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# Emergency Rule Filing Form

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

<b>Agency/Board/Commission:</b>	Department of Health
<b>Division:</b>	Community Health Services
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**Rule Type:**  
 Emergency Rule

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

**Statement of Necessity:**

The "Eligibility Verification for Entitlements Act" requires that the Department obtain access to the Systematic Alien Verification for Entitlements (SAVE program) or the Student and Exchange Visitor Information System (SEVIS system) operated by the U.S. Department of Homeland Security. The Memorandum of Understanding issued by the Department of Homeland Security to permit the Department access to that system requires that the Department have an appeals process for those who are denied services. The purpose of these rules is to identify persons who are eligible for services, and to create a review process for those who are denied services. Adoption of emergency rules is necessary under Tenn. Code Ann. § 4-5-208(a)(4) and (5) in order to comply with the requirements of the United States Department of Homeland Security, an agency of the federal government, for access to the SAVE program, and to implement rules required by 2012 and 2013 enactments of the general assembly.

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

Chapter Number	Chapter Title
1200-37-01	Primary Care Services
Rule Number	Rule Title
1200-37-01-.01	Definitions
1200-37-01-.02	Applicability of This Part
1200-37-01-.03	Application for Primary Care Services
1200-37-01-.04	Reconsideration of Denial

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

New Rule  
1200-37-01  
Primary Care Services

1200-37-01-.01 Definitions.  
1200-37-01-.02 Applicability of This Part.  
1200-37-01-.03 Application for Primary Care Services.  
1200-37-01-.04 Reconsideration of Denial.

1200-37-01-.01 Definitions.

- (1) For the purpose of these regulations the terms used herein are defined as follows:
- (a) "Adult" means an individual aged eighteen or over.
  - (b) "Applicant" means an individual seeking primary care services.
  - (c) "Citizen" means a citizen of the United States, whether native-born or naturalized.
  - (d) "Clinic" means a site under the control of the Department or a county health department at which primary care services are offered to the public and which is not a federally qualified health center (FQHC).
  - (e) "Department" means the Tennessee Department of Health.
  - (f) "Emergency" means a medical or dental condition manifesting itself by acute systems of sufficient severity (including pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.
  - (g) "Exempt Services" means those services which are not subject to eligibility verification under the Eligibility Verification for Entitlements Act, T.C.A. §§ 4-58-101 et seq.
  - (h) "Federal public benefit"
    - 1. Has the same meaning as provided in 8 U.S.C § 1611; and
    - 2. Does not mean a benefit listed in 8 U.S.C. § 1611 (b).
  - (i) "Primary Care Services" means the basic level of health care generally rendered by general practitioners, family practitioners, internists, obstetricians, and pediatricians and advanced practice nurses and is offered at clinics.
  - (j) "Program Director" means the Department employee responsible for the overall supervision of primary care services for the Department.
  - (k) "Provider" means a health care professional working in a clinic.
  - (l) "Qualified alien" means: an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is:
    - 1. Lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. §§ 1101 et seq.];
    - 2. Granted asylum under section 208 of such Act [8 U.S.C. § 1158];
    - 3. Admitted to the United States under section 207 of such Act [8 U.S.C. § 1157];

4. Paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. § 1182 (d)(5)] for a period of at least 1 year;
5. One whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. § 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208) or section 241(b)(3) of such Act [8 U.S.C. § 1231(b)(3)] (as amended by section 305(a) of division C of Public Law 104–208);
6. Granted conditional entry pursuant to section 203(a)(7) of such Act [8 U.S.C. § 1153(a)(7)] as in effect prior to April 1, 1980; or
7. A Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980); or
8. An alien:
  - (i) who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and
  - (ii) who has been approved or has a petition pending which sets forth a prima facie case for:
    - (I) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act [8 U.S.C. § 1154(a)(1)(A)(ii), (iii), (iv)],
    - (II) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) of the Act [8 U.S.C. § 1154(a)(1)(B)(ii), (iii)],
    - (III) suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act [8 U.S.C. § 1254(a)(3)] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996),
    - (IV) status as a spouse or child of a United States citizen pursuant to clause (i) of section 204(a)(1)(A) of such Act [8 U.S.C. § 1154(a)(1)(A)(i)], or classification pursuant to clause (i) of section 204(a)(1)(B) of such Act [8 U.S.C. § 1154(a)(1)(B)(i)]; or
    - (V) cancellation of removal pursuant to section 240A(b)(2) of such Act [8 U.S.C. § 1229b(b)(2)]; or
  - (iii) whose child has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

- (iv) who meets the requirements of subpart (ii) of this part; or
  - (v) who has been granted nonimmigrant status under section 101(a)(15)(T) of the Immigration and Nationality Act (8 U.S.C. §1101(a)(15)(T)) or who has a pending application that sets forth a prima facie case for eligibility for such nonimmigrant status.
- (m) "SAVE program" means the systematic alien verification for entitlements program created pursuant to the federal Immigration Reform and Control Act of 1986, compiled in 8 U.S.C. §§ 1101 et seq., and operated by the United States department of homeland security, or any successor program thereto.
  - (n) "SEVIS system" means the student and exchange visitor information system created pursuant to section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208 (as amended), and operated by the United States department of homeland security, or any successor program thereto.
  - (o) "State or local public benefit"
    - 1. Means any public benefit as defined in 8 U.S.C. § 1621, that is provided or administered by a state governmental entity or a local health department; and
    - 2. Does not mean a benefit listed in 8 U.S.C. § 1621(b).

Authority: T.C.A. §§ 4-58-102, 68-1-103, 68-1-106, 68-2-603, 8 U.S.C. § 1641(b), and 2013 Acts, Pub. Chap. 120.

1200-37-01-.02 Applicability of This Part. This part shall apply to all primary care services offered in clinics, provided, however, that it shall not apply to:

- (1) Applicants under the age of eighteen;
- (2) Exempt services;
- (3) Emergency Services, including emergency dental services; or
- (4) Prenatal care.

Authority: T.C.A. §§ 4-58-102, 4-58-106, 4-58-110, 68-1-103, 68-1-106, and 68-2-603.

1200-37-01-.03 Application for Primary Care Services. Each adult applicant for services under this program shall attest to his/her status as a citizen or qualified alien and shall submit to verification of that status as follows:

- (1) Applicants claiming to be citizens shall present one of the following:
  - (a) A valid Tennessee driver license or photo identification license issued by the department of safety;
  - (b) A valid driver license or photo identification license from another state where the issuance requirements are at least as strict as those in Tennessee, as determined by the department of safety;
  - (c) An official birth certificate issued by a state, jurisdiction or territory of the United States, including Puerto Rico, United States Virgin Islands, Northern Mariana Islands, American Samoa, Swains Island, and Guam; provided, that Puerto Rican birth certificates issued before July 1, 2010, shall not be recognized under this rule;
  - (d) A United States government-issued certified birth certificate;

- (e) A valid, unexpired United States passport;
  - (f) A United States certificate of birth abroad (DS-1350 or FS-545);
  - (g) A report of birth abroad of a citizen of the United States (FS-240);
  - (h) A certificate of citizenship (N560 or N561);
  - (i) A certificate of naturalization (N550, N570 or N578);
  - (j) A United States citizen identification card (I-197, I-179);
  - (k) Any successor document of subparagraphs (1)(e) through (1)(j) above; or
  - (l) A social security number that the entity or local health department may verify with the social security administration in accordance with federal law.
- (2) Applicants claiming to be qualified aliens shall present two forms of documentation of identity and immigration status as determined by the United States Department of Homeland Security to be acceptable for verification through the SAVE program or SEVIS system.
  - (3) Where an applicant claiming to be a qualified alien presents only one form of documentation of identity described in (2) above, the clinic shall attempt to verify the applicant's status through the SAVE program or SEVIS system.
  - (4) If an applicant who claims eligibility as a qualified alien is unable to present two (2) forms of documentation as described in paragraph (2) above, then the applicant shall present at least one (1) such document that the entity or local health department shall then verify through the SAVE program or SEVIS system.
  - (5) Any document submitted pursuant to paragraphs (1) or (2) of this rule shall be presumed to be proof of eligibility until final verification is received from the SAVE program or SEVIS system.
  - (6) If the SAVE program or SEVIS system indicates that the applicant is not a citizen or qualified alien, the clinic shall deny future primary care services and shall pursue any appropriate action under T.C.A. §§ 4-58-104 or 4-58-105.

Authority: T.C.A. §§ 4-58-102, 4-58-104, 4-58-105, 4-58-106, 4-58-107, 4-58-108, 4-58-109, 4-58-110, 68-1-103, 68-1-106, 68-2-603, and 2013 Acts, Pub. Chap. 120.

#### 1200-37-01-.04 Reconsideration of Denial.

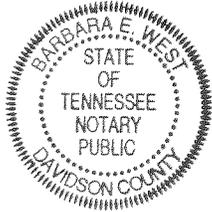
- (1) Applicants denied or removed from primary care services may request reconsideration.
  - (a) The applicant must request reconsideration in writing, directed to the Program Director, within twenty one (21) calendar days of denial or removal. The Program Director will issue a reconsidered decision in writing within fourteen (14) days of the request for reconsideration. The Program Director's review is limited to a determination of whether or not the applicant meets eligibility criteria. The decision of the Program Director is final.

Authority: T.C.A. §§ 4-58-102, 4-58-108, 4-58-110, 68-1-103, 68-1-106, and 68-2-603.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

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



MY COMMISSION EXPIRES:  
May 5, 2015

Date: 7/16/2013

Signature: Mary Kennedy

Name of Officer: Mary Kennedy

Deputy General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 07/16/2013

Notary Public Signature: Barbara E. West

My commission expires on: 05/15/2015

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

Robert E. Cooper, Jr.  
 Robert E. Cooper, Jr.  
 Attorney General and Reporter  
7-17-13  
 Date

**Department of State Use Only**

Filed with the Department of State on: 7/19/13

Effective for: 180 \*days

Effective through: 1/15/14

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

Tre Hargett long  
Mary Beth Inarow  
 POA  
 Tre Hargett  
 Secretary of State

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## **Impact on Local Governments**

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

This Chapter is expected to have no impact on local governments.

## **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.

These rules do not affect small businesses.

**Additional Information Required by Joint Government Operations Committee**

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

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

This rule provides applicants with clear guidance on the criteria for obtaining primary care services from a health department in accordance with the Eligibility Verification for Entitlements Act and how to request reconsideration if services are denied.

- (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;

Public Chapter 1061 (2012) creates the Eligibility Verification for Entitlements Act and gives authority for the promulgation of rules to assist in the enforcement of that Act. Public Chapter 120 (2013) adds the SEVIS system to the tools the Department may use to verify eligibility for services. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) gives the definition of "qualified alien" which is used in these rules.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The persons most affected by this rule are individuals seeking services from the health department.

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

None

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

No impact

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

Jan BeVille, MD, Bureau of Community Health and Mary Kennedy, Deputy General Counsel.

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

Jan BeVille, MD, Bureau of Community Health and Mary Kennedy, Deputy General Counsel.

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

Mary Kennedy, Deputy General Counsel, TDOH, 3<sup>rd</sup> Floor, Cordell Hull Building, 425 5<sup>th</sup> Avenue North, Nashville TN 37243, (615) 253-4878. [mary.kennedy@tn.gov](mailto:mary.kennedy@tn.gov); Jan BeVille, MD, Bureau of Community Health, TDOH, 4<sup>th</sup> Floor, Cordell Hull Building, 425 5<sup>th</sup> Avenue, North, Nashville TN 37243, (615) 741-0393, [jan.beville@tn.gov](mailto:jan.beville@tn.gov)

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

None at this time