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Sequence Number: 03-01-16
Rule ID(s): 6130
File Date: 3/4/16
Effective Date: 6/2/16

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 Mental Health and Substance Abuse Services
Division:	Office of Licensure
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0940-05-38	Minimum Program Requirements for Personal Support Services Agencies
Rule Number	Rule Title
0940-05-38-.01	Definitions
0940-05-38-.02	Application of Rules
0940-05-38-.03	Scope of Personal Support Services Agencies
0940-05-38-.04	Application
0940-05-38-.05	Governance Requirements
0940-05-38-.06	Policies and Procedures
0940-05-38-.07	Personnel Requirements
0940-05-38-.08	Standardized Training and Continuing Education Requirements
0940-05-38-.09	Service Recipient Record Requirements
0940-05-38-.10	Service Recipient Rights

0940-05-38-.01 Definitions.

- (1) "Personal Support Services" means one (1) or more of the following services provided to a service recipient, as defined in 0940-05-38-.01(2), in the individual's permanent or temporary residence.
 - (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 service recipients to access community activities such as transportation, social, recreational or other personal activities; and/or
 - (d) Education services.
- (2) "Service Recipient" means an individual who:
 - (a) Has substantial limitations in two (2) or more major life activities because of a chronic condition, acute episode of illness or injury, age, physical or other disability;
 - (b) Receives services in either a permanent or temporary residence; and
 - (c) Depends on personal support services to perform major life activities, but does not require nursing level services to be provided in connection with an acute episode of illness or injury.
- (3) "Personal Support Services Agency" or "Agency" means a sole proprietorship (someone who owns an unincorporated business by himself or herself), partnership, corporation, limited liability company or limited liability partnership providing personal support services. Agency includes all entities that employ or subcontract with individuals who provide personal support services to service recipients.
- (4) "Personal Support Services Worker" (or "Worker") means a person licensed as a personal support services agency, or an employee or an individual subcontracted by a personal support services agency who is providing personal support services under an arrangement between a service recipient and a personal support services agency.
- (5) "Chronic Condition" means a mental and /or physical impairment that is expected to last indefinitely.
- (6) "Education Services" means consultation provided by a registered nurse to the service recipient or primary family caregiver concerning a chronic condition.
- (7) "Hold Out to the Public" means asserting expertise and availability through advertising, public notice, self-promotion, etc.
- (8) "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.
- (9) "Medication Assistance" means providing medication reminders and opening medication packaging, but does not mean giving the service recipient injections or any form of medication or medication administration that would only be appropriate and acceptable for persons who are authorized to do so by Title 63, Chapter 7. 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 pill reminder box if the box is filled by the service recipient or authorized representative or licensed medical personnel practicing within the scope of their license;
 - (c) Placing medication within reach of the service recipient;
 - (d) Holding a service recipient's hand steady to help them with drinking liquid medication;
 - (e) Guiding the service recipient's hand when the individual is applying eye/ear/nose drops and wiping the excess liquid;
 - (f) Helping with a nasal cannula or mask for oxygen, plugging the machine in and turning it on;
 - (g) Applying non-prescription cream and lotions purchased over-the-counter to external parts of the body.
- (10) "Self-administration of Medication" means the ability of a service recipient to take prescribed or over-the-counter medications without assistance from another person.
- (11) "Written" means, as applied to 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, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404 and 33-2-407.

0940-05-38-.02 Application of Rules.

- (1) The licensee providing personal support services shall comply with and provide services that comply with the following rules:
- (a) Chapter 0940-05-02 Licensure Administration and Procedures;
 - (b) Chapter 0940-05-38 Minimum Program Requirements for Personal Support Services Agencies; and
 - (c) Chapter 0940-05-06-03(1)-(6) Minimum Program Requirements for All Facilities-Financial Management of All Facilities.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404 and 33-2-407.

0940-05-38-.03 Scope of Personal Support Services Agencies.

- (1) These rules apply to all agencies or personal support services workers who provide personal support services in the permanent or temporary residence of service recipients who meet the criteria specified in Rule 0940-05-38-.01(2).

- (2) The following are exempt from licensure under this chapter:
- (a) A person who provides personal support services to only one (1) service recipient and who is not in a business arrangement to provide personal support services to any other service recipient. 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) A person who provides personal support services only to members of the individual's own family;
 - (c) A person who provides only housekeeping services to a service recipient and no other assistance with major life activities;
 - (d) A person who provides only transportation services and no other assistance with major life activities;
 - (e) A person who provides services in homeless shelters;
 - (f) A person 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, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.04 Application.

- (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 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 July 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 0940-05-02-.05. 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, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.05 Governance Requirements.

- (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 0940-05-38-.06.
- (3) The licensee shall exercise general direction over the agency and establish policies governing the operation of the agency and the welfare of service recipients.
- (4) The licensee shall designate an individual responsible for the operation of the agency.
- (5) The licensee shall ensure that the licensed agency serves only service recipients who will not cause the agency to violate its licensed status based on the distinct licensure category.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.06 Policies and Procedures.

- (1) The licensee shall maintain written policies and procedures that include the following:
 - (a) A description of services provided by the licensee. The description shall include enrollment and termination criteria;
 - (b) An organizational chart which clearly shows or describes the lines of authority;
 - (c) A policy and procedure which outlines the plan of action to be followed when the personal support worker is absent including, but not limited to, notice to the service recipient, the action that shall be taken, and the timeframes for action;
 - (d) A schedule of fees when applicable;
 - (e) A statement of service recipient rights as listed in 0940-05-38-.10 and the grievance procedures to be followed when a suspected violation of rights has been reported;
 - (f) A policy which ensures the confidentiality of service recipients' information and which includes the following provisions:
 1. The licensee's personal support services workers shall comply with applicable confidentiality laws and regulations;
 2. The service recipient shall not be required to make public statements which acknowledge gratitude to the licensee or for the licensee's services; and
 3. Identifiable photographs of service recipients shall not be used without the written and signed consent of the individual or the individual's legal guardian and/or conservator.
 - (g) The plans and procedures to be followed in the event of an emergency including, but not limited to, fire evacuation and natural disaster emergencies;
 - (h) Policy and procedures to be followed in the reporting and investigation of suspected or alleged abuse or neglect of a service recipient, 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 department's Office of Licensure and to any authority as required by law;

- (i) Requirement that personal support services workers comply with procedures for detection and prevention of communicable diseases according to procedures of the Tennessee Department of Health;
- (j) Receipt and disbursement of money on behalf of service recipients;
- (k) Access by department licensure staff to personal support services workers to discuss investigation of any service provided under this chapter;
- (l) Procedures to be followed if a worker will be providing medication assistance if the licensee provides that service. Written policy shall minimally include the following elements:
 - 1. Medication assistance shall be provided only after written authorization has been obtained from the service recipient or the service recipient's authorized representative.
 - 2. Medication assistance training shall be provided to personal support services workers prior to providing assistance and training shall be documented in the personal support service worker's record.
 - 3. Personal support workers shall have procedures for collecting information about medications taken by service recipients.
- (m) Policies to ensure that licensees or personal support services workers providing transportation to service recipients meet the following requirements:
 - 1. All vehicles shall be maintained and operated in a safe manner;
 - 2. All licensees or personal support services workers providing transportation shall possess an appropriate driver's license from the Tennessee Department of Safety and documentation of such license shall be maintained in the licensee's records; and
 - 3. All vehicles used for service recipient transportation and owned by the licensee or personal support services worker shall be adequately covered by vehicular liability insurance for personal injury to occupants of the vehicle, and documentation of such insurance shall be maintained in the facility's records.
- (n) Policies to address use of devices such as a hoist lift or gait belt, after training, to assist the service recipient in getting out of or into bed, a chair, toilet or shower but not as part of a therapeutic regimen.
- (o) Policies to address categorization of the majority (over fifty-percent (50%)) of the agency's client population base.
- (p) Policy that the agency will cooperate with the department when investigating any case of alleged abuse, neglect, mistreatment, misappropriation or exploitation of a service recipient.
- (q) Policy that an alternate plan for staffing will be prepared in case of absence or the assigned personal support services worker.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.07 Personnel Requirements.

- (1) The licensee shall maintain a personnel file for each personal support services worker with the following information:
 - (a) A written, signed and dated job description including the employment requirements and job responsibilities for each staff position held;
 - (b) Verification that the worker meets the respective employment requirements for each position held;
 - (c) Evidence of a criminal background check, as required by T.C.A. § 33-2-1202.
 - (d) Evidence that the worker'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, has been checked pursuant to T.C.A. §68-11-1004(b). No employee or volunteer who is listed on the Abuse Registry may be hired or otherwise permitted to provider services;
 - (e) Evidence of the worker's status on the state's sexual offender registry. No individual or volunteer who is listed on the state's sexual offender registry may be hired or otherwise permitted to provide services;
 - (f) The worker's date of birth;
 - (g) Annual performance evaluation reports evaluating, at a minimum, the ability of personal support services workers to provide daily supports to service recipients;
 - (h) A worker notice that outlines the general relationship between an agency and the personal support services worker that includes the following:
 1. The status of the personal support services agency as an employer or contractor of services;
 2. The responsibility of the personal support services agency for the payment of the personal support services worker's wages, taxes, social security, workers compensation and unemployment compensation payments, and overtime pay for hours worked in excess of forty (40) hours in a week; and
 3. Duties, responsibilities, obligations and legal liabilities of the agency and the service recipient including, but not limited to, insurance and personnel management.
 - (i) The personal support service worker's work history containing a continuous description of activities over the past five (5) years; and
 - (j) Personal references from at least three (3) individuals, one of whom shall have known the personal support service worker/applicant for at least five (5) years.
- (2) The licensee shall have written personnel policies. The personnel policies shall, at a minimum address the following:
 - (a) That all personal support services workers shall be eighteen (18) years of age or older;
 - (b) That all personal support services workers shall practice infection control procedures and standard precautions that will protect the service recipient from infectious diseases;
 - (c) That all personal support services workers shall submit to a criminal background check every two (2) years or within ten (10) days of employment or within ten (10) days of a

change of responsibilities that includes direct contact with or direct responsibility for service recipients, as required by T.C.A. § 33-2-1202;

- (d) That evidence of the status of every personal support services worker 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 shall be checked annually and prior to direct contact with service recipients. No employee or volunteer who is listed on the Abuse Registry may be hired or otherwise permitted to provide services;
 - (e) That evidence of the status of every personal support services worker on the Tennessee Sexual Offender Registry shall be checked annually and prior to direct contact with service recipients;
 - (f) That the personal support services worker shall demonstrate the following prior to providing personal support services:
 - 1. Language skills sufficient to read and understand instructions; prepare and maintain written reports and records;
 - 2. Language skills sufficient to communicate with the service recipient; and
 - 3. Documented training specific to meeting individual service recipient needs in the area of self-care, household management and community living, and methodologies for service delivery.
 - (g) That personal support services workers shall have access to consultation for any of the services provided under this chapter. Consultation may include providing the personal support service worker access to or consultation with a registered nurse, other agency staff or the primary family caregiver to assist the staff in providing personal support services; and
 - (h) That the personal support service worker shall neither borrow, receive nor take funds or other personal property from the service recipient.
- (3) The licensee shall have proof of liability insurance coverage for the agency, workers and others who provide personal support services.
 - (4) The licensee shall maintain a current roster of all personal support workers at all times including workers kept on an on-call or back-up basis.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.08. Standardized Training and Continuing Education Requirements.

- (1) The licensee shall ensure and document that:
 - (a) Individuals who provide personal support services demonstrate basic competency in the following skill/knowledge areas prior to beginning work with service recipients:
 - 1. Observing, reporting and documenting changes in service recipient's daily living skills;
 - 2. Abuse, neglect, exploitation, detection, reporting and prevention;
 - 3. Service recipient rights;
 - 4. Universal health precautions, including infection control;

5. How to assist service recipients with personal hygiene;
 6. Service recipient safety; and
 7. Procedures to be followed in the event of an emergency or disaster that at least includes emergency transportation, emergency medical care and staff coverage in such events;
- (b) Individuals who provide medication assistance receive documented training in medication assistance performed by, or under the general supervision of, a registered nurse and consistent with T.C.A. § 63-7-102;
 - (c) Individuals who provide personal support services receive training on job related topics at least annually; and
 - (d) Documented training specific to meeting individual service recipient needs in the areas of self-care, household management and community living, and methodologies for service delivery.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.09 Service Recipient Record Requirements.

- (1) The licensee shall ensure that each service recipient's record includes at least the following information:
 - (a) Name, address, telephone number, gender, and date of birth;
 - (b) Date of service enrollment;
 - (c) Name, address, and telephone number of an emergency contact person;
 - (d) Written fee agreement. If the licensee charges fees for personal support services, a written agreement dated and signed by the service recipient or the service recipient's legal representative (conservator, parent, guardian or legal custodian) or person paying for services prior to the provision of services. The written agreement shall include at least the following information:
 1. The fee or fees to be paid by the service recipient;
 2. The services covered by such fees; and
 3. Any additional charges for services not covered by the basic service fee.
 - (e) Written acknowledgement that the service recipient or service recipient's legal representative (conservator, parent, guardian or legal custodian) has been informed of the service recipient's rights and responsibilities and the agency's general rules affecting the service recipients;
 - (f) A written service plan based on a needs assessment which indicates type, frequency, duration, and amount of personal support services provided to assist the service recipient in performing major life duties.
 - (g) Consent for services by the service recipient or service recipient's legal representative (conservator, parent, guardian, or legal custodian), surrogate decision maker under T.C.A. § 33-3-219 or attorney-in-fact under a durable power of attorney for health care, when applicable;

- (h) If applicable, address, phone number or e-mail address to reach the service recipient's legal representative (conservator, parent, guardian or legal custodian) or surrogate decision maker under T.C.A. § 33-3-219 or attorney-in-fact under a durable power of attorney for health care;
- (i) Documentation of party responsible for payment of services;
- (j) A record of services actually delivered with dates and times documented;
- (k) Documentation of medical problems, illnesses and treatments, accidents, seizures, adverse incidents and follow-up, while the service recipient receives services;
- (l) Documentation of all funds received and disbursed on behalf of the service recipient;
- (m) An alternate plan for staffing in case of absence of the personal support services worker;
- (n) Written authorization by the service recipient or the service recipient's authorized representative if the agency is providing medication assistance;
- (o) Written documentation that the service recipient has evaluated the quality of personal support services provided at least semi-annually. Each agency shall develop an evaluation form for the service recipient, or legal representative of the service recipient, to fill out and sign to acknowledge this requirement has occurred;
- (p) A written consumer notice outlining general service responsibilities as well as general notification of the agency's responsibilities as an employer or contractor provided to service recipients before beginning service, which shall include, at a minimum the duties, responsibilities, obligations and legal liabilities of the personal support services agency; the personal support services worker; and the service recipient. The description shall clearly set forth the service recipient's responsibility, if any, for the following:
 1. Day to day supervision of the personal support services worker;
 2. Assigning duties to the personal support services worker;
 3. Hiring, firing and discipline of the personal support services worker;
 4. Provision of equipment or materials for use by the personal support services worker;
 5. Performing a criminal background check on the personal support services worker;
 6. Checking the personal support services worker's references; and
 7. Ensuring credentials and appropriate licensure/certification of a personal support services worker; and
- (q) Copy of legal document granting another individual or corporation authority to act as the service recipient's legal representative/conservator/power of attorney/durable power of attorney for health care/mental health care.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.10 Service Recipient Rights.

- (1) The following rights shall be afforded to all individuals receiving personal support services from the licensee:

- (a) Service recipients 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 service recipient is given oral and/or written rights information that includes at least the following:
 - 1. A statement of the specific rights guaranteed the service recipient by these rules and applicable state laws;
 - 2. A description of the licensee's grievance procedures;
 - 3. A listing of available advocacy services; and
 - 4. A copy of all agency rules and regulations pertinent to the service recipient. The information shall be presented in a manner that promoted understanding by the service recipient of his or her rights, and the individual shall be given an opportunity to ask questions about the information. If the service recipient is unable to understand the information at the time of admission to service but later becomes able to do so, the information shall be presented to the service recipient at that time. If the service recipient is likely to continue indefinitely to be unable to understand the information, the licensee shall promptly attempt to provide the required information to a guardian or other appropriate person or an agency responsible for protecting the service recipients' rights.
- (b) Service recipients have the right to voice grievances to the licensee and to outside representatives of their choice with freedom from restraint, interference, coercion, discrimination, or reprisal;
- (c) Service recipients have the right to be treated with consideration, respect and full recognition of their dignity, and individuality;
- (d) Service recipients have the right to be protected by the licensee from neglect, physical, verbal, and emotional abuse (including corporal punishment), and from all forms of misappropriation and/or exploitation; and
- (e) Service recipient have the right to be assisted by the licensee in the exercise of their civil rights.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

Repeals

Chapter 0940-05-38 Minimum Program Requirements for Personal Support Services Agencies is repealed in its entirety.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305 and 309; §§ 33-2-301 and 302; and §§ 33-2-403, 404, 407, and 409.

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

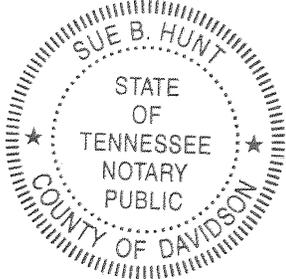
Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Mental Health and Substance Abuse Services (board/commission/ other authority) on 12/10/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/28/15

Rulemaking Hearing(s) Conducted on: (add more dates). 10/27/15



Date: 12/10/15

Signature: [Handwritten Signature]

Name of Officer: E. Douglas Varney

Title of Officer: Commissioner

Subscribed and sworn to before me on: 12/10/15

Notary Public Signature: [Handwritten Signature]

My commission expires on: May 8, 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.

[Handwritten Signature]
Herbert H. Slatery III
Attorney General and Reporter

2/19/2016
Date

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Filed with the Department of State on: 3/4/16

Effective on: 6/2/16
[Handwritten Signature]

Tre Hargett
Secretary of State

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.

TDMHSAS Responses to Comments about
Rules Chapter 0940-05-38 Minimum Program Requirements for Personal Support Services Agencies
Facilities made prior to, during, or after the
Rulemaking Hearing Held on October 27, 2015

TENNESSEE ASSOCIATION FOR HOME CARE

The Tennessee Association for Home Care (TAHC) represents personal support service agencies, home health agencies and hospice organizations statewide. I am Gayla Sasser, Executive Director for TAHC and thank you for the opportunity to provide comments on the proposed rule changes affecting personal support service agencies today. The TAHC recommends the following changes:

0940-05-38-.06 Policies & Procedures

(k) Access by department licensure staff to personal support service workers to discuss investigation of any service provided under this chapter.

There is general concern that workers may be asked to interrupt services to another client by department licensure staff to discuss an investigation. We would respectfully ask that licensure staff be mindful of the schedules set by TennCare/MCOs in providing services and be reasonable in such requests. We would request that the word "Reasonable" be inserted before "Access" in this sentence.

0940-05-38-.10 Service Recipient Rights

(d) Service recipients have the rights 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.

The words 'mistreatment' and 'misappropriation' are added to this statement and unless defined could be grossly misunderstood by agencies or licensure staff. With the emphasis on elder abuse in the last state legislative session, we believe there are sufficient definitions to protect our frail elderly. Therefore, we would respectfully request that these undefined words be removed from this section.

TDMHSAS Response: The Department recognizes TAHC's concern that PSSA staff not interrupt the provision of services by a caregiver during the course of an investigation. The Department is charged by statute (TCA §§ 33-2-413(b) and 33-2-416) with investigating complaints against a licensed agency, which includes complaints against a PSSA agency's staff member. The Department will remind Licensure staff to make their best effort to avoid interfering with the caregiver's provision of services while conducting an investigation. The Department will remove the word mistreatment from the proposed rule but will retain the word misappropriation and/or. The word misappropriation is defined in TCA §68-11-1002(3) (Abuse Registry), as well as in TCA §33-2-402(8). These are the definitions used by the Department for investigative purposes.

SENIOR SOLUTIONS HOME CARE

Ability to use electronic verifications from telephone and tablets (Choices).

I think I speak for the association that we would like Electronic Visit Verification (EVV) reports to be our clients' record of service. If the provider does not have an EVV system, which records call ins and call outs with task performed, then paper time sheets need to be kept.

Now with Amerigroup, United Health Care, and BCBS all using tablets in clients' homes, which requires task to be documented, it would eliminate the duplication of paper time sheets.

On non-choices clients it would be rather the provider has/uses an EVV system that captures the phone number, time in, time out and task performed if paper time sheets are still required.

TDMHSAS Response: The Department will amend Rule 0940-05-38-.01, Definitions, to add a new section which will read as follows: "(11) "Written" means, as applied to licensee's records, a generally accepted format, including electronic or paper, used for retaining business or client records." Adding this subsection will clarify that records may be kept in hard or electronic format.

GRISWOLD HOME CARE NASHVILLE

Per our discussion this morning at the PSSA Rules Hearing, we respectfully request the following changes/additions in bold:

0940-05-38-.04 Application

- (1) To provide **and/or refer** 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 may provide **or refer** personal support services to individuals with physical or other disabilities.
- (6) The agency should submit to the licensing department a list of the counties in which they provide **or refer** services and the address at which the agency maintains its employee/**contractor** and service recipient records.

We appreciate your time and consideration regarding our requests and look forward to the final PSSA Rules publication.

TDMHSAS Response: The Department would refer to the definition of "Personal Support Service Agency" found in 0940-05-38-.01(3), wherein the definition includes all entities that employ or subcontract with individuals who provide personal support services to service recipients." The Department believes that an agency that subcontracts with individuals is the same as an agency that refers individuals for a fee and/or maintains records on service recipients and subcontracted staff. An agency that provides only employment placement or referral is exempt from licensing by this Department. See, TCA § 33-2-403(7).

FIRST TENNESSEE HUMAN RESOURCE AGENCY

I have just received the proposed rule changes for Personal Support Services. I am greatly concerned that some of the rules as written are changing the entire foundation of what I have come to know as "homemaker services". The expansion of qualification, specifically under 0940-05-38-.07(2)(g) Personnel Requirements, leads me to question what is the role of home health agencies and TennCare Choices program. New rules already implemented by the Department of Human Services, under the Social Services Block Grant, have added an intensive burden to expand paperwork, specifically in the area of risk assessments and plan of care.

Where does the Department of Mental Health and Substances Abuse provide agencies with funding? Most agencies that are contracted under the Social Service Block Grant are already having to solicit for local matching funds to maintain the level of funding through SSBG. Our agency solicits from 5 different local United Way organization, all of which have multiple expectations of time investment from the "partner" agency. How would non-profits, specializing in "social services" be financially able to retain the salary or wages of an RN to provide "consultation".

More and more of the type of clients that are being referred to "homemaker" services are requiring greater levels of personal care. Again, are we allowing, even support, Medicare and Medicaid to go unchallenged with what should be their roles. When AARP lobbied so hard for home and community programs, then turned around and entered into an insurance underwriting with United Healthcare, was it already conceived that Medicaid funds who be transferred to the large insurance companies, only to expand denial of services, by making the levels of care requires higher year after year. Take a look at the long-term care population ten years prior to the same group today, look at the pre-admission treatment assessment process for "Choices", the same criteria not only defines the criteria for nursing home, but also translates that same criteria to home and community based services.

Somewhere in the system, there has to be a measure that weights on the side of the individual. An advocate, a Ombudsman, not paid by the State that may have fear for job, and truly standup. AARP isn't interested, "they" essentially got what "they" wanted and if the blinders were removed much more. But, what did the individual receive, less options, less choices, less control! If it were not for the few remaining "social services" organization, living from season to season, budget year to budget year, many folks would fade back into the shadows.

Without funding, the expectation that "social service" agency be pushed into the arena to provide higher levels of personal care is an unreasonable request and adds a financial burden that has no funding source options. What would be next, Adult Protective Workers must now have RN training.

TDMHSAS Response: The Department would refer the author of the question to the definitions of "Personal Support Services", "Personal Support Services Agency", and "Person Support Services Worker". The services envisioned by this rule are not home health services, which are provided by professionally licensed staff working in an agency/facility of the type licensed by the Tennessee Department of Health (see T.C.A. § 68-11-201 et. seq. for more information). Therefore the comments submitted by First Tennessee Human Resource Agency, as they pertain to the licensure of a home health agency, do not apply to these rules. The Department does not provide funding for personal support services agencies. The Department would refer the author to the Choices Program (<http://www.tn.gov/tenncare/topic/choices>) or TennCare (<http://www.tn.gov/tenncare>) for answers to the remaining questions.

ADVANCECARE HEALTH SERVICES, LLC

From my understanding, since our company has a license from Department of Intellectual and Developmental Disabilities, then we do not need a separate PSSA license?

TDMHSAS Response: If the agency has a license from the Department of Intellectual and Developmental Disabilities to provide personal support services and the majority of that agency's clients have a diagnosis of intellectual or developmental disabilities, the agency does not also need a license from the Department of Mental Health and Substance Abuse Services. An agency providing personal support services with a majority of its clients being aged or with a mental health diagnosis should be licensed by the Department of Mental Health and Substance Abuse Services. See Rule 0940-05-38-.04(1)-(4).

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 Departments believe these rules will have a positive impact on small businesses by eliminating the need for duplicate licensing and supporting their use of electronic records, thereby reducing agency expenses. The rules support a small business's hiring practices and provide protection to their clients by clarifying that no one listed on the Tennessee Department of Health's Abuse Registry or the Tennessee Sex Offender Registry can provide personal support services. The rules remove unclear terminology and address the current way small businesses provide personal support services in Tennessee.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These rules do not have a projected impact on local governments.

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;

Legislation passed during the recent session of the General Assembly and enacted as Public Chapter 110 of 2015 (SB319/HB288) revised portions of T.C.A. § 33-2-403 to address licensing issues relative to Personal Support Services Agencies (PSSAs). Statutory changes necessitated changes to Tennessee Administrative Rule Chapter 0940-05-38, Minimum Program Requirements for PSSAs. These rules now clarify that an agency can provide PSSA services whether licensed by TDMHSAS or TDIDD. From which department-TDMHSAS or TDIDD-the agency obtains a license is determined by the diagnosis of the majority (over 50%) of its client base, i.e., if over 50% are intellectually disabled, TDIDD will license the agency; if over 50% are aged or have a mental health diagnosis, TDMHSAS will license the agency. The determination of an agency's majority of client base will be determined annually at the time of license application or renewal by cooperative agreement between TDMHSAS and TDIDD. Additionally changes were made to address housekeeping matters and to ensure compliance with current best practices in these agencies.

- (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;

TCA § 4-3-1601(b) provides the following as a general function of the Department: "... set standards for, . . . monitor, and promote the . . . provision of services and supports to meet the needs of persons with mental illness or serious emotional disturbance through the public and private sectors in this state as set out in . . . title 33". Additionally, TCA § 33-1-305, gives the Department authority to adopt rules, prescribe forms and investigate complaints; TCA §33-2-403, grants the Departments the authority to license services and facilities operated for the provision of mental health services, alcohol and drug abuse prevention or treatment, for the provision of services for intellectual and developmental disabilities, and for personal support services; and Public Chapter 110 of 2015 (SB319/HB288).

- (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;

Any agency licensed by TDMHSAS or TDIDD as a personal support services agency and any business entity wishing to obtain a license for personal support services from either TDMHSAS or TDIDD are most directly impacted by this rule. TDMHSAS and TDIDD urge adoption of this rule. The Departments have not received notice of any party's desire to urge rejection of this rule.

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

No attorney general and reporter opinion was found to specifically address these rules and their proposed changes.

- (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 estimated fiscal impact to State or local governments due to the promulgation of these rules.

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

Kurt Hippel, Director of TDMHSAS Office of Legislation and Rules; Cynthia Tyler, Director of TDMHSAS Office of Licensure; Alex King, Assistant Director of TDMHSAS Office of Licensure

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

Kurt Hippel, Director of Legislation and Rules, TDMHSAS

- (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

Kurt Hippel, Director, TDMHSAS Office of Legislation and Rules, 500 Deaderick Street, 5th Floor, Andrew Jackson Bldg., Nashville, TN 37243; 615-532-6520; kurt.hippel@tn.gov

Cynthia Tyler, Director, TDMHSAS Office of Licensure, 500 Deaderick Street, 5th Floor, Andrew Jackson Bldg., Nashville, TN 37243; 615-532-6590; cynthia.tyler@tn.gov

Alex King, Asst. Director, TDMHSAS Office of Licensure, 500 Deaderick Street, 5th Floor, Andrew Jackson Bldg., Nashville, TN 37243; 615-532-6590; alex.king@tn.gov

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

N/A

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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 Mental Health and Substance Abuse Services
Division:	Office of Licensure
Contact Person:	Kurt Hippel
Address:	5 th Floor, Andrew Jackson Building, 500 Deaderick Street
Zip:	37243
Phone:	615-532-6520
Email:	Kurt.Hippel@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0940-05-38	Minimum Program Requirements for Personal Support Services Agencies
Rule Number	Rule Title
0940-05-38-.01	Definitions
0940-05-38-.02	Application of Rules
0940-05-38-.03	Scope of Personal Support Services Agencies
0940-05-38-.04	Application Fees
0940-05-38-.05	Governance Requirements
0940-05-38-.06	Policies and Procedures
0940-05-38-.07	Personnel Requirements
0940-05-38-.08	Standardized Training and Continuing Education Requirements
0940-05-38-.09	Service Recipient Record Requirements
0940-05-38-.10	Service Recipient Rights

0940-05-38-.01 DEFINITIONS.

- (1) "Personal Support Services" means one (1) or more of the following services provided to a service recipient, as defined in 0940-05-38-.01(2), in the individual's permanent or temporary residence.
 - (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 service recipients to access community activities such as transportation, social, recreational or other personal activities; and/or
 - (d) Education services.
- (2) "Service Recipient" means an individual who:
 - (a) Has substantial limitations in two (2) or more major life activities because of a chronic condition, acute episode of illness or injury, age, physical or other disability;
 - (b) Receives services in either a permanent or temporary residence; and
 - (c) Depends on personal support services to perform major life activities, but does not require nursing level services to be provided in connection with an acute episode of illness or injury.
- (3) "Personal Support Services Agency" or "Agency" means a sole proprietorship (someone who owns an unincorporated business by himself or herself), partnership, corporation, limited liability company or limited liability partnership providing personal support services. Agency includes all entities that employ or subcontract with individuals who provide personal support services to service recipients.
- (4) "Personal Support Services Worker" (or "Worker") means a person licensed as a personal support services agency, or an employee or an individual subcontracted by a personal support services agency who is providing personal support services under an arrangement between a service recipient and a personal support services agency.
- (5) "Chronic Condition" means a mental and /or physical impairment that is expected to last indefinitely.
- (6) "Education Services" means consultation provided by a registered nurse to the service recipient or primary family caregiver concerning a chronic condition.
- (7) "Hold Out to the Public" means asserting expertise and availability through advertising, public notice, self-promotion, etc.
- (8) "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.
- (9) "Medication Assistance" means providing medication reminders and opening medication packaging, but does not mean giving the service recipient injections or any form of medication or medication administration that would only be appropriate and acceptable for persons who are authorized to do so by Title 63, Chapter 7. 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 pill reminder box if the box is filled by the service recipient or authorized representative or licensed medical personnel practicing within the scope of their license;
 - (c) Placing medication within reach of the service recipient;
 - (d) Holding a service recipient's hand steady to help them with drinking liquid medication;
 - (e) Guiding the service recipient's hand when the individual is applying eye/ear/nose drops and wiping the excess liquid;
 - (f) Helping with a nasal cannula or mask for oxygen, plugging the machine in and turning it on;
 - (g) Applying non-prescription cream and lotions purchased over-the-counter to external parts of the body.
- (10) "Self-administration of Medication" means the ability of a service recipient to take prescribed or over-the-counter medications without assistance from another person.
- (11) "Written" means, as applied to 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, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404 and 33-2-407.

0940-05-38-.02 APPLICATION OF RULES.

- (1) The licensee providing personal support services shall comply with and provide services that comply with the following rules:
- (a) Chapter 0940-05-02 Licensure Administration and Procedures;
 - (b) Chapter 0940-05-38 Minimum Program Requirements for Personal Support Services Agencies; and
 - (c) Chapter 0940-05-06-03(1)-(6) Minimum Program Requirements for All Facilities-Financial Management of All Facilities.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404 and 33-2-407.

0940-05-38-.03 Scope of Personal Support Services Agencies.

- (1) These rules apply to all agencies or personal support services workers who
- (a) Provide personal support services in the permanent or temporary residence of service recipients who meet the criteria specified in Rule 0940-05-38-.01(2).

- (2) The following are exempt from licensure under this chapter:
- (a) A person who provides personal support services to only one (1) service recipient and who is not in a business arrangement to provide personal support services to any other service recipient. 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) A person who provides personal support services only to members of the individual's own family;
 - (c) A person who provides only housekeeping services to a service recipient and no other assistance with major life activities;
 - (d) A person who provides only transportation services and no other assistance with major life activities;
 - (e) A person who provides services in homeless shelters;
 - (f) A person 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, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.04 APPLICATION FEES

~~The applicant shall submit a fee or fees with the application to the Department's Office of Licensure and Review. Each initial and renewal application for licensure shall be submitted with the appropriate fee or fees as set forth in Rule 0940-05-02.05 Licensure Administration and Procedure Fees. All fees submitted are non-refundable.~~

- (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 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 July 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 0940-05-02-.05. 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, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.05 GOVERNANCE REQUIREMENTS.

- (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 0940-05-38-.06.
- (3) The licensee shall exercise general direction over the agency and establish policies governing the operation of the agency and the welfare of service recipients.
- (4) The licensee shall designate an individual responsible for the operation of the agency.
- (5) The licensee shall ensure that the licensed agency serves only service recipients who will not cause the agency to violate its licensed status based on the distinct licensure category.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.06 POLICIES AND PROCEDURES.

- (1) The licensee shall maintain written policies and procedures that include the following:
 - (a) A description of services provided by the licensee. The description shall include enrollment and termination criteria;
 - (b) An organizational chart which clearly shows or describes the lines of authority;
 - (c) A policy and procedure which outlines the plan of action to be followed when the personal support worker is absent including, but not limited to, notice to the service recipient, the action that shall be taken, and the timeframes for action;
 - (d) A schedule of fees when applicable;
 - (e) A statement of service recipient rights as listed in 0940-05-38-.10 and the grievance procedures to be followed when a suspected violation of rights has been reported;
 - (f) A policy which ensures the confidentiality of service recipients' information and which includes the following provisions:
 1. The licensee's personal support services workers shall comply with applicable confidentiality laws and regulations;
 2. The service recipient shall not be required to make public statements which acknowledge gratitude to the licensee or for the licensee's services; and
 3. Identifiable photographs of service recipients shall not be used without the written and signed consent of the individual or the individual's legal guardian and/or conservator.

- (g) The plans and procedures to be followed in the event of an emergency including, but not limited to, fire evacuation and natural disaster emergencies;
- (h) Policy and procedures to be followed in the reporting and investigation of suspected or alleged abuse or neglect of a service recipient, 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 Tennessee Department of Mental Health and Developmental Disabilities' Office of Licensure and Review department's Office of Licensure and to any authority as required by law;
- (i) Requirement that personal support services workers comply with procedures for detection and prevention of communicable diseases according to procedures of the Tennessee Department of Health;
- (j) Receipt and disbursement of money on behalf of service recipients;
- (k) Access by department licensure staff to personal support services workers to discuss investigation of any service provided under this chapter;
- (l) Procedures to be followed if a worker will be providing medication assistance if the licensee provides that service. Written policy shall minimally include the following elements:
 - 1. Medication assistance shall be provided only after written authorization has been obtained from the service recipient or the service recipient's authorized representative.
 - 2. Medication assistance training shall be provided to personal support services workers prior to providing assistance and training shall be documented in the personal support service worker's record.
 - 3. Personal support workers shall have procedures for collecting information about medications taken by service recipients.
- (m) Policies to ensure that licensees or personal support services workers providing transportation to service recipients meet the following requirements:
 - 1. All vehicles shall be maintained and operated in a safe manner;
 - 2. All licensees or personal support services workers providing transportation shall possess an appropriate driver's license from the Tennessee Department of Safety and documentation of such license shall be maintained in the licensee's records; and
 - 3. All vehicles used for service recipient transportation and owned by the licensee or personal support services worker shall be adequately covered by vehicular liability insurance for personal injury to occupants of the vehicle, and documentation of such insurance shall be maintained in the facility's records.
- (n) Policies to address use of devices such as a hoist lift or gait belt, after training, to assist the service recipient in getting out of or into bed, a chair, toilet or shower but not as part of a therapeutic regimen.
- (o) Policies to address categorization of the majority (over fifty-percent (50%)) of the agency's client population base.
- (p) Policy that the agency will cooperate with the department when investigating any case of alleged abuse, neglect, mistreatment, misappropriation or exploitation of a service recipient.

- (q) Policy that an alternate plan for staffing will be prepared in case of absence or the assigned personal support services worker.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.07 PERSONNEL REQUIREMENTS.

- (1) The licensee shall maintain a personnel file for each personal support services worker with the following information:
 - (a) A written, signed and dated job description including the employment requirements and job responsibilities for each staff position held;
 - (b) Verification that the worker meets the respective employment requirements for each position held;
 - (c) Evidence of a criminal background check, as required by T.C.A. § 33-2-1202.
 - (d) ~~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.~~

Evidence that the worker'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, has been checked pursuant to T.C.A. §68-11-1004(b). No employee or volunteer who is listed on the Abuse Registry may be hired or otherwise permitted to provide services;
 - (e) ~~Evidence of the worker's status on the state's sexual offender registry. No individual or volunteer who is listed on the state's sexual offender registry may be hired or otherwise permitted to provide services;~~
 - (f) The worker's date of birth;
 - (g) Annual P performance evaluation reports evaluating, at a minimum, the ability of personal support services workers to provide daily supports to service recipients; and
 - (h) A worker notice that outlines the general relationship between an agency and the personal support services worker that includes the following:
 - 1. The status of the personal support services agency as an employer or contractor of services;
 - 2. The responsibility of the personal support services agency for the payment of the personal support services worker's wages, taxes, social security, workers compensation and unemployment compensation payments, and overtime pay for hours worked in excess of forty (40) hours in a week; and
 - 3. Duties, responsibilities, obligations and legal liabilities of the agency and the service recipient including, but not limited to, insurance and personnel management.
 - (i) The personal support service worker's work history containing a continuous description of activities over the past five (5) years; and
 - (j) Personal references from at least three (3) individuals, one of whom shall have known the personal support service worker/applicant for at least five (5) years.

- (2) The licensee shall have written personnel policies. The personnel policies shall, at a minimum address the following:
- (a) That all All-P personal support services workers shall be eighteen (18) years of age or older;
 - (b) That all All-P personal support services workers shall practice infection control procedures and standard precautions that will protect the service recipient from infectious diseases;
 - (c) That all All-P personal support services workers shall submit to a criminal background check every two (2) years or within ten (10) days of employment or within ten (10) days of a change of responsibilities that includes direct contact with or direct responsibility for service recipients, as required by T.C.A. § 33-2-1202;
 - (d) That evidence of the Sstatus of every personal support services worker 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 shall be checked annually and prior to direct contact with service recipients. No employee or volunteer who is listed on the Abuse Registry may be hired or otherwise permitted to provide services;
 - (e) That evidence of the status of every Ppersonal support services worker on the Tennessee Sexual Offender Registry shall be checked annually and prior to direct contact with service recipients;
 - (f) That the P personal support services worker shall demonstrate the following prior to providing personal support services:
 1. Language skills sufficient to read and understand instructions; prepare and maintain written reports and records;
 2. Language skills sufficient to communicate with the service recipient; and
 3. Documented training specific to meeting individual service recipient needs in the area of self-care, household management and community living, and methodologies for service delivery.
 - (g) That P personal support services workers shall have access to consultation for any of the services provided under this chapter. Consultation may include providing the personal support service worker access to or consultation with a registered nurse, other agency staff or the primary family caregiver to assist the staff in providing personal support services; and
 - (h) That the personal support service worker shall neither borrow, receive nor take funds or other personal property from the service recipient.
- (3) The licensee shall have proof of liability insurance coverage for the agency, workers and others who provide personal support services.
- (4) The licensee shall maintain a current roster of all personal support workers at all times including workers kept on an on-call or back-up basis.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.08. STANDARDIZED TRAINING AND CONTINUING EDUCATION REQUIREMENTS.

- (1) The licensee shall ensure and document that:

- (a) Individuals who provide personal support services demonstrate basic

competency in the following skill/knowledge areas within the first 30 days of employment/contract prior to beginning work with service recipients:

1. Observing, reporting and documenting changes in service recipient's daily living skills;
 2. Abuse, neglect, exploitation, detection, reporting and prevention;
 3. Service recipient rights;
 4. Universal health precautions, including infection control;
 5. How to assist service recipients with personal hygiene;
 6. Service recipient safety; and
 7. Procedures to be followed in the event of an emergency or disaster that at least includes emergency transportation, emergency medical care and staff coverage in such events;
- (b) Individuals who provide medication assistance receive documented training in medication assistance performed by, or under the general supervision of, a registered nurse and consistent with T.C.A. § 63-7-102;
- (c) Individuals who provide personal support services receive training on job related topics at least annually; and
- (d) Documented training specific to meeting individual service recipient needs in the areas of self-care, household management and community living, and methodologies for service delivery.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.09 SERVICE RECIPIENT RECORD REQUIREMENTS.

- (1) The licensee shall ensure that each service recipient's record includes at least the following information:
- (a) Name, address, telephone number, gender, and date of birth;
 - (b) Date of service enrollment;
 - (c) Name, address, and telephone number of an emergency contact person;
 - (d) Written fee agreement when applicable. If the licensee charges fees for personal support services, a written agreement dated and signed by the service recipient or the service recipient's legal representative (conservator, parent, guardian or legal custodian) or person paying for services prior to the provision of services. The written agreement shall include at least the following information:
 1. The fee or fees to be paid by the service recipient;
 2. The services covered by such fees; and
 3. Any additional charges for services not covered by the basic service fee.
 - (e) Written acknowledgement that the service recipient or service recipient's legal representative (conservator, parent, guardian or legal custodian) has been informed of the service recipient's rights and responsibilities and the agency's general rules affecting

the service recipients;

- (f) A written service plan based on a needs assessment which indicates type, frequency, duration, and amount of personal support services to be provided to assist the service recipient in performing major life duties.
- (g) Consent for services by the service recipient or service recipient's legal representative (conservator, parent, guardian, or legal custodian), surrogate decision maker under T.C.A. § 33-3-219 or attorney-in-fact under a durable power of attorney for health care, when applicable;
- (h) If applicable, address, phone number or e-mail address to reach the service recipient's legal representative (conservator, parent, guardian or legal custodian) or surrogate decision maker under T.C.A. § 33-3-219 or attorney-in-fact under a durable power of attorney for health care;
- (i) Documentation of party responsible for payment of services;
- (j) A record of services actually delivered with dates and times documented;
- (k) Documentation of medical problems, illnesses and treatments, accidents, seizures, adverse incidents and follow-up, while the service recipient receives services;
- (l) Documentation of all funds received and disbursed on behalf of the service recipient;
- (m) An alternate plan for staffing in case of absence of the personal support services worker;
- (n) Written authorization by the service recipient or the service recipient's authorized representative if the agency is providing medication assistance;
- (o) Written documentation that the service recipient has evaluated the quality of personal support services provided at least semi-annually. Each agency shall develop an evaluation form for the service recipient, or legal representative of the service recipient, to fill out and sign to acknowledge this requirement has occurred;
- (p) A written consumer notice outlining general service responsibilities as well as general notification of the agency's responsibilities as an employer or contractor provided to service recipients before beginning service, which shall include, at a minimum the duties, responsibilities, obligations and legal liabilities of the personal support services agency; the personal support services worker; and the service recipient. The description shall clearly set forth the service recipient's responsibility, if any, for the following:
 - 1. Day to day supervision of the personal support services worker;
 - 2. Assigning duties to the personal support services worker;
 - 3. Hiring, firing and discipline of the personal support services worker;
 - 4. Provision of equipment or materials for use by the personal support services worker;
 - 5. Performing a criminal background check on the personal support services worker;
 - 6. Checking the personal support services worker's references; and
 - 7. Ensuring credentials and appropriate licensure/certification of a personal support services worker; and

- (q) Copy of legal document granting another individual or corporation authority to act as the service recipient's legal representative/conservator/power of attorney/durable power of attorney for health care/mental health care.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.10 SERVICE RECIPIENT RIGHTS.

- (1) The following rights shall be afforded to all individuals receiving personal support services from the licensee:
 - (a) Service recipients 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 service recipient is given oral and/or written rights information that includes at least the following:
 1. A statement of the specific rights guaranteed the service recipient by these rules and applicable state laws;
 2. A description of the licensee's grievance procedures;
 3. A listing of available advocacy services; and
 4. A copy of all agency rules and regulations pertinent to the service recipient. The information shall be presented in a manner that promoted understanding by the service recipient of his or her rights, and the individual shall be given an opportunity to ask questions about the information. If the service recipient is unable to understand the information at the time of admission to service but later becomes able to do so, the information shall be presented to the service recipient at that time. If the service recipient is likely to continue indefinitely to be unable to understand the information, the licensee shall promptly attempt to provide the required information to a guardian or other appropriate person or an agency responsible for protecting the service recipients' rights.
 - (b) Service recipients have the right to voice grievances to the licensee and to outside representatives of their choice with freedom from restraint, interference, coercion, discrimination, or reprisal;
 - (c) Service recipients have the right to be treated with consideration, respect and full recognition of their dignity, and individuality;
 - (d) Service recipients have the right to be protected by the licensee from neglect, from physical, verbal, and emotional abuse (including corporal punishment), and from all forms of misappropriation and/or exploitation; and
 - (e) Service recipient have the right to be assisted by the licensee in the exercise of their civil rights.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

Repeals

Chapter 0940-05-38 Minimum Program Requirements for Personal Support Services Agencies is repealed in its entirety.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305 and 309; §§ 33-2-301 and 302; and §§ 33-2-403, 404, 407, and 409.

* 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 Tennessee Department of Mental Health and Substance Abuse Services (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: 08/28/15

Rulemaking Hearing(s) Conducted on: (add more dates). 10/27/15

Date: _____

Signature: _____

Name of Officer: E. Douglas Varney

Title of Officer: Commissioner

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

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.

TDMHSAS Responses to Comments about
Rules Chapter 0940-05-38 Minimum Program Requirements for Personal Support Services Agencies
Facilities made prior to, during, or after the
Rulemaking Hearing Held on October 27, 2015

TENNESSEE ASSOCIATION FOR HOME CARE

The Tennessee Association for Home Care (TAHC) represents personal support service agencies, home health agencies and hospice organizations statewide. I am Gayla Sasser, Executive Director for TAHC and thank you for the opportunity to provide comments on the proposed rule changes affecting personal support service agencies today. The TAHC recommends the following changes:

0940-05-38-.06 Policies & Procedures

(k) Access by department licensure staff to personal support service workers to discuss investigation of any service provided under this chapter.

There is general concern that workers may be asked to interrupt services to another client by department licensure staff to discuss an investigation. We would respectfully ask that licensure staff be mindful of the schedules set by TennCare/MCOs in providing services and be reasonable in such requests. We would request that the word "Reasonable" be inserted before "Access" in this sentence.

0940-05-38-.10 Service Recipient Rights

(d) Service recipients have the rights 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.

The words 'mistreatment' and 'misappropriation' are added to this statement and unless defined could be grossly misunderstood by agencies or licensure staff. With the emphasis on elder abuse in the last state legislative session, we believe there are sufficient definitions to protect our frail elderly. Therefore, we would respectfully request that these undefined words be removed from this section.

TDMHSAS Response: The Department recognizes TAHC's concern that PSSA staff not interrupt the provision of services by a caregiver during the course of an investigation. The Department is charged by statute (TCA §§ 33-2-413(b) and 33-2-416) with investigating complaints against a licensed agency, which includes complaints against a PSSA agency's staff member. The Department will remind Licensure staff to make their best effort to avoid interfering with the caregiver's provision of services while conducting an investigation. The Department will remove the word mistreatment from the proposed rule but will retain the word misappropriation and/or. The word misappropriation is defined in TCA §68-11-1002(3) (Abuse Registry), as well as in TCA §33-2-402(8). These are the definitions used by the Department for investigative purposes.

SENIOR SOLUTIONS HOME CARE

Ability to use electronic verifications from telephone and tablets (Choices).

I think I speak for the association that we would like Electronic Visit Verification (EVV) reports to be our clients' record of service. If the provider does not have an EVV system, which records call ins and call outs with task performed, then paper time sheets need to be kept.

Now with Amerigroup, United Health Care, and BCBS all using tablets in clients' homes, which requires task to be documented, it would eliminate the duplication of paper time sheets.

On non-choices clients it would be rather the provider has/uses an EVV system that captures the phone number, time in, time out and task performed if paper time sheets are still required.

TDMHSAS Response: The Department will amend Rule 0940-05-38-.01, Definitions, to add a new section which will read as follows: "(11) "Written" means, as applied to licensee's records, a generally accepted format, including electronic or paper, used for retaining business or client records." Adding this subsection will clarify that records may be kept in hard or electronic format.

GRISWOLD HOME CARE NASHVILLE

Per our discussion this morning at the PSSA Rules Hearing, we respectfully request the following changes/additions in bold:

0940-05-38-.04 Application

- (1) To provide **and/or refer** 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 may provide **or refer** personal support services to individuals with physical or other disabilities.
- (6) The agency should submit to the licensing department a list of the counties in which they provide **or refer** services and the address at which the agency maintains its employee/**contractor** and service recipient records.

We appreciate your time and consideration regarding our requests and look forward to the final PSSA Rules publication.

TDMHSAS Response: The Department would refer to the definition of "Personal Support Service Agency" found in 0940-05-38-.01(3), wherein the definition includes all entities that employ or subcontract with individuals who provide personal support services to service recipients. The Department believes that an agency that subcontracts with individuals is the same as an agency that refers individuals for a fee and/or maintains records on service recipients and subcontracted staff. An agency that provides only employment placement or referral is exempt from licensing by this Department. See, TCA § 33-2-403(7).

FIRST TENNESSEE HUMAN RESOURCE AGENCY

I have just received the proposed rule changes for Personal Support Services. I am greatly concerned that some of the rules as written are changing the entire foundation of what I have come to know as "homemaker services". The expansion of qualification, specifically under 0940-05-38-.07(2)(g) Personnel Requirements, leads me to question what is the role of home health agencies and TennCare Choices program. New rules already implemented by the Department of Human Services, under the Social Services Block Grant, have added an intensive burden to expand paperwork, specifically in the area of risk assessments and plan of care.

Where does the Department of Mental Health and Substances Abuse provide agencies with funding? Most agencies that are contracted under the Social Service Block Grant are already having to solicit for local matching funds to maintain the level of funding through SSBG. Our agency solicits from 5 different local United Way organization, all of which have multiple expectations of time investment from the "partner" agency. How would non-profits, specializing in "social services" be financially able to retain the salary or wages of an RN to provide "consultation"?

More and more of the type of clients that are being referred to "homemaker" services are requiring greater levels of personal care. Again, are we allowing, even support, Medicare and Medicaid to go unchallenged with what should be their roles. When AARP lobbied so hard for home and community programs, then turned around and entered into an insurance underwriting with United Healthcare, was it already conceived that Medicaid funds who be transferred to the large insurance companies, only to expand denial of services, by making the levels of care requires higher year after year. Take a look at the long-term care population ten years prior to the same group today, look at the pre-admission treatment assessment process for "Choices", the same criteria not only defines the criteria for nursing home, but also translates that same criteria to home and community based services.

Somewhere in the system, there has to be a measure that weights on the side of the individual. An advocate, a Ombudsman, not paid by the State that may have fear for job, and truly standup. AARP isn't interested, "they" essentially got what "they" wanted and if the blinders were removed much more. But, what did the individual receive, less options, less choices, less control! If it were not for the few remaining "social services" organization, living from season to season, budget year to budget year, many folks would fade back into the shadows.

Without funding, the expectation that "social service" agency be pushed into the arena to provide higher levels of personal care is an unreasonable request and adds a financial burden that has no funding source options. What would be next, Adult Protective Workers must now have RN training.

TDMHSAS Response: The Department would refer the author of the question to the definitions of "Personal Support Services", "Personal Support Services Agency", and "Person Support Services Worker". The services envisioned by this rule are not home health services, which are provided by professionally licensed staff working in an agency/facility of the type licensed by the Tennessee Department of Health (see T.C.A. § 68-11-201 et. seq. for more information). Therefore the comments submitted by First Tennessee Human Resource Agency, as they pertain to the licensure of a home health agency, do not apply to these rules. The Department does not provide funding for personal support services agencies. The Department would refer the author to the Choices Program (<http://www.tn.gov/tenncare/topic/choices>) or TennCare: (<http://www.tn.gov/tenncare>) for answers to the remaining questions.

ADVANCECARE HEALTH SERVICES, LLC

From my understanding, since our company has a license from Department of Intellectual and Developmental Disabilities, then we do not need a separate PSSA license?

TDMHSAS Response: If the agency has a license from the Department of Intellectual and Developmental Disabilities to provide personal support services and the majority of that agency's clients have a diagnosis of intellectual or developmental disabilities, the agency does not also need a license from the Department of Mental Health and Substance Abuse Services. An agency providing personal support services with a majority of its clients being aged or with a mental health diagnosis should be licensed by the Department of Mental Health and Substance Abuse Services. See Rule 0940-05-38-.04(1)-(4).

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 Departments believe these rules will have a positive impact on small businesses by eliminating the need for duplicate licensing and supporting their use of electronic records, thereby reducing agency expenses. The rules support a small business’s hiring practices and provide protection to their clients by clarifying that no one listed on the Tennessee Department of Health’s Abuse Registry or the Tennessee Sex Offender Registry can provide personal support services. The rules remove unclear terminology and address the current way small businesses provide personal support services in Tennessee.

PRELIMINARY

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These rules do not have a projected impact on local governments.

REDLINE

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;

Legislation passed during the recent session of the General Assembly and enacted as Public Chapter 110 of 2015 (SB319/HB288) revised portions of T.C.A. § 33-2-403 to address licensing issues relative to Personal Support Services Agencies (PSSAs). Statutory changes necessitated changes to Tennessee Administrative Rule Chapter 0940-05-38, Minimum Program Requirements for PSSAs. These rules now clarify that an agency can provide PSSA services whether licensed by TDMHSAS or TDIDD. From which department-TDMHSAS or TDIDD-the agency obtains a license is determined by the diagnosis of the majority (over 50%) of its client base, i.e., if over 50% are intellectually disabled, TDIDD will license the agency; if over 50% are aged or have a mental health diagnosis, TDMHSAS will license the agency. The determination of an agency's majority of client base will be determined annually at the time of license application or renewal by cooperative agreement between TDMHSAS and TDIDD. Additionally changes were made to address housekeeping matters and to ensure compliance with current best practices in these agencies.

- (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;

TCA § 4-3-1601(b) provides the following as a general function of the Department: "... set standards for, ... monitor, and promote the ... provision of services and supports to meet the needs of persons with mental illness or serious emotional disturbance through the public and private sectors in this state as set out in ... title 33". Additionally, TCA § 33-1-305, gives the Department authority to adopt rules, prescribe forms and investigate complaints; TCA § 33-2-403, grants the Departments the authority to license services and facilities operated for the provision of mental health services, alcohol and drug abuse prevention or treatment, for the provision of services for intellectual and developmental disabilities, and for personal support services; and Public Chapter 110 of 2015 (SB319/HB288).

- (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;

Any agency licensed by TDMHSAS or TDIDD as a personal support services agency and any business entity wishing to obtain a license for personal support services from either TDMHSAS or TDIDD are most directly impacted by this rule. TDMHSAS and TDIDD urge adoption of this rule. The Departments have not received notice of any party's desire to urge rejection of this rule.

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

No attorney general and reporter opinion was found to specifically address these rules and their proposed changes.

- (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 estimated fiscal impact to State or local governments due to the promulgation of these rules.

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

Kurt Hippel, Director of TDMHSAS Office of Legislation and Rules; Cynthia Tyler, Director of TDMHSAS Office of Licensure; Alex King, Assistant Director of TDMHSAS Office of Licensure

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

Kurt Hippel, Director of Legislation and Rules, TDMHSAS

(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

Kurt Hippel, Director, TDMHSAS Office of Legislation and Rules, 500 Deaderick Street, 5th Floor, Andrew Jackson Bldg., Nashville, TN 37243; 615-532-6520; kurt.hippel@tn.gov

Cynthia Tyler, Director, TDMHSAS Office of Licensure, 500 Deaderick Street, 5th Floor, Andrew Jackson Bldg., Nashville, TN 37243; 615-532-6590; cynthia.tyler@tn.gov

Alex King, Asst. Director, TDMHSAS Office of Licensure, 500 Deaderick Street, 5th Floor, Andrew Jackson Bldg., Nashville, TN 37243; 615-532-6590; alex.king@tn.gov

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

N/A

Tennessee Secretary of State
Tre Hargett



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Cody Ryan York
Director of Publications

615-253-4564
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May 19, 2016

Kurt Hippel
Office of Licensure
Tennessee Department of Mental Health and Substance Abuse Services
Andrew Jackson Building
5th Floor
500 Deaderick Street
Nashville, TN 37243

Dear Mr. Hippel,

Per your phone conversation with our staff on May 18, 2016, we have corrected Rule 0940-05-38-.03, paragraph (2), subparagraph (d) to read: "A person who provides only transportation services and no other assistance with major life activities." We have also corrected Rule 0940-05-38-.10, paragraph (1), subparagraph (e) to read: "Service recipients have the right to be assisted by the licensee in the exercise of their civil rights." If you should have questions, please feel free to contact me at (615) 741-2650.

Sincerely,

Cody Ryan York
Director of Publications