

Notice of Rulemaking Hearing

The Tennessee Department of Human Services
Adult Protective Services Division

There will be hearings before the Tennessee Department of Human Services to consider the promulgation of amendments to rules pursuant to Tennessee Code Annotated §§ 4-5-201 et seq. and 71-1-105(12). The hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-204, and will take place in the following locations:

Nashville, Tennessee: Citizens Plaza State Office Building, Second Floor Boardroom, 400 Deaderick Street, Nashville, Tennessee 37243, at 6:30 PM CDT on July 17, 2008;

Knoxville, Tennessee: Knoxville State Office Building, 7th Floor Conference Room A, 531 Henley Street, Knoxville, Tennessee 37902, at 6:30 PM EDT on July 22, 2008;

Memphis, Tennessee: Donnelley J. Hill State Office Building, Second Floor Auditorium, 170 North Main Street, Memphis, Tennessee 38103, at 6:30 PM CDT on July 24, 2008.

Any individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Department of Human Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date or the date the party intends to review such filings, to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services ADA Coordinator, Natasha Webster, Citizens Plaza Building, 400 Deaderick Street, 10th Floor, Nashville, Tennessee 37243, telephone number (615) 313-4731, (TTY)- (800) 270-1349.

For a copy of this notice of rulemaking hearing, contact: Kim Beals, Deputy General Counsel, Citizen's Plaza Building, 2nd Floor, 400 Deaderick Street, Nashville, Tennessee, 37243-1403 and (615) 313-4731.

Substance of Proposed Rules
of

The Tennessee Department of Human Services
Adult Protective Services Division

Chapter 1240-07-03
Reports of Abuse, Neglect or Exploitation of Adults

New Rules

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1240-07-03-.01	Scope of Rules.
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- (1) These rules shall apply to any report made to the Department of Human Services of a suspected case of abuse, neglect, or exploitation of an adult as defined in Title 71, Chapter 6, Part of the Tennessee Code Annotated.

- (2) These rules provide for investigations of the abuse, neglect and exploitation of an adult and for an administrative hearing process for any paid caregiver who has been indicated by the Department as the perpetrator of abuse, neglect, or exploitation of an adult to determine the validity of the indication of such person.
- (3) A release of information pursuant to these rules, including placement on the vulnerable persons registry contained in Title 68, Chapter 11, Part 10, shall be for purposes of protecting adults from further abuse, neglect, or exploitation and for purposes directly connected with the administration of Title 71, Chapter 6, Part 1 of the Tennessee Code Annotated.
- (4) These rules shall not govern the release of information by the Department about an allegation of abuse, neglect, or exploitation to any of the following:
 - (a) Any state(s) or federal law enforcement agency(ies) investigating or prosecuting a case of reported abuse, neglect, or exploitation of an adult;
 - (b) Any state(s) or federal grand jury by subpoena or presentation of evidence by the District Attorney or United States Attorney to such grand jury;
 - (c) In-house requests by employees of the Department for purposes consistent with enforcement of the adult protection laws of the State of Tennessee, including disclosure to other individuals for purposes directly connected with the administration of Title 71, Chapter 6, Part 1 of the Tennessee Code Annotated, other than disclosure to the employers of the alleged perpetrator, or licensing authority of the perpetrator other than the Department;
 - (d) Any state(s) or federal social service or other agencies investigating cases of abuse, neglect, or exploitation of an adult or providing treatment or care for alleged or known adult victims of abuse, neglect or exploitation;
 - (e) To the court, administrative board or hearing, the officials or employees thereof in the performance of their duties, the parties, or their legal representatives in any judicial or administrative proceeding or before any board or hearing officer for the purpose of protecting adults from abuse, neglect, or exploitation, except in such situation when such court, administrative hearing, board, or hearing officer, other than the Department of Human Services, is adjudicating a case affecting the perpetrator's ability to remain or become employed or licensed, in which situation such information shall be released only by order of the court or hearing officer.

Authority: T.C.A. §§ 4-5-202; 68-11-1004; 71-6-103(a).

1240-07-03-.02 Definitions.

- (1) "Abuse" shall mean the infliction of physical pain, injury, or mental anguish.
- (2) "Adult" shall mean a person eighteen (18) years of age or older who because of mental or physical dysfunctioning or advanced age is unable to manage his / her own resources, carry out the activities of daily living, or protect himself / herself from neglect, hazardous or abusive situations without assistance from others, and who has no available, willing, and responsibly able person for assistance and who may be in need of protective services.
- (3) "Department" shall mean the Department of Human Services (DHS).
- (4) "Indicated Individual" shall mean a paid caretaker determined by the Department to be a perpetrator of abuse, neglect, or exploitation of an adult.

- (5) "Exploitation" shall mean the improper use of funds that have been paid by a governmental agency for the use or care of the adult.
- (6) "Neglect" shall mean the deprivation of services that are necessary to maintain the health and welfare of an adult or a situation in which an adult is unable to provide or obtain the services that are necessary to maintain that person's health or welfare.
- (7) "Paid Caregiver."
 - (a) A person or entity who, for monetary remuneration, provides daily or periodic supervision of an adult or some level of service or activity directed toward meeting the personal needs and care of an adult, including medical, psychiatric, psychological, health, and/or health-related care or services, through employment or through contractual arrangement by the adult or through another person or entity, by contract with the adult, or by written or oral agreement with the adult or by course of conduct between such person or entity and the adult.
 - (b) The term "paid caregiver" does not include persons or entities who provide services to the general public that typically consist solely of business-related services, such as, but not limited to, financial services by a bank, credit union or brokerage or financial services by a licensed individual or person or entity representing themselves to be licensed to provide such service, repair or construction work, food services, or professional services by other licensed persons or entities that do not engage in providing services of the types described in subparagraph (a).
- (8) "Registry" shall mean the Department of Health's Vulnerable Persons Registry established under Tennessee Code Annotated, Title 68, Chapter 11, Part 10.
- (9) "Vulnerable Person" shall mean anyone who is over eighteen (18) years of age, and who, by reason of advanced age or other physical or mental condition, is vulnerable to or who has been determined to have suffered from abuse, neglect, or exploitation, and who was, at the time of the commission of an alleged offense, receiving protective services from a state agency pursuant to law, or in the care of either a state agency, or an entity that is licensed or regulated by a state agency, or an entity providing services under the provisions of a contract between that entity and a state agency.

Authority: T.C.A. §§ 4-5-202; 68-11-1004; 71-6-102; 71-6-103(a).

1240-07-03-.03 Investigation of Reports.

- (1) Investigation of a report of abuse, neglect, or exploitation of an adult shall be the responsibility of the Department's Adult Protective Services Division.
- (2) In appropriate circumstances, to be determined by the Adult Protective Services Division, the investigation of abuse, neglect, or exploitation of an adult may be conducted in conjunction with the Department's Division of Adult and Child Care Licensing, as well as other licensing authorities and law enforcement officials as appropriate.
- (3) The Report.
 - (a) A report of abuse, neglect, or exploitation of a particular adult shall include, to the extent available, the following information:
 1. The name and address of the individual responsible for the adult's care;

2. The age of the adult;
 3. The nature and extent of the abuse, neglect, or exploitation, including any evidence of previous abuse, neglect, or exploitation;
 4. The identity of the alleged perpetrator, if known;
 5. The identity of the complainant, if possible; and
 6. Any other information that the person believes might be helpful in proving the abuse, neglect, or exploitation.
- (b) Following an investigation of a report of abuse, neglect, or exploitation of a particular adult, a subsequent allegation of abuse, neglect, or exploitation regarding the same adult shall only constitute a new report requiring investigation if the allegation is based upon new information, as specified in subparagraph (3)(a) above, which was not alleged in the prior report.
- (4) If upon investigation, a report leads to the indication of an individual as a perpetrator of abuse, neglect, or exploitation, the Department shall provide a notice to the indicated individual with the following information:
- (a) That the individual has been indicated as the perpetrator of abuse, neglect, or exploitation of an adult in a report investigated by the Department;
 - (b) That the individual may request an administrative hearing within ten (10) business days of the date of the notice;
 - (c) That failure to submit a request for an administrative hearing within ten (10) business days, absent a showing of good cause, shall waive the right to the administrative process and shall make the indication of the person as a perpetrator final and eligible for disclosure;
 - (d) That the request for an administrative hearing shall be submitted to the Tennessee Department of Human Services, Appeals and Hearings Division, 400 Deaderick Street, Nashville, Tennessee, 37243; and
 - (e) That, if the individual provides care, supervision, instruction or treatment to an adult, the decision from the administrative hearing may impact the individual's employment.

Authority: T.C.A. §§ 4-5-202; 71-6-103(a).

1240-07-03-.04 Disclosure of Information.

- (1) All reports of abuse, neglect, or exploitation of an adult are confidential pursuant to Tenn. Code Ann. § 71-6-118.
- (2) The Department shall not disclose information of any kind from its records regarding a specific report of abuse, neglect, or exploitation, except as permitted by Tenn. Code Ann. § 71-6-118 or as otherwise permitted by these rules.
- (3) Identity of Alleged Perpetrator.
 - (a) If a report of abuse, neglect, or exploitation does not lead to the indication of an individual as the perpetrator, the identity of the alleged perpetrator shall not be released by the Department.

- (b) Following the indication of an individual as the perpetrator of abuse, neglect, or exploitation, the Department may disclose the identity of the indicated individual only as permitted by Rule 1240-07-03-.07.
- (4) Except as permitted by Rule 1240-07-03-.05, prior to completion of the process provided for in Rule 1240-07-03-.06, the Department may only –
 - (a) Confirm that an investigation of abuse, neglect, or exploitation of an adult has commenced; and
 - (b) Confirm that a hearing involving the individual is currently pending, upon receipt of a timely request for a hearing.
- (5) Any unauthorized release of a report of abuse, neglect, or exploitation of an adult constitutes a class B misdemeanor.
- (6) Nothing in this rule shall be construed to require the expunction of any information from internal case records maintained by the Department.

Authority: T.C.A. §§ 4-5-202; 71-6-103(a); 71-6-118.

1240-07-03-.05 Emergency Notification.

- (1) If the Department finds that an individual indicated as a perpetrator of abuse, neglect, or exploitation of an adult poses an immediate threat to the health, safety or welfare of adults to whom the alleged perpetrator has access, the Department shall:
 - (a) Provide written notice of this finding to the indicated individual and any organization(s) or person(s) with who the individual is associated as a paid caregiver.
 - (b) Notice to the indicated individual shall include the information required by Rule 1240-07-03-.03(4).
 - (c) Notice to organizations or persons shall contain the following information:
 - 1. That the organization or person shall ensure that the indicated individual is not a threat to the safety of any adult in their care; and
 - 2. That the indicated individual has been notified of his or her rights to an administrative hearing on the allegations and that the organization or person shall be notified of the final decision.
- (2) The indicated individual shall have the right to request the administrative hearing provided for in Rule 1240-07-03-.06.

Authority: T.C.A. §§ 4-5-202; 71-6-103(a).

1240-07-03-.06 Administrative Hearing.

- (1) Except as specified in Rule 1240-07-03-.05, an administrative hearing shall be available to all indicated individuals prior to –
 - (a) The release of any related information to the Department of Health in compliance with Tenn. Code Ann. § 68-11-1004(b)(2); or

- (b) The release of any related information to any organization(s) or person(s) with whom the individual is associated as a paid caregiver.
- (2) An indicated individual may request an administrative hearing within ten (10) business days of the date of the notice regarding the indication.
- (3) If the individual timely requests a hearing, the Department shall schedule a hearing and give the individual adequate notice of the hearing, as provided by Rules 1240-5-4-.01(2)(h).
- (4) Hearing Process.
 - (a) The hearing shall be conducted by the Appeals and Hearings Division of the Department of Human Services in accordance with the provisions of Tenn. Code Ann. § 4-5-301 et seq. and Chapter 1240-5.
 - (b) The only issue for the hearing officer to determine is whether the preponderance of the evidence, in light of the entire record, proves that the individual committed abuse, neglect, or exploitation of an adult.
 - (c) The hearing shall be held and a final order entered within ninety (90) days of the receipt of the request for an administrative hearing, unless the administrative process is stayed pursuant to Rule 1240-07-03-.06(9).
- (5) An individual who fails to make a timely request for a hearing may still be granted a hearing with a showing of good cause, which shall be limited to:
 - (a) A failure to receive the notice referred to paragraph (1) above;
 - (b) Severe illness; or
 - (c) Some other circumstance that substantially prevented the individual from making a request for a hearing.
- (6) If the individual fails to request a hearing, pursuant to either paragraph (2) or (5) above, the individual shall waive his or her right to a hearing. The Department's report regarding the indicated individual shall then be available for dissemination pursuant to Rule 1240-07-03-.07.
- (7) An individual shall be indicated as an alleged perpetrator if the preponderance of the evidence, in light of the entire record, proves that the individual committed abuse, neglect, or exploitation of an adult.
- (8) Review of the Department's decision is available as provided for in the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-301 et seq.
- (9) Stay of the Administrative Process.
 - (a) The Department shall stay all administrative proceedings under these rules if, prior to entry of a final order by the Department –
 - 1. The indicated individual has been arrested or indicted on criminal charges that are derived from the same allegations that lead to the indication; or
 - 2. The indicated individual is the subject of other administrative or civil proceedings that are derived from the same allegations that that lead to the indication.

- (b) The stay shall remain in effect until final resolution (including appeals) of the other judicial or administrative proceedings.
- (c) Upon issuance of the stay, the Department shall notify the indicated individual of the following:
 - 1. That the administrative process has been stayed pending the final outcome of judicial or other administrative proceedings concerning allegations of abuse, neglect, or exploitation of an adult involving the individual;
 - 2. That the administrative process will be reinstated at the point they were stayed only if the individual requests such in writing within thirty (30) days of the entry of a final order by the court or administrative tribunal or a verdict or other order by a criminal court, subject to the limitation of subparagraph (e)(1) below;
 - 3. That, if the individual fails timely to make such a written request, he or she shall waive his or her rights to an administrative hearing in regard to the report.
- (d) During the stay, no information regarding the indication will be released by the Department, unless the circumstances of 1240-07-03-.05 exist.
- (e) Reinstatement of the Administrative Process.
 - 1. If the evidence on which the individual was indicated as a perpetrator of abuse, neglect, or exploitation of an adult results in a criminal conviction or guilty plea for an offense against a vulnerable person, or if the individual is otherwise adjudicated in a civil or administrative proceeding as having perpetrated abuse, neglect or exploitation against the adult, then such conviction, plea, and/or adjudication will be conclusive evidence that the individual is the perpetrator indicated in the report. In this event, the individual will no longer have a right to a hearing under these rules with respect to this particular report. The administrative process will not be reinstated, and the Department may release information about the perpetrator as permitted under these rules.
 - 2. If the other criminal, civil or administrative proceedings do not result in the conviction or finding specified in part 1 above, then the administrative process will be reinstated at the point at which it was stayed upon request of the individual in writing within thirty (30) days of the entry of a final order by the court or other administrative tribunal or entry of a verdict by a criminal court.

Authority: T.C.A. §§ 4-5-202; 4-5-301 et seq.; 71-6-103(a).

1240-07-03-.07 Notice to Third Parties.

- (1) Organization(s) and Person(s) with Whom the Indicated Individual is Associated as a Paid Caregiver.
 - (a) Prior to completion of the administrative process, information regarding the indication can only be provided as permitted by Rule 1240-07-03-.05.
 - (b) Following final resolution of the case, whether by administrative hearing order, court order, or waiver by the indicated individual, notice of the final outcome shall be provided as indicated below:

1. That the classification of the individual as "indicated" was upheld and that the organization or person has a continuing obligation to assure that the indicated individual is not a threat to the safety of any adult in their care.
2. If notice was previously provided pursuant to Rule 1240-07-03-.05, that the classification of the individual as "indicated" was not upheld.

(2) Department of Health.

- (a) If, upon final resolution of the case, whether by administrative hearing order, court order, or waiver by the indicated individual, the classification of the individual as "indicated" is upheld, the Department shall provide notification of this finding to the Department of Health to have the name of the indicated individual included on the Vulnerable Persons Registry.
 1. Notification shall consist of a copy of a final administrative order, a judicial order, or other evidence indicating that the Department has afforded the individual an opportunity for an administrative due process hearing.
 2. Notification shall include the individual's last known mailing address, social security number, and the Department's definition of abuse, neglect, or misappropriation of property (exploitation) that it used in making the determination.
- (b) If the classification of the individual as "indicated" is upheld based upon a criminal adjudication as specified in Rule 1240-07-03-.07(e)(1), the Department shall provide to the Department of Health a copy of the criminal disposition from the Tennessee Bureau of Investigation, other federal, state or local law enforcement agency, court, or criminal justice agency, indicating that a criminal disposition against the named individual was the result of an offense against a vulnerable person.

Authority: T.C.A. §§ 4-5-202; 68-11-1004; 71-6-103(a).

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of may, 2008. (FS 05-18-08; DBID 858)