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Sequence Number: 09-19-20
Rule ID(s): 4826
File Date: 09/20/2010
Effective Date: 12/19/2010

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

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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)**

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

(1) These rules shall apply to the:

- (a) Investigation of any report made to the Department of Human Services of a suspected case of abuse, neglect, or exploitation of an adult as defined by the Tennessee Adult Protection Act (the Act) in Title 71, Chapter 6, Part 1 of the Tennessee Code Annotated;
- (b) Release of information from the Department's adult protective services records; and
- (c) Department's indication of an individual as a perpetrator of abuse, neglect or exploitation of an adult as defined by the Act and subsequent placement on the Vulnerable Persons Registry contained in Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated; the release of such indication to protect vulnerable persons; and, for the administrative due process procedures associated with that placement or release.

(2) Administrative Due Process.

- (a) Administrative due process is provided by these rules to any paid caregiver who has been indicated by the Department as a perpetrator of abuse, neglect, or exploitation of an adult to determine the validity of the indication of such paid caregiver.
- (b) Administrative due process is not available under these rules for any individual who is indicated in an investigation of alleged abuse, neglect or exploitation, but who is not a paid caregiver; provided, however, if such individual becomes a paid caregiver, the administrative due process procedures of this Chapter shall apply.
- (c) The administrative due process provisions of this Chapter shall not apply to any release of information authorized pursuant Rule 1240-07-03-.03 except as otherwise specified by Rule 1240-07-03-.03(4) and this Chapter.

Authority: T.C.A. §§ 4-5-202; 68-11-1004; 71-6-101 et seq.; 71-6-102; 71-6-103(a).

1240-07-03-.02 Definitions.

- (1) "Abuse" means the infliction of physical pain, injury, or mental anguish on an adult as defined in this Chapter. Nothing in this Chapter shall be construed to mean a person is

abused or neglected or in need of protective services for the sole reason that the person relies on or is being furnished treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing in lieu of medical treatment.

- (2) "Adult" means a person eighteen (18) years of age or older who because of mental or physical dysfunctioning or advanced age is unable to manage such person's own resources, carry out the activities of daily living, or protect such person 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. Provided, however, that a person eighteen (18) years of age or older who is mentally impaired, but still competent, shall be deemed to be a person with a mental dysfunction for the purposes of this Chapter.
- (3) "Advanced Age" means sixty (60) years of age or older.
- (4) "Capacity to consent" means the mental ability to make a rational decision, which includes the ability to perceive, appreciate all relevant facts and to reach a rational judgment upon such facts. A decision itself to refuse services cannot be the sole evidence for finding the person lacks capacity to consent.
- (5) "Caretaker" means an individual or institution who has the responsibility for the care of the adult as a result of family relationship, or who has assumed the responsibility for the care of the adult person voluntarily, or by contract, or agreement.
- (6) "Department (DHS)" means the Department of Human Services.
- (7) "Exploitation" means the improper use by a caretaker of funds that have been paid by a governmental agency to an adult or to the caretaker for the use or care of the adult.
- (8) "Indicated perpetrator" or "indication" means a paid caregiver of an adult has been determined by the Department to have committed or to have caused to be committed abuse, neglect, or exploitation of an adult.
- (9) "Imminent danger" means conditions calculated to and capable of producing within a relatively short period of time a reasonable probability of resultant irreparable physical or mental harm or the cessation of life, or both, if such conditions are not removed or alleviated. However, the Department is not required to assume responsibility for a person in imminent danger pursuant to this Chapter except when, in the Department's determination, sufficient resources exist for the implementation of the Act.
- (10) "Investigation" means, but is not limited to, a personal interview with the individual reported to be abused, neglected, or exploited. When abuse or neglect is allegedly the cause of death, a coroner's or doctor's report shall be examined as part of the investigation.
- (11) "Misappropriation" means any taking, possession or use of the property of a vulnerable person the elements of which constitute any criminal offense involving such property, or which constitute a violation of a fiduciary duty of a caretaker of a vulnerable person.
- (12) "Neglect" means the deprivation of services by a caretaker 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 individual's health or welfare.
- (13) "Paid Caregiver" or "Paid Caretaker" means:

- (a) For purposes of indication of an individual as having committed abuse, neglect or exploitation of an adult, and for the purpose of providing due process prior to the release of information regarding such indication of abuse, neglect or exploitation of an adult, and for placement on the Vulnerable Persons Registry, a "paid caregiver" or "paid caretaker" is an individual who, for compensation, 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, but not limited to, in-home care or supervision of the adult or housekeeping services for the adult, medical, psychiatric, psychological, health, and/or health-related care or services, or, as part of any aspect of meeting the personal needs and care of the adult, has access to or control of the property of the adult:
1. Through employment or through contractual arrangement with the adult or through another individual or entity;
 2. By written or oral agreement with the adult; or
 3. By course of conduct between such individual and the adult.
- (b) For purposes of protecting vulnerable persons, a paid caretaker or paid caregiver is any person who has been indicated by the Department as a perpetrator of abuse, neglect or exploitation of an adult, who, for compensation, provides daily or periodic supervision of a vulnerable person or some level of service or activity directed toward meeting the personal needs and care of a vulnerable person, including, but not limited to, in-home care or supervision of the vulnerable person or housekeeping, child care or adult day care services for the vulnerable person, medical, psychiatric, psychological, health, and/or health-related care or services, to the vulnerable person, or, as part of any aspect of meeting the personal needs and care of the vulnerable person, has access to or control of the property of the vulnerable person:
1. Through employment or through contractual arrangement with the vulnerable person or through another individual or entity;
 2. By written or oral agreement with the vulnerable person; or
 3. By course of conduct between such individual and the vulnerable person.
- (c) A paid caretaker or paid caregiver does not include individuals who, individually or through employment or by contract with any entity, 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, brokerage house, accounting or legal or other business services by individuals licensed or representing themselves to be licensed to provide such services, nor does it include repair or construction work, food services, or professional services by other licensed or unlicensed individuals or by any individual through employment or contract with any entity that does not engage in providing services of the types described in subparagraph (a).
- (d) A financial institution is not a caretaker of funds or other assets, and is not a paid caretaker or paid caregiver of a vulnerable person unless such financial institution has entered into an agreement to act as a trustee of such property or has been appointed by a court of competent jurisdiction to act as a trustee with regard to the property of the adult.

- (14) "Property" means all interests of any type in real property, and any interests of any type in personal property whether in monies or financial instruments of any type, goods, furnishings, and similar property; provided, however, that for purposes of reporting to the registry established by T.C.A. 68-11-1001 et seq., property shall only consist of funds paid by a governmental agency to an "adult" as defined in T.C.A. § 71-6-102, if the report of abuse, neglect, exploitation is investigated by the Department of Human Services pursuant to Title 71, Chapter 6, Part 1 of the Tennessee Code Annotated.
- (15) "Protective Services" means services undertaken by the Department with or on behalf of an adult in need of protective services who is being abused, neglected, or exploited. These services may include, but are not limited to, conducting investigations of complaints of possible abuse, neglect, or exploitation to ascertain whether or not the situation and condition of the adult in need of protective services warrants further action; social services aimed at preventing and remedying abuse, neglect, and exploitation; services directed toward seeking legal determination of whether the adult in need of protective services has been abused, neglected or exploited and procurement of suitable care in or out of the adult's home.
- (16) "Sexual Abuse" means the forcing, tricking, threatening or otherwise coercing of an adult, as defined by these rules, by another individual into sexual activity, involuntary exposure to sexually explicit material or language, or sexual contact against such adult's will. Sexual abuse also means sexual activities or contact with another individual when the adult is unable to give consent.
- (17) "Vulnerable person" means anyone who:
- (a) Is under eighteen (18) years of age; or
 - (b) Is eighteen (18) years of age or older and, by reason of advanced age or other physical or mental condition, is vulnerable to or has been determined to have suffered from abuse, neglect or misappropriation or exploitation of property and is or has been:
 1. The subject of any report of harm, abuse, neglect, or exploitation of property made to any state agency or investigative authority with responsibility to investigate those reports pursuant to Tennessee Code Annotated, Title 37, Chapter 1, Parts 1 or 6, Title 71, Chapter 6, Part 1, or pursuant any other provision of law or regulation; or
 2. Receiving protective services from a state agency pursuant to law; or
 3. The victim of any criminal offense that constitutes abuse, neglect, or misappropriation or exploitation of property; or
 4. In the care of either a state agency, an entity that is licensed or regulated by a state agency, or in the care of an entity providing services under the provisions of a contract between that entity and a state agency; or
 5. Receiving services in the person's home from any agency licensed or regulated by or contracted to a state agency, including, but not limited to home and community-based services, home health care, or other health care-related services provided through state or federal funds to assist persons to remain in their homes.
- (18) "Vulnerable Persons Registry" or "Registry" means:

- (a) The registry established by the Department of Health under Tennessee Code Annotated, Title 68, Chapter 11, Part 10, containing the names of individuals who have abused, neglected vulnerable persons, or who have, exploited or misappropriated the property of vulnerable persons; and
- (b) That is used by employers when making decisions for employees or other service providers for positions which require background checks, such as for child care and adult day care agencies and other services to vulnerable persons, or by any governmental agency to review the status of persons subject to its regulatory oversight authority.

Authority: T.C.A. §§ 4-5-202; 68-11-1004; 71-6-101 et seq.; 71-6-102; 71-6-103(a).

1240-07-03-.03 Confidentiality of Records and Release of Information.

- (1) Except as otherwise provided pursuant to T.C.A. § 71-6-118 and these rules, all reports to the Department of abuse, neglect, or exploitation of an adult and the records of investigations of such reports are confidential.
- (2) A release of information from the records of the Department pursuant to these rules resulting from a report of abuse, neglect or exploitation of an adult, shall be for purposes directly connected with the administration of Title 71, Chapter 6, Part 1, of the Tennessee Code Annotated, including the administrative processes associated with designation of an individual as an indicated perpetrator of abuse, neglect or exploitation on the Vulnerable Persons Registry established by Title 68, Chapter 11, Part 10.
- (3) Information from the files, records and reports of the Department may be released for the following purposes:
 - (a) The use by authorized personnel of the Department for purposes directly connected with the administration of the Tennessee Adult Protection Act (the Act). Such purposes shall include, but are not limited to, the release of information by Department personnel to any other persons or entities who or which should, as determined by the Department, receive information regarding an adult from an adult protective service record, limited to the extent that is necessary, when:
 - 1. Conducting an investigation of abuse, neglect or exploitation of an adult, including an investigation of alleged abuse, neglect or exploitation of an adult by law enforcement officials;
 - 2. Providing protective services to the adult, including, but not limited to, medical, mental health, or rehabilitative care, public assistance eligibility determination, or other services necessary to protect the adult, or for the purpose of securing medical or mental, or other, evaluations to determine the adult caretaker's ability to provide adequate care for the adult;
 - 3. Providing information or services necessary for the purpose of implementing the processes required by the Vulnerable Persons Registry (the Registry) established by Title 68, Chapter 11, Part 10 to protect vulnerable persons. It shall not be a prerequisite to the release of information for the protection of vulnerable persons that the person's indication as a perpetrator of abuse, neglect or exploitation of an adult has resulted in placement on the Registry if the release of such information is consistent with the emergency release procedures under Rule 1240-07-03-.05; or

4. Conducting legal proceedings on behalf of the adult, pursuant to T.C.A. §§ 71-6-101 et seq., the conservatorship laws, or pursuant to other laws affecting the status of an adult, including disclosure to any attorney, attorney ad litem or guardian ad litem retained by or appointed for such person or other litigants.
 - (b) The disclosure of information from the Department's records to an employer or licensing authority of a paid caregiver that the person has been indicated as a perpetrator of abuse, neglect or exploitation of an adult for the purpose of preventing further abuse, neglect or exploitation of vulnerable persons; provided, however, the release of such information to an employer or licensing authority shall be consistent with the administrative due process provisions established by this Chapter.
 - (c) Release of information, including the identity of an alleged or indicated perpetrator of abuse, neglect or exploitation of an adult, to:
 1. Any state or federal law enforcement agency(ies), District Attorney or United States Attorney investigating or prosecuting a case of reported abuse, neglect, or exploitation of an adult; or
 2. Any state or federal grand jury by subpoena of such grand jury; or
 3. Presentation of evidence through Department staff by the District Attorney or United States Attorney to such grand jury regarding abuse, neglect, or exploitation of any adult;
 - (d) Release of information, including the identity of an alleged or indicated perpetrator, to any state or federal social service agency 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, exploitation or misappropriation of property; or
 - (e) Release of information, including the identity of an alleged or indicated perpetrator, to the court or administrative board or other tribunal, the officials or employees thereof in the performance of their duties, to the parties, or their legal representatives in any judicial or administrative proceeding or before any board, and to any administrative law judge or hearing officer in the course of their duties in any legal action involving the Department of Human Services before such courts, board or tribunal concerning the protection of vulnerable persons from abuse, neglect, or exploitation; provided that, in a situation when such court, administrative board, administrative law judge or hearing officer, other than the Department of Human Services, is adjudicating a case affecting the alleged perpetrator's ability to remain or become employed or licensed, such information shall be released only by order of the court, administrative law judge or hearing officer.
- (4) Release of the Identity of Alleged Perpetrator of Abuse, Neglect or Exploitation.
 - (a) Except as provided by Rules 1240-07-03-.03(3), 1240-07-03-.05 or 1240-07-03-.06(7)(e), prior to completion of the administrative hearing process for an indicated perpetrator provided for in Rule 1240-07-03-.06, the Department may only confirm that:
 1. An investigation of abuse, neglect, or exploitation of an adult has commenced or has been completed; and

2. A hearing involving the alleged perpetrator is currently pending if a timely request by the alleged perpetrator for an administrative hearing has been received by the Department.
- (b) Following the completion of administrative due process that upholds the Department's indication of a paid caregiver as a perpetrator or abuse, neglect or exploitation of an adult, the Department will disclose the identity of the indicated perpetrator as otherwise permitted by these Rules to any employer of the perpetrator who is a paid caretaker of a vulnerable person or to any licensing authority that licenses the paid caretaker of a vulnerable person, and to the Department of Health for placement of the perpetrator's name on that department's registry.

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

1240-07-03-.04 Investigation of Reports of Abuse, Neglect, or Exploitation.

- (1) Investigation of a report of abuse, neglect, or exploitation of an adult as defined under the Adult Protection Act contained in Title 71, Chapter 6, Part 1 of the Tennessee Code Annotated, shall be the responsibility of the Department's Adult Protective Services Division.
- (2) The process employed by Department staff for investigation and indication of an alleged perpetrator of abuse, neglect and exploitation of an adult under the Adult Protection Act contained in the Investigation Chapter and the Classification Chapter of the Policy and Procedures Manual of the Adult Protective Services Division of the Tennessee Department of Human Services, is incorporated herein by reference. The Policy and Procedures Manual is available to the public on the Department's website at <http://www.state.tn.us/humanserv/adfam/aps-manual.pdf>.
- (3) 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, but not limited to, other licensing and law enforcement authorities as appropriate.
- (4) The Report of Abuse, Neglect or Exploitation.
 - (a) A report of abuse, neglect, or exploitation of a particular adult shall include, to the extent available, the following information:
 1. For the adult, caretaker (if any), and alleged perpetrator:
 - (i) Name, street address, email address, phone number;
 - (ii) Date of birth and social security number;
 2. The gender, race, and ethnicity 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 complainant, if possible; and

5. Any other information that the individual believes might be helpful in proving the abuse, neglect, or exploitation.
- (b) Notification of a report of abuse, neglect or exploitation of an adult shall be made by the Department to the appropriate:
1. Law enforcement agency in all cases in which the report involves abuse, neglect or exploitation of the adult by another person or persons; and
 2. Licensing authority if the report concerns an adult who is, or at the time of the alleged harm was, receiving services from a facility that is required by law to be licensed under Title 63 of the Tennessee Code Annotated.
- (c) 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 and provision of services if the allegation is based upon new information, as specified in subparagraph (4)(a) above, which was not alleged in the prior report.
- (5) If, upon investigation, a report leads to the indication of a paid caregiver as a perpetrator of abuse, neglect, or exploitation, the Department shall provide a notice to the indicated perpetrator pursuant to 1240-07-03-.05 or 1240-07-03-.06.

Authority: T.C.A. §§ 4-5-202; 71-6-101 et seq.; 71-6-103(a).

1240-07-03-.05 Emergency Notification of Finding of an Indicated Perpetrator.

- (1) If the Department finds that a paid caregiver indicated as a perpetrator of abuse, neglect, or exploitation of an adult poses an immediate threat to the health, safety or welfare of a vulnerable person to whom the alleged perpetrator has access as a paid caregiver, the Department shall provide written notice of this finding as soon as practicable to the indicated individual and any organization(s) or individual(s) with whom the individual is associated as a paid caregiver or any authority which licenses or otherwise regulates the indicated perpetrator's ability to engage in an occupation or profession in which the person is a paid caregiver.
- (2) Notice to the indicated individual of the emergency release of the indication shall be in addition to the notice required by 1240-07-03-.04(5) and 1240-07-03-.06.
- (3) Notice to organizations or individuals with whom the indicated perpetrator is associated shall contain the following information:
 - (a) The organization or individual shall ensure that the indicated individual is not a threat to the health, safety or welfare of any vulnerable person in their care; and
 - (b) The indicated perpetrator has been notified of his / her rights to an administrative hearing on the allegations, and that the organization or individual shall be notified of the final decision; and
 - (c) The Department will seek injunctive relief pursuant to T.C.A. § 71-6-104 to prevent any violation of the requirements of this notice.
- (4) The indicated perpetrator shall continue to have the right to appeal the indication as specified in Rule 1240-07-03-.06 after emergency notification is sent pursuant to this rule.

Authority: T.C.A. §§ 4-5-202; 71-6-101 et seq.; 71-6-103(a); 71-6-104.

1240-07-03-.06 Notice to and Administrative Hearings for Indicated Perpetrators.

- (1) Notice to paid caregivers who have been indicated as perpetrators following the investigation of abuse, neglect or exploitation shall contain the following:
 - (a) The paid caregiver has been indicated as the perpetrator of abuse, neglect, or exploitation of an adult in a report investigated by the Department and a summary of the basis for the indication;
 - (b) The indicated perpetrator may, within ten (10) business days of the date of the notice, request an administrative hearing by submitting a written request for an administrative hearing to the Tennessee Department of Human Services, Appeals and Hearings Division;
 - (c) Subject to the requirements of the Uniform Administrative Procedures Act, Tennessee Code Annotated, §§ 4-5-301 et seq., a decision resulting from the administrative hearing that upholds the Department's indication of the individual as a perpetrator will result in the placement of the indicated perpetrator's name on the Vulnerable Persons Registry, and that the Department may also, as a result of such decision, release the fact that the paid caregiver has been found to be a perpetrator of abuse, neglect or exploitation of an adult, and, as a result, such finding, placement of the individual's name on the Vulnerable Persons Registry and release of information regarding the finding, the paid caregiver's ability to provide care, supervision, treatment or other related services to vulnerable persons as a paid caregiver may be adversely impacted; and
 - (d) That failure to submit a written request for an administrative hearing within ten (10) business days, absent a showing of good cause, shall be a waiver of the right to the administrative due process proceeding and shall cause the indication of the paid caregiver as a perpetrator to become final and qualified for disclosure for any purposes necessary to protect vulnerable persons.
- (2) Except as specified in paragraph (10) below and Rules 1240-07-03-.03(3) and 1240-07-03-.05, an administrative hearing shall be available to all paid caregivers who have been indicated by the Department as a perpetrator of abuse, neglect or exploitation of an adult prior to:
 - (a) The release of any information to the Department of Health for purposes of placement of the name of the perpetrator on the Vulnerable Persons Registry; or
 - (b) The release by the Department of any information as to the perpetrator's indicated status to any organization(s) or individual(s) with whom the indicated perpetrator is associated as a paid caregiver.
- (3) To initiate a timely appeal of the notice of indication as a perpetrator of abuse, neglect, or exploitation, an indicated perpetrator shall submit a written request for an administrative hearing to the Tennessee Department of Human Services, Appeals and Hearings Division, within ten (10) business days of the date of the notice from the Department notifying the alleged perpetrator of the indication.
- (4) If the indicated perpetrator timely requests a hearing, the Department shall schedule a hearing and give the indicated perpetrator adequate notice of the hearing, as provided by Rule 1240-05-04-.01(2)(h).

- (5) An indicated perpetrator who fails to timely request a hearing may still be granted a hearing upon a showing of good cause, which shall be limited to:
 - (a) Proof by the indicated perpetrator of failure to receive the notice required by paragraph (1) above;
 - (b) Severe illness of the perpetrator or severe illness or death of a close family member that prevented the indicated perpetrator from timely requesting a hearing; or
 - (c) Some other circumstance that clearly prevented the indicated perpetrator from making a timely request for a hearing.
- (6) If the indicated perpetrator fails to request a hearing, or fails to show good cause pursuant to paragraph (5) above, the indicated perpetrator's right to a hearing is waived. The Department's indication of the person as a perpetrator of abuse, neglect or exploitation shall then be available for dissemination for purposes consistent with this Chapter.
- (7) Stay of the Administrative Process.
 - (a) The Department may stay all administrative proceedings under these rules if, prior to entry of a final order by the Department:
 - 1. The indicated perpetrator has been arrested or indicted for, or otherwise charged with, any criminal offense derived from the same allegations that led to the indication by the Department of abuse, neglect or exploitation by the alleged perpetrator; or
 - 2. The indicated perpetrator is the subject of other administrative or civil judicial proceedings that are derived from the same allegations that led to the indication of abuse, neglect or exploitation by the Department in which a determination is to be made about whether the indicated perpetrator abused, neglected or exploited the adult who was the subject of the report to the Department.
 - (b) The stay, if entered, shall remain in effect until final resolution (including appeals) of the other judicial or administrative proceedings, unless the hearing officer determines, upon motion of a party to the case, that the proceeding should continue, or the stay is otherwise lifted pursuant to subparagraph (d).
 - (c) Upon issuance of the stay, the Department shall notify the indicated perpetrator 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 indicated perpetrator;
 - 2. That the administrative process will be reinstated at the point it was stayed only if the indicated perpetrator requests reinstatement in writing to the Department's Appeals and Hearings Division 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 which has adjudicated the same allegation that led to the indication of abuse, neglect or exploitation by the

Department, subject to the limitations of subparagraph (g) and paragraph (10) below;

3. That, if the indicated perpetrator fails to timely make such a written request, he or she shall waive his or her rights to an administrative hearing in regard to the report, and the indication of the individual as a perpetrator shall be disseminated as otherwise permitted pursuant to this Chapter.

(d) Lifting of Stay on Motion of the Parties.

If notification pursuant to subparagraph (c) is provided, and the indicated perpetrator has previously timely appealed the notice of indication, then, notwithstanding any other rule of the Department to the contrary, the indicated perpetrator or the Department may move that the administrative proceedings adjudicating the issue of abuse, neglect or exploitation of an adult by the indicated perpetrator be set for hearing, and the hearing officer may lift such stay and proceed with the determination of the issue of whether the indicated perpetrator committed abuse, neglect, or exploitation of a adult.

(e) Release of Information During Stay.

During the stay, other than to disclose that the alleged perpetrator has pending administrative or judicial proceedings to adjudicate the allegations of abuse, neglect or exploitation of a adult, and except as provided pursuant to 1240-07-03-.03(3), or, unless the circumstances of subparagraph (f) exist, no information regarding the status of the indication will be released by the Department.

(f) Emergency Release of Information During Stay and Notice of Emergency Release.

If, during the stay, the Department's staff determine that the indicated perpetrator poses an immediate threat to the health, safety or welfare of a vulnerable person to whom the indicated perpetrator has access, then, pursuant to 1240-07-03-.05, the Department will notify the indicated individual of such determination and any organization(s) or individual(s) with whom the individual is associated as a paid caregiver.

(g) Conclusion or Reinstatement of the Administrative Process.

1. If the same or similar evidence on which the paid caregiver was indicated by the Department as a perpetrator of abuse, neglect, or exploitation of an adult results in a criminal conviction or guilty or no contest plea for an offense against a adult, or, if the indicated perpetrator is otherwise adjudicated by a preponderance of the evidence in a civil or administrative proceeding as having perpetrated abuse, neglect or exploitation against the adult who was the subject of the report to the Department, then, following resolution of any appeals of 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 that 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 proceedings do not result in the conviction or finding specified in part 1 above, then, 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, the administrative process will be reinstated at the point at which it was stayed.

3. If the indicated perpetrator fails to make the written request specified in part 2 above within thirty (30) days from entry of a final order in the other proceedings (including appeals), the indicated perpetrator shall waive his or her rights to an administrative hearing in regard to the report, and the indication of the individual as a perpetrator shall become final and disseminated as otherwise permitted pursuant to this Chapter.

(8) Hearing Process.

- (a) The hearing shall be conducted by a hearing officer in the Appeals and Hearings Division of the Department of Human Services in accordance with the provisions of the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq., this Chapter and Chapter 1240-05 of the rules of the Department of Human Services.
 - (b) The only issue for the hearing officer to determine shall be whether the preponderance of the evidence, in light of the entire hearing record, proves that the indicated perpetrator 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(7).
- (9) Review of the Department's decision is available as provided in the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq.
- (10) Nothing in this Chapter shall be construed to require the expunction of any information from internal case records maintained by the Department based upon any finding contrary to the Department's indication of a person as a perpetrator of abuse, neglect or exploitation.

Authority: T.C.A. §§ 4-5-202; 4-5-301 et seq.; 71-6-101 et seq.; 71-6-103(a).

1240-07-03-.07 Notice of Perpetrator Status to Third Parties.

- (1) Organizations and Individuals with Whom the Indicated Perpetrator is Associated as a Paid Caregiver.
 - (a) Prior to completion of administrative due process, information regarding the indication can only be provided to third parties as permitted by Rules 1240-07-03-.03, 1240-07-03-.05 or 1240-07-03-.06(7)(e) and (f).
 - (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 specified below:
 1. If the indication of the paid caregiver as a perpetrator of abuse, neglect, or exploitation of an adult was upheld, the organization or individual has a continuing obligation to assure that the indicated perpetrator is not a threat to the safety of vulnerable persons in their care;
 2. If notice was previously provided pursuant to Rule 1240-07-03-.05, that the indication of the paid caregiver as a perpetrator was not upheld the

organization or individual no longer has a continuing obligation pursuant to the previously provided notice to assure that the paid caregiver is not a threat to the safety of any vulnerable person in their care; and

3. If the indication of the paid caregiver as a perpetrator of abuse, neglect, or exploitation of an adult was upheld, the Department may provide notice of the person's status as an indicated perpetrator of abuse, neglect or exploitation to any organization or to any individual with which or with whom the person is associated as a paid caregiver or to any licensing authority of such person or the licensing authority of such organization or individual with which or with whom the person is associated as a paid caregiver.

(2) Vulnerable Persons Registry of the 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 indication of the paid caregiver as a perpetrator is upheld, the Department shall provide notification of this finding to the Department of Health to have the name of the indicated perpetrator included on the Vulnerable Persons Registry pursuant to the criteria established by T.C.A. § 68-11-1004.
 1. Notification shall consist of a copy of a final administrative order, a judicial order, or other evidence verifying that the Department or other tribunal has afforded the indicated perpetrator an opportunity for an administrative or judicial due process hearing regarding allegations of abuse, neglect or exploitation of a adult who was the subject of a report and investigation under T.C. A. §§ 71-6-101 et seq.
 2. Notification shall also include the individual's last known mailing address, the definition of abuse, neglect, or exploitation as specified in Rule 1240-07-03-.02 above, and any other information that the Department of Health determines is necessary to adequately identify such individual for purposes of administrative hearings provided by T.C.A. § 68-11-1004 or to adequately identify such individual when inquiry to the Registry is made.
- (b) If the indication of the paid caregiver as a perpetrator is upheld based upon a criminal adjudication, 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, verifying that a criminal disposition against the named individual was the result of an offense against a adult for whom an investigation was also conducted by the Department of Human Services pursuant to T.C.A. §§ 71-6-101 et seq.

Authority: T.C.A. §§ 4-5-202; 68-11-1004; 71-6-101 et seq., 71-6-103(a).

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services on 07/23/2010, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 05/29/08

Rulemaking Hearing(s) Conducted on: (add more dates). 07/17/08; 07/22/08; 07/24/08



Date: 7/23/10

Signature: DK Summers

Name of Officer: Kim Summers

Deputy General Counsel

Title of Officer: Tennessee Department of Human Services

Subscribed and sworn to before me on: July 23, 2010

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.

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.

Attorney General and Reporter

9-14-10

Date

Department of State Use Only

Filed with the Department of State on: 9/20/10

Effective on: 12/19/10

Tre Hargett

Tre Hargett
Secretary of State

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SECRETARY OF STATE
PUBLICATIONS

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.

Date(s), Time(s) and Place(s) of Public Hearing(s):

Nashville, Tennessee: Citizens Plaza State Office Building, Fifteenth Floor Auditorium, 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.

Public hearings were held on the dates, times and places noted above by the Department of Human Services to receive comments regarding the new rules. No comments were received.

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.

Current law at Tennessee Code Annotated, §§68-11-1006 already requires an entity licensed by a state agency such as a nursing home or child care agency or adult day care center, or that has a contract with a state agency, and that provides care for vulnerable persons to check the Vulnerable Persons Registry maintained by the Department of Health and prohibits them from hiring or using a person as a volunteer who is found on the Registry who has been determined by a state agency to have abused, neglected, exploited or misappropriated the property of a vulnerable person. These rules are intended to provide a due process mechanism for placement of indicated perpetrators of abuse, neglect or exploitation of an adult on that Registry as currently required by law. The impact of Chapter 1240-07-03 upon small businesses would be that persons who are indicated as perpetrators of abuse, neglect or exploitation of an adult would not be permitted to work in those businesses, however, the overall impact upon small business is not estimated to be significant due to the relatively small number of paid caregivers who will be indicated as perpetrators of abuse, neglect or exploitation of an adult pursuant to the Adult Protection Act.

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 TCA 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 Adult Protective Services (APS) Due Process Rules are the first set of rules introduced for the APS program, therefore, there is no impact on any other rule in the program. APS is the mandated agency to investigate allegations of abuse, neglect and exploitation of vulnerable adults. The enactment of this rule will enable the APS program to more adequately protect the vulnerable population of Tennessee on a larger scale by allowing the Department to place the name of indicated perpetrators on the Vulnerable Persons Registry. When APS investigates a referral on a vulnerable adult being abused, neglected or exploited by a paid caregiver and there is sufficient evidence after the investigation to determine that the paid caregiver is responsible for the abuse, neglect or exploitation of a vulnerable adult, the individual is indicated. Currently when a paid caregiver is indicated, the only means to notify the agency of one of their employees has been indicated is to file an injunction against the perpetrator in Court.

The Due Process Rules will provide a specific set of guidelines which will enable the release of the name an indicated paid caregiver to the Vulnerable Persons Registry and will allow APS to notify the employer of the indication after due process. Agencies working with the vulnerable adult population are required to complete a background check of potential employees and this background check process requires checking the Vulnerable Persons Registry. Enactment of these rules will provide a more comprehensive data base, better ensuring the protection of vulnerable adults.

These rules also provide measures that will preserve the rights of paid caregivers who have been investigated by APS and indicated as a perpetrator. In order for APS to be able to release the name of an indicated paid caregiver, these rules set out specific, stringent activities that must be accomplished in order to ensure that APS is not adversely affecting an individual's right to employment without the proper evidence.

- (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;

Tenn. Code Ann. § 68-11-1004 requires notification to the Department of Health of an indicated perpetrator following receipt of due process for purposes of placing the name of the individual on the State's Vulnerable Persons Registry. These rules provide for the necessary due process for individuals who are indicated of abuse, neglect or exploitation of a vulnerable adult in the context of an adult protective services investigation.

- (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;

Individuals impacted by the enactment of these rules are those individuals who are employed as paid caregivers for vulnerable adults, have been investigation by APS for abuse, neglect or exploitation of a vulnerable adult and have been determined to be an indicated perpetrator. If these individuals are represented by an employee associations or union, the expectation would be that these entities would be opposed to these rules as they would impact on future employment of the indicated individual

Organizations, corporations or governmental entities directly impacted would be Tennessee Mental Health and Developmental Disabilities, Tennessee Division of Intellectual Disabilities, Tennessee Department of Health, Tennessee Department of Human Services and all agencies who contract with or are licensed by the aforementioned agencies. Since these entities are in the business of providing services to vulnerable adults, it is expected that they would urge the adoption of this rule.

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

AG Opinion 87-184 addresses the perimeters for release of information obtained during an APS investigation. Release of information pursuant to these due process rules is consistent with this opinion.

- (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;

These rules have no projected financial impact on either state or local governments.

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

Vickie Lawson, Director, Adult Protective Services

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

Vickie Lawson, Director, Adult Protective Services
Kim Summers, Deputy General Counsel, Department of Human Services

- (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

Vickie Lawson, Director, Adult Protective Services
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Kim Summers, Deputy General Counsel
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(615) 313-4731
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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

N/A