

## **PUBLIC NECESSITY RULES**

### **PUBLIC NECESSITY RULES NOW IN EFFECT (SEE T.A.R. CITED)**

- 0620 - Department of Finance and Administration - Bureau of TennCare - Public necessity rules implementing the provisions of any federal waiver or state plan amendment obtained pursuant to the Medical Assistance Act as amended by Acts 1993 - 5 T.A.R. (May 2004) - Filed April 28, 2004; effective through October 10, 2004. (04-20)
- 1360 - Department of Health - Administrative Procedures Division - Public necessity rule concerning hearings, rule 1360-4-1-.06 Service of Notice of Hearing, 3 T.A.R. (March 2004) - Filed February 27, 2004; effective through August 10, 2004. (02-14)

### **THE TENNESSEE COMMISSION ON AGING AND DISABILITY - 0030**

#### **STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES**

The Commission on Aging and Disability is required by the General Assembly in TCA 71-2-111 (b) to immediately implement these rules precluding the use of the usual rulemaking procedures.

For a complete copy of this public necessity rule, please contact Charles W. Hewgley, Tennessee Commission on Aging and Disability, 500 Deaderick Street, Suite 825, Nashville, TN 37243-0860, telephone (615) 741-2056.

Charles W. Hewgley  
Acting Executive Director

### **PUBLIC NECESSITY RULES OF TENNESSEE COMMISSION ON AGING AND DISABILITY**

#### **CHAPTER 0030-1-6 REQUIREMENT TO VERIFY BACKGROUND INFORMATION FOR NEW EMPLOYEES AND VOLUNTEERS**

## NEW RULES

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#### **0030-1-6-.01 PURPOSE.**

- (1) The Commission on Aging and Disability requires all contractors, grantees, subcontractors and service providers to verify individual background information for newly-hired employees and volunteers who provide direct care for, have direct contact with, or have direct responsibility for the safety and care of disabled or elderly persons in their homes.

#### **0030-1-6-.02 MINIMUM REQUIREMENTS.**

- (1) The following requirements shall be considered minimum requirements. Any provider agency subject to this part shall have the option to make more intensive background checks provided that the agency has established in writing the criteria and process for such checks.

#### **0030-1-6-.03 REPORTING PRIOR CONVICTIONS.**

- (1) A service provider agency shall require all applicants for pay or volunteer employment to list any prior conviction by any local, state, federal or military court of any felony or any other conviction involving sexual crimes, crimes against a person, fraud involving financial exploitation and/or substance abuse in a format prescribed by the Commission on Aging and Disability.
- (2) No in-home worker as described by 0030-1-6-.01 convicted of a felony or listed on the abuse registry or sex offender registry may serve participants of programs administered by the Commission on Aging and Disability.

#### **0030-1-6-.04 CHECKING EMPLOYMENT AND PERSONAL REFERENCES.**

- (1) The service provider agency shall check past work and personal references prior to employment of applicants.
  - (a) At a minimum the organization shall communicate directly with the most recent employer and each employer identified by the applicant as having employed the applicant for more than six (6) months in the past five (5) years.
  - (b) The organization shall communicate directly with at least two (2) of the personal references identified by the applicant.
  - (c) Within or prior to ten (10) days of employment, or volunteer affiliation, of such person, employing organizations shall begin the process of verifying background information as required by this subsection.

**0030-1-6-.05 REQUIREMENTS FOR EMPLOYEES OR VOLUNTEERS.**

- (1) As a condition of employment with a provider agency, any person who applies to work for the agency as an employee, or any volunteer, whose function would include direct contact with or direct responsibility for persons receiving home and community based services, if so requested by the employing agency, shall:
  - (a) Agree to the release of all investigative records from any source, including federal, state and local governments to the hiring organization for the purpose of verifying the accuracy of criminal violation information contained on an application to work for the organization;
  - (b) Supply fingerprint samples for the purpose of submitting for a criminal background investigation by the Tennessee Bureau of Investigation. If no disqualifying record is identified, the TBI shall, if so requested, send the fingerprints to the FBI for a national criminal history record check;
  - (c) Release information for a criminal background investigation by a state licensed private investigation company;
  - (d) Provide past work history containing a continuous description of activities over the past five (5) years; and/or
  - (e) Identify at least three (3) individuals as personal references, one (1) of whom shall have known the applicant for at least five (5) years.

**0030-1-6-.06 REQUIREMENTS FOR EMPLOYERS.**

- (1) Each provider agency must document in its personnel files for each employee or volunteer subject to this part:
  - (a) The applicant's statement of any prior convictions;
  - (b) The results of its check of personal and/or employment references;
  - (c) The results of a county criminal history check for each of the last two counties in which the applicant lived or worked, if such a check is performed;
  - (d) The results of the check of all Tennessee Department of Health databases of licensed health professionals including Certified Nursing Assistants (CNA);
  - (e) The results of any other checks which may have been requested by the provider agency, including background checks by the Tennessee Bureau of Investigation or the Federal Bureau of Investigation; and
  - (f) Justification/explanation of the decision to employ an individual if the background check identified negative information.

**0030-1-6-.07 CRIMINAL HISTORY BACKGROUND CHECKS.**

- (1) If the employing agency requests a criminal history background check to be conducted by the Tennessee Bureau of Investigation (TBI) or the Federal Bureau of Investigation (FBI), the process must be initiated

by the submission of fingerprint cards to the investigating agency. Any cost incurred by the TBI or the FBI shall be paid by the organization requesting the investigation and information. If a criminal history background check is conducted by the TBI or the FBI, the payment of all costs associated with the investigation shall be made in the amounts established by T.C.A. 38-6-103.

**Authority:** *T.C.A. §§ 4-5-201, 71-2-105(b)(1), and 71-2-111(b).*

The public necessity rules set out herein were properly filed in the Department of State on the 16th day of June, 2004, and will be effective from the date of filing for period of 165 days. These emergency rules will remain in effect through the day of 28th day of November, 2004. (06-32)

**THE TENNESSEE DEPARTMENT OF STATE - 1360  
DIVISION OF BUSINESS SERVICES**

**CHAPTER 1360-7-2  
NOTARY PUBLICS**

**STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES**

2004 Tenn. Public Acts, ch. 854, makes certain changes to Tennessee laws relating to Notaries Public effective July 1, 2004, including a change in the name of this official, and authorizes the Secretary of State to promulgate a notary seal design for such officials. As a result of this enactment by the General Assembly, the department is required to implement rules relating to the notary seal design that are effective no later than July 1, 2004, a period of time which precludes utilization of other rulemaking procedures under the Uniform Administrative Procedures Act for the promulgation of permanent rules. Promulgation of a public necessity rule is therefore necessary under TCA §4-5-209(a)(4).

For a copy of these public necessity rules, contact Bob Grunow, Director of Business Services, Department of State, William R. Snodgrass Tower, 6<sup>th</sup> Floor, 312 Eighth Avenue North, Nashville, TN 37243, and (615)-741-0584.

The text of these public necessity rules is as follows:

Public Necessity Rules

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1360-7-2-.01 Notary Public seal of office

**1360-7-2-.01 NOTARY PUBLIC SEAL OF OFFICE**

- (1) A notary public commissioned on or after July 1, 2004, shall use a notary seal that substantially conforms to the following design: a circular seal with the notary public's name as it appears on the commission printed at the top, the county of election printed at the bottom, and the words "State of Tennessee Notary Public" or "Tennessee Notary Public" printed in the center. A sample seal format appears below.