHOICES also provides coverage for individuals with I/DD who are at risk of institutionalization.

On February 2, 2016, the Bureau received approval from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) to amend the TennCare II section 1115 demonstration (Project No. 11-W-001514) through Amendment 27 to implement the ECF CHOICES program.

Pursuant to T.C.A. §4-5-208, the Bureau of TennCare is authorized to adopt an emergency rule when the agency finds that it is required by an agency of the federal government and the adoption of the rules through ordinary procedures might jeopardize the loss of a federal program funds.

Based upon the above information, I have made the finding that the emergency adoption of these rules is required in order to achieve implementation of the ECF CHOICES program by July 1, 2016.

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

Darin J. Gordon
Director, Bureau of TennCare
Tennessee Department of Finance and Administration

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

| **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.

1200-13-13-.02 Eligibility.

(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).

(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. 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 in accordance with Rule 1200-13-01-.05 and ECF CHOICES services and benefits 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: individuals 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; 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. |

(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 in accordance with Rule 1200-13-01-.05 or 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, Care Facility for the Mentally Retarded),~~ Individuals with Intellectual Disabilities, the CHOICES program, or a Home and Community Based Services waiver.

(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.

Introductory paragraph to Paragraph (3) of Rule 1200-13-13-.10 Exclusions is amended by adding the phrase "or ECF CHOICES" after the word "CHOICES" in the last sentence so as amended the introductory paragraph to Paragraph (3) shall read as follows:

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 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.

GW10216161ab.redline

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

Date: 6/27/2016

Signature: [signature]

Name of Officer: Darin J. Gordon

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

ROBIN A. PAGE
STATE OF TENNESSEE NOTARY PUBLIC
WILLIAMSON COUNTY, TN

Subscribed and sworn to before me on: 6/27/2016

Notary Public Signature: Robin A Page

My commission expires on: 10/18/2016

---

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

July 1 2016
Date

**Department of State Use Only**

Filed with the Department of State on: 7/1/16

Effective for: 180 *days

Effective through: 12/28/16

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

Tre Hargett
Secretary of State

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PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

| | |
|---|---|
| DEPARTMENT: | Finance and Administration |
| DIVISION: | Bureau of TennCare |
| SUBJECT: | Cover Kids; Definitions and Eligibility |
| STATUTORY AUTHORITY: | Tennessee Code Annotated, Sections 71-3-1104 and 71-3-1110 |
| EFFECTIVE DATES: | October 18, 2016 through June 30, 2017 |
| FISCAL IMPACT: | None |
| STAFF RULE ABSTRACT: | These rulemaking hearing rules are being promulgated to delete language concerning "Presumptive Eligibility (PE)" and "Fast Track Eligibility (FTE)" from the CoverKids rules. This eligibility process was never implemented. |

**Public Hearing Comments**

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

There were no public comments received on these rules.

**Regulatory Flexibility Addendum**
Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

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 delete language concerning "Presumptive Eligibility (PE)" and "Fast Track Eligibility (FTE)" from the CoverKids rules. This eligibility process was never implemented. |

**(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, 71-3-1104 and 71-3-1110. |

**(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 CoverKids enrollees and providers. The governmental entity most directly affected by these rules is the Division of Health Care Finance and Administration of the Tennessee Department of Finance and Administration. |

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

| |
|---|
| The rules were approved by the Tennessee Attorney General. No additional opinion was given or requested. |

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

| |
|---|
| The promulgation of these rules is not anticipated to have a fiscal impact 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;

| |
|---|
| John G. (Gabe) Roberts<br>General Counsel |

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

| |
|---|
| John G. (Gabe) Roberts<br>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<br>Nashville, TN 37243<br>(615) 507-6936<br>gabe.roberts@tn.gov |

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

GW10116141

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**Division of Publications**
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
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Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 07-30-16
Rule ID(s): 6267
File Date: 7/20/16
Effective Date: 10/18/16

# 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).*

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

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

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

| **Chapter Number** | **Chapter Title** |
|---|---|
| 0620-05-01 | Cover Kids Rules |
| **Rule Number** | **Rule Title** |
| 0620-05-01-.01 | Definitions |
| 0620-05-01-.02 | Eligibility |

RULES
OF
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF INSURANCE ADMINISTRATION

CHAPTER 0620-05-01
COVER KIDS RULES

TABLE OF CONTENTS

0620-05-01-.01 DEFINITIONS.

(1) Unless otherwise specifically defined in these rules, these terms will have the following meaning:

(a) "Administrative Contractor" or "AC" is the entity responsible for determining eligibility of applicants to CoverKids. This may be a private contractor, government agency, or Departmental entity.

(b) "Budget Group" means for each applicant, the following family members living with the applicant: the applicant's spouse, the applicant's minor unmarried children, the siblings of children in the home when the applicant child and siblings do not have income of their own, and each of the applicant's financially responsible adults as indicated by the family including natural, adoptive, and step-parents. Children with SSI or Families First are not included in a budget group.

(c) "Commissioner" is the executive officer in charge of the Tennessee Department of Finance and Administration.

(d) "Commissioner's Designee" means a person or group of persons appointed by the Commissioner to perform a particular function under these rules.

(e) "CoverKids" is the program created by Tennessee Code Annotated Section 71-3-1101 et seq. and includes its authorized employees and agents as the context of the rules requires.

(f) "Days" means calendar days rather than business days.

(g) "Health insurance" shall include but not be limited to basic medical coverage (hospitalization plans), major medical insurance, comprehensive medical insurance, short-term medical policies, limited-benefit plans, mini-medical plans and high deductible health plans with health savings accounts. 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 (or the maximum allowed deductible for a health savings account plan);

4. dental-only plans;

5. vision-only plans;

6. coverage through the State of Tennessee's Children's Special Services (CSS) program; or

7. medical insurance that is available to an enrollee pursuant either to the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986 (Pub. L. No. 99-272, codified at 29 U.S.C. § 1161 *et seq.*) and which the individual declined, or to § 56-7-2312 *et seq.* and which the individual declined.

Consistent with 42 U.S.C. § 1397jj(b)(2)(B) and 42 C.F.R. 457.301 and 310(c)(1)(ii), health insurance shall also 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 CFR 457.310(c)(1)(ii)) to the premium for the dependent who is applying (or re-applying) for coverage through CoverKids.

(h) "Involuntary loss of coverage" means the loss of health benefits coverage arising from (but not limited to) the following circumstances:

1. a separation from employment (voluntary or involuntary);

2. a health insurance carrier's cancellation of group or individual health benefits coverage for reasons other than premium non-payment, fraud, or misrepresentation;

3. a health insurance carrier's decision to no longer sell small group health benefits coverage; or

4. the loss of eligibility for TennCare Medicaid or TennCare Standard.

Involuntary loss of coverage shall not include situations in which the primary insured dropped dependent spouse and/or dependent child(ren) from the health benefits coverage policy.

(i) "Meaningful Access" is insurance coverage that includes a network of providers within a reasonable distance from the area in which the covered individual lives.

(j) "Parent" means a natural or appointed guardian of minor children as defined by Title 34, Part 1 of Tennessee Code Annotated subject to court orders entered or recognized by the courts of the state of Tennessee.

(k) "Plan Administrator" or "PA" is the entity responsible for providing health care services to CoverKids enrollees. This may be a private contractor, government agency, or Departmental entity.

~~(l) "PE Entity" or "FTE Entity" refers to Cover Kids Contractors or designated providers authorized by CoverKids to determine that a newborn baby or pregnant woman is eligible for CoverKids under the presumptive eligibility or fast track eligibility rules and procedures~~.

(~~m~~l) "SSI" means Supplemental Security Income benefits provided by the Social Security Administration.

0620-05-01-.02 ELIGIBILITY.

~~(11) Fast Track Eligibility (FTE). The State reserves the right to discontinue the Fast Track Eligibility Process should a significant number of incorrect determinations be made.~~

~~(a) Fast Track Eligibility for Pregnant Women (FTE-PW) CoverKids Healthy Babies Program allows a pregnant woman to have immediate CoverKids coverage that begins on the day of the visit to a FTE entity as long as a complete, signed CoverKids application is submitted and all FTE requirements are met. The eligibility begins on date of signed application. To be eligible for FTE-PW, the applicant must:~~

~~1. Live in a family with adjusted gross income, as reported to the FTE entity, which is at or below 250% FPL.~~

~~2. Work with the FTE entity to submit a complete, signed CoverKids application.~~

~~3. Not have had FTE-PW within the last 18 months.~~

~~4. Not be currently enrolled in TennCare or CoverKids.~~

~~5. Not be currently enrolled in comprehensive health insurance coverage. (If a pregnant woman has health insurance that does not cover prenatal/delivery services, she will not be considered to have comprehensive health insurance coverage.)~~

~~6. Not have been enrolled in comprehensive health insurance coverage that was voluntarily terminated at any time within the three months prior to the visit with the FTE entity. (If a pregnant woman had health insurance that did not cover prenatal/delivery services, she will not be considered to have had comprehensive health insurance coverage.)~~

~~7. Not have access to health insurance as defined in rule 0620-05-01-.01(1)(g), by means of a family member's employment with a state agency or local education agency.~~

~~(b) Fast Track Eligibility for Newborns (FTE-NB) allows a newborn to have immediate CoverKids coverage that begins on the day of the visit to a FTE entity as long as a complete, signed CoverKids application is submitted and all FTE requirements are met. The eligibility begins on date of signed application which will also be the date the FTE entity makes the FTE determination. To be eligible for FTE-NB, the applicant must:~~

~~1. Be a newborn who is not yet 4 months old.~~

~~2. Be a citizen or, as defined in federal law, an eligible immigrant.~~

~~3. Live in a family with adjusted gross income, as reported to the FTE entity, which is above 185% FPL and below 250% FPL.~~

~~4. Work with the FTE entity to submit a complete, signed CoverKids application.~~

~~5. Not have had FTE-NB within the last 18 months.~~

~~6. Not be currently enrolled in TennCare or CoverKids.~~

~~7. Not be currently enrolled in comprehensive health insurance coverage.~~

~~8. Not have been enrolled in comprehensive health insurance coverage that was voluntarily terminated at any time within the three months prior to the visit with the FTE entity.~~

~~9. Not have access to health insurance as defined in rule 0620-05-01-.01(1)(g), by means of a family member's employment with a state agency or local education agency.~~

~~(c) Fast Track Eligibility For Children (FTE-C) Transitioning from TennCare allows certain children whose TennCare coverage is ending to have immediate CoverKids coverage that begins on the day TennCare ends as long as all PE-C requirements are met. This effort is to ensure that there are no gaps in coverage. To be eligible for CoverKids PE-C, the child must:~~

~~1. Be under 19 years of age.~~

~~2. Be a child for whom a TennCare final termination has or will be issued.~~

~~3. Not be currently enrolled in CoverKids.~~

~~4. Not be currently enrolled in comprehensive health insurance coverage.~~

~~5. Have adjusted gross family income greater than the TennCare level for which they were enrolled and at or less than 250% of the FPL. This income information for the purpose of CoverKids enrollment will be self-declared on the CoverKids application. Income information may not be older than forty-five (45) days old.~~

~~6. Families should apply before termination of the TennCare coverage to allow for no gaps in coverage. However, families must submit a complete CoverKids application within thirty (30) days before TennCare termination to be considered for CoverKids coverage beginning the day after TennCare coverage ends.~~

(~~12~~11) Changes in Family Status. If the family has applied for CoverKids and coverage was denied, applicants may reapply for CoverKids any time a change occurs that may make them eligible. This could include a change in family size, pregnancy, loss of a job, or change in family income. (A change in the child's health status does not make a child eligible for CoverKids.) If a family has a change in status that makes the children newly eligible for CoverKids, the family should reapply as soon as possible.

(~~13~~12) Annual Redetermination of Eligibility.

(a) Eligibility determinations will be done annually. The AC will mail a CoverKids redetermination form to families within 60 calendar days of the beneficiary's last day of continuous eligibility. The family must review the renewal letter, note changes, attach documentation as appropriate, sign it and return it to AC. The AC will make an eligibility determination for each applicant on the redetermination form. The AC may present an option of renewal online.

(b) For beneficiaries at or above 250% of the FPL who continue to be otherwise eligible in this category, CoverKids eligibility will continue as long as the family continues to pay premiums timely each month.

(~~14~~13)Pregnant women with income above 250% of the Federal poverty level will only be eligible for CoverKids enrollment if they are presently enrolled in the CoverTN program or presently enrolled in the CoverKids program.

(~~15~~14)Enrollment Caps. CoverKids may impose enrollment caps for the program as a whole or for any category of enrollees when, in its discretion, it determines that either

(a) sufficient Federal funds will not be available;

(b) sufficient appropriations from the Tennessee General Assembly will not be available; or

(c) CoverKids expenditures will exceed the existing funds available for the program.

GW10216141

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 _____ (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: 04/14/2016 ~~04/16/2016~~

Rulemaking Hearing(s) Conducted on: (add more dates). 05/31/2016

Date: 6/20/2016

Signature:

Name of Officer: Darin J. Gordon

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

KATHY CROCKARELL NOTARY PUBLIC STATE OF TENNESSEE DAVIDSON COUNTY

Subscribed and sworn to before me on: 6/20/2016

Notary Public Signature:

My commission expires on: 1/08/2019

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

7/18/2016
Date

**Department of State Use Only**

Filed with the Department of State on: 7/20/16

Effective on: 10/18/16

Tre Hargett
Secretary of State

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