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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. T.C.A. § 4-5-205

Agency/Board/Commission:	Tennessee Department of Human Services
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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
1240-01-57	Families First Eligibility – Drug Screening and Testing
Rule Number	Rule Title
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1240-01-57-.02	Definitions
1240-01-57-.03	Program of Suspicion-Based Drug Testing
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Chapter 1240-01-57
Families First Eligibility – Drug Screening and Testing

New Rules

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1240-01-57-.01 Purpose

- (1) The purpose of this Chapter is to establish a process to screen for, and, if appropriate, test for the use of drugs, as defined in this Chapter, by applicants for Families First/TANF benefits, and to refer persons found to be using such drugs for a substance abuse evaluation and any necessary treatment; and
- (2) Provide for the appropriate use of Families First/TANF benefits for the children of recipients.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b.

1240-01-57-.02 Definitions

For the purposes of this Chapter:

- (1) "Assistance Unit (AU)" means the "aid group (AG)" or group of people applying for or receiving Families First/TANF cash assistance benefits.
- (2) "Applicant" is an individual who makes application for Families First/TANF cash assistance.
- (3) "Caretaker relative" means the father, mother, grandfather or grandmother of any degree, brother or sister of the whole or half-blood, stepfather, stepmother, stepbrother, stepsister, aunt or uncle of any degree, first cousin, nephew or niece, the relatives by adoption within the previously named classes of persons, and the biological relatives within the previous degrees of relationship, and the legal spouses of persons within the previously named classes of persons, even if the marriage has been terminated by death or divorce, with whom a child is living.
- (4) "Chain of custody" means the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances, and providing for accountability at each stage in handling, testing and storing specimens and reporting test results.
- (5) "Child" or "children" means:
 - (a) A person or persons under eighteen (18) years of age; or
 - (b) A person who has not attained nineteen (19) years of age and who is a full-time student in a secondary school or the equivalent and who is expected to graduate by the person's nineteenth birthday.
- (6) "Confirmation test," "confirmed test" or "confirmed drug test" means a second analytical procedure used to identify the presence of a specific drug as defined in this Chapter, or its metabolite, in a

specimen, which test must be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity and quantitative accuracy.

- (7) "Department" means the Department of Human Services.
- (8) "Drug" means marijuana, cocaine, methamphetamine, amphetamine, and opiates, such as, but not limited to, morphine.
- (9) "Drug screening" consists of a questionnaire regarding the Families First applicant's current and prior use of drugs as defined in paragraph (8).
- (10) "Drug test" or "test" means any chemical, biological or physical instrumental analysis administered by an authorized drug testing agency, using the applicant's urine, for the purpose of determining the presence or absence of a drug or its metabolites pursuant to this Chapter.
- (11) "Drug testing agency" means an entity that has the required credentials as established by regulatory or certification authorities to administer tests using a person's urine, blood or DNA that will detect and validate the presence of drugs in such person's body.
- (12) "Drug treatment period" is the length of the treatment plan, not to exceed six (6) months. If the treatment plan requires more than six (6) months in a continuum of care, the Families First applicant may take a drug test at the end of six (6) months of treatment to determine the applicant's continued eligibility for Families First benefits.
- (13) "Drug treatment program" means a service provider that provides confidential, timely and expert identification, assessment and resolution of drug or alcohol abuse problems affecting persons, including residential/in-patient drug treatment and outpatient drug treatment.
- (14) "Families First" refers to the temporary public assistance program provided under Temporary Assistance for Needy Families (TANF), pursuant to Title IV-A of the Social Security Act.
- (15) "Five (5) panel test" means a drug test for marijuana, cocaine, methamphetamine, amphetamine, and opiates that uses a specimen of the applicant's urine.
- (16) "Initial drug test" means a procedure that qualifies as a "screening test" or "initial test."
- (17) "Legal guardian" means a person or entity that has the legal authority to provide for the care, supervision or control of a minor child as established by law or court order.
- (18) "Medical review officer (MRO)" means a licensed physician who has knowledge of substance abuse disorders, laboratory testing procedures and chain of custody collection procedures; who verifies positive, confirmed test results; and who has the necessary medical training to interpret and evaluate a Families First/TANF recipient's positive test result in relation to the recipient's medical history and current, valid prescription(s), or any other relevant biomedical information.
- (19) "Minor" is a person less than eighteen (18) years of age. A minor is considered a "dependent child" if he/she is living with a specified relative and is otherwise eligible.
- (20) "New applicant" is an applicant who has not received prior cash assistance under the Families First/TANF program or has not received cash assistance under the Families First/TANF program for at least one (1) month due to case closure, for any reason, prior to the application date.
- (21) "New application" means that the applicant has not received prior cash assistance under the Families First/TANF program or has not received cash assistance under the Families First/TANF program for at least one (1) month due to case closure, for any reason, prior to the application date.
- (22) "Protective payee" means a caretaker relative or a legal guardian of the child; provided, however, that the person defined as a caretaker relative or guardian who is the applicant for Families First/TANF

benefits who tests positive for the use of a drug as defined in this Chapter shall be excluded from this definition.

- (23) "Recovery support" means a group or resource for drug abuse treatment and recovery, which includes self-help and support groups, such as, but not limited to, Narcotics Anonymous.
- (24) "Specimen" means tissue, fluid or a product of the human body capable of revealing the presence of drugs or their metabolites.
- (25) "Treatment plan" is a document used by an approved drug treatment agency that specifies an applicant's drug treatment program, activities, and continuum of care for a defined time period, subject to continuing assessments. The drug treatment plan may include residential treatment, out-patient treatment, or recovery support groups, or resources for assistance with the Families First/TANF recipient's drug abuse recovery.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b.

1240-01-57-.03 Program of Suspicion-Based Drug Testing

- (1) Effective July 1, 2014, the Department's Families First/TANF Program shall conduct a drug screening of new Families First/TANF applicants to determine whether there is reasonable cause to believe the applicant engages in the use of drugs as defined in this Chapter.
- (2) Except as provided in subparagraphs (a) and (b) of this paragraph (2), all new Families First/TANF applicants who are eighteen (18) years of age or older and who are otherwise eligible to receive Families First/TANF benefits as defined in Chapters 1240-01-47, 1240-01-50, and 1250-01-51 are required to submit to the drug testing requirements under this Chapter, subject to the Department's finding of reasonable cause.
 - (a) Dependent children less than eighteen (18) years of age are exempt from the drug screening and testing, provided, however, that any minor parent who is a new Families First/TANF applicant who does not live with a parent, legal guardian, or other adult caretaker relative must submit to drug screening and any required drug testing.
 - (b) In a two (2)-parent household, only one (1) parent, the new Families First/TANF applicant, shall be required to submit to the drug screening and testing requirements of this Chapter.
- (3) The Department's drug screening and testing program for new Families First/TANF applicants is separate from any employer-required drug screening and/or drug test.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b.

1240-01-57-.04 Drug Screening

- (1) Effective July 1, 2014, new Families First/TANF applicants shall submit a completed drug screening questionnaire as a part of the eligibility determination for Families First/TANF cash assistance.
- (2) Refusal and/or failure, without good cause, to submit a completed drug screening questionnaire shall result in denial of the applicant's Families First/TANF application.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b.

1240-01-57-.05 Reasonable Cause

- (1) If the Department determines that there is reasonable cause to believe that a new Families First/TANF applicant is using drugs as defined in this Chapter, the applicant shall submit to a drug test at a drug testing agency approved by the Department.
- (2) Initial Drug Screening to Determine Reasonable Cause.

- (a) Reasonable cause shall exist when the applicant's completed drug screening questionnaire contains one or more "yes" responses.
 - (b) Any applicant who answers "yes" to one or more questions on the drug screening questionnaire must submit to a drug test.
 - (c) Any Families First/TANF applicant/recipient who has a current, valid prescription or prescriptions for a drug or drugs, as defined in this Chapter, may present the prescription(s) to the drug testing agency and/or medical review officer (MRO) as well as inform the agency and/or MRO of any over-the-counter medication the individual is currently taking after submitting to a drug test. No drug for which an applicant has a current, valid prescription shall be a basis for denial of Families First/TANF benefits pursuant to this Chapter.
- (3) Failure to complete the drug screening questionnaire or to submit to a drug test based on the results of the drug screening questionnaire, without good cause, shall result in denial of the applicant's Families First/TANF application.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b.

1240-01-57-.06 Drug Test

- (1) All drug tests conducted pursuant to this Chapter shall consist of a five (5) panel drug test, as defined in this Chapter, and be administered by an approved drug testing agency that uses a specimen of the applicant's urine. All drug tests, including any confirmation test, required under this Chapter shall be paid for by the Department.
- (2) Confirmation Test. If a Families First/TANF applicant tests positive for the presence of drugs, as defined in this Chapter, the drug testing agency shall perform a confirmation test using the same urine specimen from the initial positive drug test.
 - (a) The results of the confirmation tests shall be verified by a MRO in relation to an applicant's biomedical history as well as any current, valid prescriptions and over-the-counter medication.
 - (b) The Department shall use the MRO's report, providing an evaluation of the confirmation test, to determine whether the applicant/recipient is eligible for Families First/TANF and whether to refer the applicant/recipient for a substance abuse evaluation.
- (3) An applicant who tests positive for a drug as defined by this Chapter shall be ineligible for Families First/TANF, except as otherwise provided by this Chapter.
- (4) All drug testing procedures, including chain of custody, specimen handling, and performance of the drug test, shall be in conformity with the requirements of the Tennessee Drug-Free Workplace Act, compiled at T.C.A. § 50-9-101 et seq. to the extent that no requirement is more broad than that provided in T.C.A. § 71-3-1201 et seq. or this Chapter.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b.

1240-01-57-.07 Referral for Substance Abuse Evaluation, Treatment, Ineligibility for Benefits, Appeals

- (1) Drug Treatment Referral. If the results of the confirmation test indicate usage of drugs as defined in this Chapter, the Department shall refer the Families First/TANF recipient for a substance abuse evaluation to determine the appropriate treatment plan and/or recovery support group or resource.
 - (a) If, as a result of the substance abuse evaluation, the Families First/TANF recipient is determined not to need any drug treatment or drug recovery support, the recipient shall be exempt from the drug treatment requirements under this Chapter and shall continue to be eligible for Families First/TANF benefits.

- (b) After submitting to a substance abuse evaluation, if the Families First/TANF recipient is determined to require drug abuse treatment and/or recovery support, the Department, in conjunction with the agency performing the substance abuse evaluation, shall refer the recipient to an appropriate drug treatment facility and/or recovery support group or resource to begin the drug treatment/recovery support plan. The recipient shall have ten (10) business days, after a referral for treatment is made, to provide the Department any of the following, as required under the drug treatment plan:
 - 1. Verification of enrollment in an approved drug treatment program;
 - 2. Verification of placement on a waiting list for an approved drug treatment program; or
 - 3. Verification of attendance at approved recovery support resource meeting.
 - (c) If the Families First/TANF recipient is placed on a waiting list for enrollment in an approved drug treatment program, the recipient shall continue to receive benefits during the waiting list period; provided, however, the recipient is not eligible for immediate enrollment in any other comparable drug treatment program.
 - (d) The recipient shall receive benefits for the duration of the drug treatment period, not to exceed six (6) months.
 - 1. The drug treatment period shall begin with the date of the first treatment session in the drug treatment program or the first date of attendance at a drug recovery support group/resource meeting.
 - 2. To receive Families First/TANF benefits for the duration of the drug treatment program, not to exceed six (6) months, the recipient must provide the Department with evidence of ongoing compliance with the drug treatment program or recovery support resource, including, but not limited to, verification of attendance and participation in the program on a weekly basis or as otherwise necessitated by the individual treatment plan.
 - 3. If the drug treatment plan requires more than six (6) months in a continuum of care, the Families First/TANF recipient may submit to a drug test at the end of six (6) months of treatment to determine the recipient's continued eligibility for Families First/TANF benefits.
 - (e) At the conclusion of the drug treatment period, the Families First/TANF recipient shall submit to another five (5) panel drug test in accordance with this Chapter.
 - 1. If the recipient tests positive for drugs as defined in this Chapter, validated by a confirmation test and evaluated by a MRO, the recipient shall be ineligible to receive cash assistance benefits for six (6) months from the date of the positive confirmation test.
 - 2. After the six (6) month disqualification period, if the disqualified individual reapplies for Families First/TANF benefits, the applicant shall submit to a drug test, conducted pursuant to this Chapter. If the applicant tests positive for drugs as defined in this Chapter, in a subsequent drug test, validated by a confirmation test, the recipient shall be ineligible to receive Families First/TANF benefits for one (1) year from the date of the positive confirmation test.
- (2) If the recipient fails to begin, participate in, and/or complete, the drug treatment/recovery support resource program after a Department referral for a substance abuse evaluation, the recipient shall be ineligible for cash assistance benefits for six (6) months.
- (a) Good cause. The Families First/TANF recipient may submit verification of good cause to the Department for his/her failure to begin, complete, and/or participate in the drug treatment program/recovery support resource.

1. The Department shall determine whether an individual has good cause for failure to begin, participate in, and/or complete the drug treatment/recovery support resource program by considering the exigency of the applicant's circumstances, whether failure to comply is the result of circumstances beyond the applicant's control and the requirements of the applicant's drug treatment and/or recovery support program.
 2. If the Department determines that good cause exists, the Department shall work in collaboration with the substance abuse evaluation agency and/or the drug treatment program to amend the recipient's drug treatment plan so that the recipient is able to complete the requirements of the drug treatment plan consistent with his/her abilities.
 3. The recipient shall not receive cash assistance benefits for longer than six (6) months during drug treatment prior to undergoing a subsequent drug test, as set forth below.
 4. If, after amending the recipient's drug treatment plan to meet the recipient's needs and abilities, the recipient fails to begin, participate in, or complete the drug treatment program, the recipient shall be ineligible for six (6) months. After the six (6) month disqualification period, the recipient shall submit to another drug test, pursuant to subparagraph (b) below.
- (b) At the conclusion of the six (6) month disqualification period, the Families First/TANF recipient shall submit to another five (5) panel drug test in accordance with this Chapter. If the recipient tests positive for drugs as defined in this Chapter, in a subsequent drug test, validated by a confirmation test and verified by a MRO, the recipient shall be ineligible to receive Families First/TANF benefits for one (1) year from the date of the positive confirmation test.
- (3) Protective Payees.
- (a) If a caretaker relative is found ineligible to receive Families First/TANF benefits as a result of a positive drug test or failure to begin, participate in, and/or complete the drug treatment/recovery support resource program, that caretaker relative shall be removed from the Assistance Unit and the dependent child's eligibility for Families First/TANF benefits shall not be affected.
 - (b) The Department shall designate a protective payee, either a caretaker relative or legal guardian of the child, to receive the dependent child's Families First/TANF benefits for a child less than sixteen (16) years of age; provided, however, for purposes of this Chapter, that no person who is the applicant for Families First/TANF benefits and tests positive for the use of drugs as defined in this Chapter shall serve as a protective payee.
- (4) The Families First/TANF recipients participating in a drug treatment or recovery support program under this Chapter shall receive necessary child care services during drug treatment, provided, however, the recipient is participating in a work or educational activities requirement as required by the Families First/TANF program.
- (5) Appeals. A Families First/TANF applicant or recipient may appeal any denial of eligibility for Families First/TANF benefits under this Chapter according to appeal procedures set forth in Chapter 1240-5 and Title 4, Chapter 5, Part 3 of the Uniform Administrative Procedures Act.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b, 42 U.S.C. § 608(b)(2)(A)(v).

1240-01-57-.08 Confidentiality

- (1) Except as provided in paragraph (2), the Department shall not disclose, without the applicant/recipient's written consent, any information, interviews, reports, statements, memoranda, drug screening and other questionnaires, drug tests results and samples, or any related materials:
 - (a) To any law enforcement authorities;

- (b) For use in any public or private proceedings or in a discovery proceeding related to any legal proceedings;
 - (c) For use or received as evidence in any civil or criminal proceedings; or .
 - (d) For any other public or private use.
- (2) Any information received as a part of the drug testing program may be used in accordance with the administration of the Families First/TANF program, in any proceedings concerning the protection or permanency of children, in adjudicating any claim or action arising from the administration of the Families First/TANF program, or in reporting child abuse, child sexual abuse, or child neglect.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services (board/commission/ other authority) on 03/12/2014, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/16/13
02/04/13; 02/05/13; 02/06/13; 02/07/13; 02/10/13;
Rulemaking Hearing(s) Conducted on: (add more dates). 02/11/13; 02/13/13; 02/14/13

Date: March 12, 2014

Signature: Madeline Brough

Name of Officer: Madeline Brough
Assistant General Counsel

Title of Officer: Tennessee Department of Human Services



Subscribed and sworn to before me on: March 12, 2014

Notary Public Signature: Debra E. Batts

My commission expires on: May 20, 2014

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.

RE Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter
3-24-14
Date

Department of State Use Only

Filed with the Department of State on: 4/2/14

Effective on: 7/1/14

Tre Hargett
Tre Hargett
Secretary of State

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Public Hearing Comments

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

Comment One:

Perhaps there is a drafting error in the proposed rules as the proposed rules refer to "AU"/"Assistance Unit" instead of "AG"/"aid group," which is used in the current regulations. See 1240-01-02-.01(1), which states the abbreviation for "aid group" is "AG."

Response and reason for adoption or rejection of suggested changes:

The Department's regulations at 1240-01-02-.01 refer to "Assistance Group" as it relates to the Food Stamp (SNAP) program. In 1240-01-02-.03, however, the Department defines the "Assistance Unit" for TANF, formerly AFDC, as "the group of individuals for whom assistance is sought." For this reason, the use of "assistance unit" "AU" is appropriate and the Department has not deleted the use of "assistance unit" or "AU" in the proposed regulations. The Department has included "Assistance Unit (AU)" as a definition in this Chapter.

Comment Two:

A provision should be added to section 1240-01-57-.03 which provides that "Drug testing shall be administered in conformity with requirements of the Drug-Free Workplace Program Act, T.C.A. § 50-9-101 et seq." This provision is needed to ensure that procedures and methods followed in the drug testing will produce valid and reliable results. A similar provision is found at T.C.A. § 50-7-303(a)(b) concerning disqualification from unemployment benefits.

Response and reason for adoption or rejection of suggested changes:

Changes have been made to the Rule as suggested and a provision has been added to 1240-01-57-.06.

Comment Three:

1240-01-57-.03(2)(b) states that in two parent households, only the new Families First/TANF applicant shall be required to submit to the drug screening and testing requirements of the chapter. This provision is inconsistent with the state statute which provides at TCA 71-3-1-1202(b)(2) that in a two parent household, only one parent shall be required to undergo a drug test.

Response and reason for adoption or rejection of suggested changes:

The Department disagrees that the Rule is inconsistent with the Statute because the Statute specifically states that each applicant will submit to the suspicion based drug testing program as well as stating that only one (1) parent in a two (2) parent household would be screened and tested. Reconciling these two pieces of the statute, the intent of the Rule is to screen only one (1) parent in a two (2) parent household, the parent acting as the new applicant. The Rule provided specificity regarding which parent, in a two-parent household, would be tested. The Department, however, has added additional language to 1240-01-57-.03(1) to further clarify which parent in a two-parent household will be screened and tested pursuant to this Chapter.

Comment Four:

T.C.A. §.71-3-1202(h)(1) states "that the department shall establish a referral process for any applicant who tests positive to be referred to an appropriate treatment resource for drug abuse treatment or other resource by the department." DHS proposed Regulation 1240-01-57-.07(1) requires the Department to refer the Families First recipient for substance abuse evaluation to determine the appropriate treatment plan and/or recovery support group or resource..." The proposed DHS regulations state further at (1)(b) that "after submitting to a substance abuse evaluation...the recipient must take action to begin the drug treatment/recovery support plan." The proposed DHS regulations do not require "the department to refer the recipient to an appropriate treatment resource for drug abuse treatment or other resource by the department," as T.C.A. §71-3-1202(h)(1) requires. T.C.A. § 71-3-1202(h)(1) requires that the department shall establish a referral process so that the client is "referred to an appropriate treatment resource." The proposed DHS regulations also require the recipient to provide verification of enrollment, attendance, or wait list in an "approved" program. Nowhere on the department's website, manual, or in the proposed regulations is there a list of "approved" programs. Often SNAP recipients are

unable to locate any DHS "approved" list of providers or any "approved" programs for substance abuse treatment. The DHS case workers also were unable to provide a copy of the "approved" providers of programs to the clients.

Response and reason for adoption or rejection of suggested changes:

To clarify, it is the Department's intent to first refer the recipient who has had a positive drug test to an appropriate entity for a substance abuse evaluation. The substance abuse evaluation results will determine the type of treatment that each individual requires. The Department will work with the agency providing the substance abuse evaluation to refer the Families First/TANF recipient to an appropriate entity for treatment and/or support. The Department has added clarifying language to the Rule to establish that the Department will provide the individual both a referral for evaluation and a referral for treatment. In addition, a list of approved treatment facilities will be provided to the Families First/TANF recipient.

Comment Five:

T.C.A. § 71-3-1204(a) states all information and drug tests results "may not be used or received in evidence," obtained in discovery or "disclosed in any public or private proceedings...." The statute does not limit the use of information and drug test results in criminal proceedings. Proposed rule 1240-01-57-.08 should include the phrase "may not be used or received in evidence" in civil cases.

Response and reason for adoption or rejection of suggested changes:

The Department has amended Rule 1240-01-57-.08(c) to read: "For use or received as evidence in any civil or criminal proceedings."

Comment Six:

Clarify who pays for the confirmation test. In 1240-01-57.06(1), the Rule states that the cost for drug test is paid for by the Department, but does not include the same language regarding payment for confirmation tests.

Response and reason for adoption or rejection of suggested changes:

The Department has added additional language in the Rule at 1240-01-57-.06(1), as suggested, to clarify that the confirmation test is also provided by the Department at no charge to the Families First/TANF recipient.

Comment Seven:

In 1240-01-57-.07(3), what is the reasoning behind the requirement that only children under sixteen (16) years of age will be assigned a protective payee?

Response and reason for adoption or rejection of suggested changes:

The Department has promulgated this Rule based upon the requirement in the statute, T.C.A. § 71-3-1202(h)(5), "[t]hat if a caretaker relative is deemed ineligible for TANF benefits as a result of failing a drug test, the dependent child's eligibility for TANF benefits is not affected, and an appropriate protective payee shall be designated to receive TANF benefits on behalf of the child who is under sixteen (16) years of age."

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.

For purposes of the Regulatory Flexibility Act, the Department of Human Services certifies that these rulemaking hearing rules substantially codify existing state law, compiled at T.C.A. § 71-3-1201 et. seq., such that, pursuant to Section 6 of the Regulatory Flexibility Act, the Regulatory Flexibility Act's provisions do not apply to these rules. In addition, these rulemaking hearing rules do not appear to affect small businesses as defined in the Act because these rules are related to the determination of eligibility and provision of benefits to individuals and households who file an application for Families First/TANF benefits.

Impact on Local Governments

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

These rules have no projected financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The rule requires that all new Families First/TANF applicants shall be drug screened to determine whether there is reasonable cause to believe the applicant engages in illegal drug use. If the screening indicates that the applicant engages in illegal drug use, the applicant must undergo a drug test. Eligibility for the entire Families First/TANF assistance unit will be denied if the applicant refuses to be screened or tested without good cause. Applicants who test positive for drug use will be provided the opportunity to be evaluated and to join a drug treatment/recovery program, if the evaluation warrants it. Continued eligibility for Families First/TANF is dependent on the recipient's compliance with his/her treatment/recovery plan. If non-compliance with the treatment/recovery plan is evident and the recipient is without good cause for non-compliance, the recipient will be removed from the Families First/TANF program, but the remainder of the assistance unit may continue to receive assistance.

These rules are based on a state statute, T.C.A. § 71-3-1201 et. seq.; there are no changes to previous regulations effectuated by this rule.

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

Tennessee Code Annotated Section 71-3-1201 et seq. provides for the implementation of a suspicion-based drug screening program for Families First/TANF applicants. Section 71-3-1205 provides rulemaking authority to the Department for the Rule. Federal law at 21 U.S.C. § 862b expressly permits the use of substance abuse tests as an eligibility factor in TANF cases.

- (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;

Families First/ TANF recipients, DHS staff, the Department of Mental Health, the drug testing agencies/facilities, and drug treatment facilities/programs will be affected by this Rule. The Department has not received any comments urging the rejection of the Rule. The Families First/TANF drug screening/testing program for new Families First/TANF is required under state law and permitted under federal law.

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

There are no Attorney General opinions or judicial rulings that directly relate to the Rule.

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

The Department estimates that there will be a negligible effect on state and local government revenues and expenditures resulting from the promulgation of this rule.

The Rule will have a fiscal impact on the Department, but those costs will be absorbed within existing resources of the Department. The Department has concluded that the costs associated with implementation of these requirements can be handled with existing TANF dollars. The Department intends to fund this directive by reallocating resources within the existing TANF grant monies to account for the implementation costs. We have determined that implementation of the legislation will come at no additional cost since existing resources are sufficient to administer it.

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

Madeline B. Brough, Assistant General Counsel
David Sanchez, Assistant Commissioner of Family Assistance and Child Support
Ben Maxwell, Special Assistant to the Commissioner
Wanda Franklin, Director of Family Assistance

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

Madeline B. Brough, Assistant General Counsel
Wanda Franklin, Director of Family Assistance

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

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

None.