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# Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

**Agency/Board/Commission:** Debt-Management Services  
**Division:** Division of Regulatory Boards  
Department of Commerce and Insurance  
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**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0780-05-18	Debt Management Services
Rule Number	Rule Title
0780-05-18-.01	Purpose of Rules
0780-05-18-.02	Short Title
0780-05-18-.03	Retained Powers
0780-05-18-.04	Definitions
0780-05-18-.05	Administration of Act
0780-05-18-.06	Applicability
0780-05-18-.07	Registration Application
0780-05-18-.08	Renewal of Registration
0780-05-18-.09	Fees

0780-05-18-.10	Submission of Information
0780-05-18-.11	Standards of Practice
0780-05-18-.12	Examinations, Records, and Reports
0780-05-18-.13	Fingerprinting
0780-05-18-.14	Inflationary Adjustment
0780-05-18-.15	Accreditation
0780-05-18-.16	Certification
0780-05-18-.17	Severability

<b>Chapter Number</b>	<b>Chapter Title</b>
0780-08-01	Debt Management Services
<b>Rule Number</b>	<b>Rule Title</b>
0780-08-01-.01	Purpose of Rules
0780-08-01-.02	Short Title
0780-08-01-.03	Retained Powers
0780-08-01-.04	Definitions
0780-08-01-.05	Administration of Act
0780-08-01-.06	Applicability
0780-08-01-.07	Registration Application
0780-08-01-.08	Renewal of Registration
0780-08-01-.09	Fees
0780-08-01-.10	Submission of Information
0780-08-01-.11	Standards of Practice
0780-08-01-.12	Examinations, Records, and Reports
0780-08-01-.13	Severability

(Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to [http://sos.tn.gov/sites/default/files/forms/Rulemaking\\_Guidelines\\_August2014.pdf](http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf))

## Debt-Management Services

### New Rules

0780-05-18

### Rules

Of

Tennessee Department Of Commerce And Insurance

Division Of Consumer Affairs

0780-05-18

Rules And Regulations For Debt Management Services

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#### 0780-05-18-.01 Purpose of Rules.

The purpose of these rules is to institute the registration and regulation of providers of debt-management services and to protect the interests of consumers as required by the Uniform Debt-Management Services Act.

Authority: T.C.A. §§ 47-18-5501 and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

#### 0780-05-18-.02 Short Title.

These rules may be cited as the Tennessee Debt-Management Services Rules.

Authority: T.C.A. § 47-18-5501. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

#### 0780-05-18-.03 Retained Powers.

It is the express intent of these rules that such powers as are herein delegated by the Administrator are also retained and may be exercised by the Administrator at the Administrator's election.

Authority: T.C.A. § 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

#### 0780-05-18-.04 Definitions.

- (1) When used in these rules and in the Uniform Debt-Management Services Act, unless the context otherwise requires:

- (a) "Act" shall mean Chapter 469 of the Public Acts of 2009, otherwise known as the Uniform Debt-Management Services Act, and its codification in Tennessee Code Annotated.
  - (b) "Branch office" means any office of a provider within this state other than its principal place of business within this state.
  - (c) "Director" shall mean the Director of the Division of Regulatory Boards of the Department of Commerce and Insurance of the State of Tennessee.
  - (d) "Division" shall mean the Director, staff, employees, and agents of the Division of Regulatory Boards of the Department of Commerce and Insurance of the State of Tennessee or such other agency as shall administer the Act.
  - (e) "UAPA" shall mean the Uniform Administrative Procedures Act as set forth in T.C.A. § 4-5-101, et seq., and any rules promulgated pursuant thereto to the extent such rules are not inconsistent with the Act or these rules.
- (2) Unless the context otherwise requires or a rule expressly provides otherwise, terms defined in the Act shall have the same meaning when used in these rules.

Authority: T.C.A. §§ 47-18-5502 and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.05 Administration of Act.

(1) General

- (a) The Administrator delegates to the Director all of the power and duties granted to and imposed upon the Administrator by the Act except the power:
  - 1. to issue orders and impose any sanction pursuant to T.C.A. §§ 47-18-5533 (a)(1),(2),(3) and (b), or 47-18-5534(b) and (c) in any contested case, as such term is defined in the UAPA; and
  - 2. to adopt any rule as such term is defined in the UAPA.
- (b) Without limiting the foregoing delegation, the Director is expressly empowered to:
  - 1. conduct examinations and investigations as provided by T.C.A. § 47-18-5532(b);
  - 2. issue registrations; and
  - 3. accept on behalf of the Administrator settlement agreements reached between the Division and any person pursuant to T.C.A. § 4-5-105.
- (c) Nothing herein limits the Director's authority, duties, or responsibilities set forth elsewhere in state law, regulation, or rule.

(2) Filing Requirements

- (a) Applications, financial statements, reports, educational materials, and other information shall be filed on good quality white paper, 8½ by 11 or 8½ by 14 inches in size.
- (b) All documents filed with the Division shall be in clear and easily readable form and suitable for photocopying.
- (c) Exhibits may be attached or filed separately and shall be properly marked or identified.

- (d) Each copy of educational materials and financial analysis models must be bound securely. The Division reserves the right to reject any such document the pages of which are not securely bound together.
  - (e) All applications, reports, financial statements, correspondence, educational materials, financial analysis models, exhibits and other information required or requested pursuant to the Act or these rules may be submitted to the Division in the paper format prescribed in this subpart (e) or through electronic data-gathering, access, retrieval, and storage methods acceptable to the Division.
  - (f) Unless expressly required or requested, only the original executed copy of each form is required.
- (3) Upon a request for records under Tennessee's Public Records Act, T.C.A. § 10-7-501 et seq., the Division shall assess reasonable charges for copying and associated labor.

Authority: T.C.A. §§ 47-18-5501, 47-18-5505, 47-18-5506, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.06 Applicability.

- (1) A person forming an agreement to provide debt-management services and any person to whom the account is then transferred are providers subject to the provisions of the Act.
- (2) Any person conducting business in this state as a provider must apply to the Division to become registered.
- (3) Debt-management services do not include:
  - (a) legal services provided by an attorney licensed and in good standing in Tennessee during the entire time services are provided and in an attorney-client relationship;
  - (b) accounting services provided by a certified public accountant licensed and in good standing in Tennessee during the entire time services are provided and in an accountant-client relationship;
  - (c) financial planning services provided in a financial planner-client relationship by a person who is either licensed as an insurance provider and in good standing or registered as an investment adviser representative and in good standing in this state and who holds one of the following professional designations during the entire time services are provided:
    - 1. Certified Financial Planner (CFP), awarded by the Certified Financial Planner Board of Standards, Inc.;
    - 2. Chartered Financial Consultant (ChFC), awarded by the American College of Financial Services, Bryn Mawr, PA;
    - 3. Personal Financial Specialist (PFS), awarded by the American Institute of Certified Public Accountants;
    - 4. Chartered Financial Analyst (CFA), awarded by the Institute of Chartered Financial Analysts; or
    - 5. Chartered Investment Counselor (CIC), awarded by the Investment Counsel Association of America, Inc.
  - (d) services provided within the scope of the business or profession of:
    - 1. a judicial officer or person acting under court order or administrative order;
    - 2. an assignee for the benefit of creditors;

- 3 a bank or government regulated bank affiliate;
4. a title insurer, escrow company, or person providing bill-paying services if the provision of debt-management services is incidental to the bill-paying services.

Authority: T.C.A. §§ 47-18-5502, 47-18-5503 and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.07 Registration Application.

- (1) Applications for registration shall be submitted on forms approved by the Director.
- (2) Any application submitted without required information or failing to meet any requirement for registration will be held by the program office, and written notification of the information that is lacking or the reason(s) the application does not meet the requirements for registration will be sent to the applicant. The application will be held in "pending" status for a reasonable period of time, but such period is not to exceed one hundred eighty (180) days from the date of application. If the applicant fails to timely and completely respond to the written notification, the application will be closed.
- (3) Upon determination that an application submitted directly to the Division has been abandoned, the Division shall by Order of Abandonment cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.
- (4) Any application once submitted may be withdrawn, provided, however, that the application fee shall not be refunded.
- (5) Applications must be complete before they are submitted for consideration. Applications shall at a minimum include:
  - (a) a complete and properly executed application form signed under penalty of perjury and before a notary by the person applying;
  - (b) a non-refundable application fee;
  - (c) a surety bond as required by T.C.A. § 47-18-5513, or an acceptable surety alternative that complies with the provisions of T.C.A. § 47-18-5514;
  - (d) evidence of insurance as required by T.C.A. § 47-18-5505(b)(4) in the amount of two hundred and fifty thousand dollars (\$250,000).
    1. Any insurance policy submitted by a provider as evidence of insurance required by the Act shall include the insurer's written agreement to provide the Administrator with written notice of termination or reduction of the policy, which shall be sent by certified U.S. mail to the Division.
    2. For purposes of administering the Act, the insurer's termination or reduction of liability shall be effective from and after the expiration of sixty (60) days from the Division's receipt of such written notice or on such later date as is stated in the written notice. The insurer's termination or reduction of liability shall not affect, reduce, or release its liability for any acts or practices that occurred during the time the policy was in force and prior to the effective date of termination or reduction of the policy.
  - (e) the charter or articles of organization of the applicant;
  - (f) a description of any ownership interest of greater than ten percent (10%) by a director, owner, or employee of the applicant in:

1. any affiliate of the applicant; or
  2. any entity that provides products or services to the applicant or any individual related to the applicant's debt-management services.
- (g) the name and address of each entity that owns an interest in or is otherwise affiliated with or controls, directs, or influences the operations of the applicant;
  - (h) the name and address of each entity in which the applicant owns an interest or is otherwise affiliated with or whose operations are controlled, directed, or influenced by the applicant;
  - (i) the names and addresses of all employers of each of the applicant's directors during the immediately preceding ten (10) years;
  - (j) the names, addresses, and amounts of compensation for the five (5) most highly compensated employees of the applicant for each of the three (3) years immediately preceding the application, or the period of the applicant's existence if less than three (3) years, if the applicant meets any of the criteria outlined in T.C.A. § 47-18-5506(17);
  - (k) the identity of each director who is an affiliate as defined by T.C.A. § 47-18-5502(2);
  - (l) evidence of tax-exempt status under the Internal Revenue Code, 26 U.S.C. §501, if applicant is a not-for-profit corporation and exempt from taxation;
  - (m) consent to jurisdiction of the State of Tennessee and venue in Davidson County, Tennessee;
  - (n) disclosure of and identification information for all trust accounts;
  - (o) irrevocable consent to the authority of the Administrator to review and examine all trust accounts;
  - (p) applicant's financial statements prepared in accordance with the provisions of T.C.A. § 47-18-5506(7);
  - (q) evidence of the applicant's accreditation by an independent accrediting organization approved by the Director;
  - (r) evidence of certification by an independent certifying program approved by the Director of all counselors and debt specialists conducting business in this state on behalf of the applicant;
  - (s) detailed descriptions of the three most common education programs provided by the applicant to Tennessee consumers and copies of all materials associated with the education programs;
  - (t) a description of the applicant's financial analysis and initial budget plan, including any form or electronic model used by the applicant to evaluate the financial conditions of Tennessee consumers;
  - (u) copies of each agreement form provided by the applicant to Tennessee consumers and any other documents or information required to be signed by or provided to a Tennessee consumer;
  - (v) a schedule of all fees and charges, including any recommended donations, provided by the applicant to Tennessee consumers;
  - (w) sworn criminal history records checks, including fingerprints, conducted within the immediately preceding twelve (12) months for the purpose of providing debt-management services, for every officer of the applicant and every employee or agent who is authorized to have access to the applicant's trust account(s). The sworn criminal history records check must be submitted directly by the criminal history records check provider to the Division. Applicants who have had these sworn criminal history records checks performed for the purpose of providing debt-management services in another state within twelve (12) months prior to submitting the application may have

the results of those records checks submitted directly by the other state to the Division as certified business records of the other state.

- (x) disclosure of any debt-management services agreements or plans entered into with Tennessee consumers since June 23, 2009; and
  - (y) any other information required to determine whether the application should be approved or denied.
- (6) An applicant shall notify the Division within ten (10) days after a change occurs in any information originally reported in the initial registration application.

Authority: T.C.A. §§ 47-18-5504, 47-18-5505, 47-18-5506, 47-18-5507, 47-18-5508, 47-18-5509, 47-18-5510, 47-18-5513, 47-18-5514, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.08 Renewal of Registration.

- (1) Registrations shall expire on the last day of the twenty-fourth (24<sup>th</sup>) month following their issuance or renewal and shall become invalid on such date unless renewed prior to their expiration date.
- (2) Renewal applications must be received by the Division not less than thirty (30) days or more than sixty (60) days prior to the expiration of a registration.
- (3) A provider choosing not to renew its registration shall notify the Division of its intention prior to the expiration date of the registration and shall surrender the registration certificate to the Division immediately upon its expiration.
- (4) Applications for the renewal of registrations shall be made on forms provided by the Director.
- (5) Applications for renewals will not be considered filed until the applicable fee prescribed in these rules and all other information required pursuant to the Act and these rules are received.
- (6) Applicants are responsible for annual renewal whether or not a notice of renewal is received from the Administrator.
- (7) A provider's application for renewal of its registration shall include at a minimum:
  - (a) a complete and properly executed renewal application form signed by the provider's representative under penalty of perjury before a notary;
  - (b) the applicable non-refundable renewal application fee as provided in Rule 0780-05-18-.09, below;
  - (c) a surety bond as required by T.C.A. § 47-18-5513, or an acceptable surety alternative that complies with the provisions of T.C.A. § 47-18-5514;
  - (d) evidence of insurance as required by T.C.A. § 47-18-5505(b)(4) in the amount of two hundred and fifty thousand dollars (\$250,000);
    - 1. Any insurance policy submitted by a provider as evidence of insurance required by the Act shall include the insurer's written agreement to provide the Administrator with written notice of termination or reduction of the policy, which shall be sent by certified U.S. mail to the Division.
    - 2. For purposes of administering the Act, the insurer's termination or reduction of liability shall be effective from and after the expiration of sixty (60) days from the Division's receipt of such written notice or on such later date as is stated in the written notice. The insurer's termination or reduction of liability shall not affect, reduce, or release its liability for any acts or practices that occurred during the time the policy was in force and prior to the effective date of termination or reduction of the policy.

- (e) disclosure of any changes of information reported in the initial registration application or the immediately previous renewal application, as applicable;
  - (f) the applicant's financial statements prepared in accordance with the provisions of T.C.A. § 47-18-5506(7);
  - (g) evidence of the applicant's accreditation by an independent accrediting organization approved by the Director;
  - (h) evidence of certification, by an independent certifying program approved by the Director, of all counselors and debt specialists conducting business in this state on behalf of the applicant;
  - (i) sworn criminal history records checks, including fingerprints, conducted within the immediately preceding twelve (12) months for the purpose of providing debt-management services, for every officer of the applicant and every employee or agent who is authorized to have access to the applicant's trust account(s). The criminal history records check must be submitted directly to the Division by the criminal history check provider. Applicants that have had a criminal records check performed for the purpose of registration as a provider in another state within twelve (12) months prior to submitting the registration application may have the results of that background check submitted directly from the other state to the Division as a certified business record of the other state;
  - (j) disclosure of the total amount of money received by the applicant from or on behalf of Tennessee consumers pursuant to debt-management services agreements and plans during the preceding twelve (12) month period and the total amount of money distributed to creditors of those Tennessee consumers during the same twelve (12) month period;
  - (k) disclosure of the gross amount accumulated during the preceding twelve (12) month period pursuant to debt-management services plans by or on behalf of Tennessee consumers with whom the applicant has debt-management services agreements; and
  - (l) any other information required to determine whether the application should be approved or denied.
- (8) An applicant shall notify the Division within ten (10) days after a change occurs in any of the information originally reported in the renewal application.

Authority: T.C.A. §§ 47-18-5504, 47-18-5506, 47-18-5511, 47-18-5513, 47-18-5514, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.09 Fees.

- (1) Nonrefundable debt-management services registration.....\$4,000.00
- (2) Nonrefundable renewal fee for debt-management services.....\$4,000.00

Authority: T.C.A. §§ 47-18-5505, 47-18-5511, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.10 Submission of Information.

- (1) An applicant or registrant shall inform the Division in writing of any change in business name or business structure at least ten (10) days before the change occurs. Registrations are non-transferable.
- (2) An applicant or registrant shall inform the Division in writing within thirty (30) days of receipt of notice and provide a copy of:

- (a) any indictment or information filed in any court of competent jurisdiction naming the applicant or registrant, any affiliate, partner, officer, director, owner, or agent of the applicant or registrant, or any person occupying a similar status with or performing similar functions for the applicant or registrant, alleging the commission of any felony regardless of subject matter, or of any misdemeanor involving a security or any aspect of the debt-management services business;
  - (b) any complaint filed in any court of competent jurisdiction naming the applicant or registrant, any affiliate, partner, officer, director, owner, or agent, or any person occupying a similar status with or performing similar functions for the applicant or registrant, seeking a permanent or temporary injunction enjoining any of such person's conduct or practice involving any aspect of the debt-management services business;
  - (c) any complaint or order filed by a federal or state regulatory agency or the United States Postal Service naming the applicant or registrant, any affiliate, partner, officer, director, owner or agent, or any person occupying a similar status with or performing a similar function for the applicant or registrant, related to the debt-management services business.
- (3) Within ten (10) days of filing, an applicant or registrant shall file with the Division a copy of any answer, response, or reply to any complaint, indictment, or information described in subparts (2)(a) through (2)(c) above.
  - (4) Within ten (10) days of receipt, an applicant or registrant shall file with the Division a copy of any decision, order, or sanction that is made, entered, or imposed with respect to any proceedings described in subparts (2)(a) through (2)(c) above.
  - (5) Nothing in paragraphs (2), (3), or (4) is intended to relieve the applicant or registrant from any duty to comply with the legal process or any reporting requirements elsewhere specified in these rules or in the Act.
  - (6) Trust Accounts
    - (a) An applicant or registrant shall file with the Division a notice of any relocation of trust accounts from one bank to another bank thirty (30) days prior to the date on which the relocation of the trust accounts becomes effective.
    - (b) In the event of the relocation of trust accounts from one bank to another, the applicant or registrant shall provide the new trust account numbers to the Division no later than two (2) days after receiving the new trust account numbers.
    - (c) An applicant or registrant shall notify the Division of a theft from a trust account within five (5) days of discovery of the theft.

Authority: T.C.A. §§ 47-18-5507, 47-18-5522, 47-18-5529, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.11 Standards of Practice.

- (1) Upon any request for additional information or upon receipt of notice of any written complaint against the provider, the provider shall, within ten (10) business days, file with the Division a written answer to the request for additional information or to the complaint.
- (2) A provider shall immediately determine the state of residence of a potential client during the first contact with the potential client. If the potential client is a resident of the state of Tennessee, the provider shall notify the potential client in writing of its current registration status in the state of Tennessee.
- (3) No later than thirty (30) days prior to the opening of a branch office, a provider shall notify the Division in writing of the opening of the branch office as well as the name of the person responsible for the branch office and the certified counselor(s) and certified debt specialist(s) working in the branch office.

- (4) A provider shall comply with all applicable federal and state laws and rules in providing debt-management services and otherwise comply with all federal and state laws and rules applicable to the provider.
- (5) A provider shall keep each client reasonably informed about the status of the debt-management services being performed for the client and shall promptly comply with the client's reasonable requests for information.
- (6) A provider shall not use improper or questionable methods of soliciting clients, including but not limited to misleading or deceiving clients or utilizing scare tactics or other improper tactics and shall not pay another person or accept payment from another person for engaging in improper methods.
- (7) A provider shall not associate its business with any business or person that engages in or attempts to engage in unfair, deceptive, or misleading practices or acts in its dealings with clients.
- (8) Unless responding to a request for information, subpoena, or order issued by a regulatory agency, law enforcement agency, or court of competent jurisdiction, a provider shall not disclose any client information obtained relative to a debt-management services agreement or plan to someone other than the client unless the disclosure is expressly authorized in writing by the client.
- (9) A provider shall not misrepresent its debt-management services or the features of any service or make unwarranted claims about the merits of a service that the provider offers.
- (10) A provider shall not accept or offer commissions or allowances, directly or indirectly, from other parties dealing with the client in connection with work for which the provider is responsible.
- (11) Before the execution of an agreement for debt-management services, a provider shall clearly and conspicuously disclose to the client any interest the provider has in a business that may affect the client. No provider shall allow its interest in any business to affect the quality or results of the debt-management services that the provider may be called upon to perform.
- (12) A provider shall fully comply with all Federal Trade Commission rules, regulations, and guidelines, including but not limited to the Guides Concerning Use of Endorsements and Testimonials in Advertising, 16 C.F.R. pt. 255.
- (13) A provider shall not engage in false or misleading advertising.
- (14) A provider shall not perform or recommend any debt-management services that would violate applicable federal or state laws.
- (15) A provider shall not engage in deceptive or unfair trade practices. Examples of deceptive or unfair trade practices include but are not limited to:
  - (a) proposing or communicating any alteration of a material term of a debt-management services agreement or plan to a client or a client's creditor without first receiving explicit written instructions from the client directing the provider to make a specific alteration;
  - (b) expressly or impliedly representing that any of its goods or services are "free" if the client will be asked to make any payment in connection with the goods or services, other than a payment that will be forwarded in its entirety to the client's creditors. A provider may represent that a consultation or other initial contact is "free" if the consultation or contact is provided with no obligation on the part of the client to make any payment in connection with the consultation or contact;
  - (c) expressly or impliedly representing that any payments made by clients in connection with providers are voluntary contributions or are payments to support a non-profit organization, unless more than fifty percent (50%) of the payment is paid to or for the benefit of the non-profit organization for purposes other than to pay the provider for services rendered to a non-profit organization;

- (d) expressly or impliedly misrepresenting the effects of a debt-management plan on a client's ability to obtain credit;
- (e) enrolling a debtor in a debt-management plan unless, prior to enrollment, the debtor has received credit counseling from a credit counselor who has sufficient experience and training to counsel in financial literacy, money management, budgeting, and responsible use of credit and is advised of the various options available to the debtor for addressing the debtor's financial problems;
- (f) enrolling a debtor in a debt-management plan if the debtor's estimated monthly living expenses and estimated monthly provider payments exceed his or her income. A debtor in this situation may be enrolled in a debt-management plan if the debtor is specifically advised not to enroll in a debt-management plan because the debtor cannot afford the debt-management plan payment and the debtor independently states that he or she believes that he or she can afford the debt-management plan payment by reducing expenses, obtaining additional income or funds from another source, or otherwise adjusting the budget estimate to make the debt-management plan affordable;
- (g) disclosing or using any individual's private financial and personal information that the provider receives in connection with providing debt-management services except in accordance with and as permitted by applicable law, including but not limited to the Gramm-Leach-Bliley Act, 15 U.S.C.A. § 6801, et seq.;
- (h) entering into any agreement with any person that contains any standards or criteria under which the person must enroll debtors into a debt-management plan;
- (i) entering into any agreement with any person that sets any minimum enrollment rate or other standard mandating the number of individuals who must be enrolled in debt-management plans or an amount that the person must collect from clients;
- (j) entering into any agreement with any person that sets any minimum revenues or other standards mandating the amount of revenue that must be generated through a debt-management plan;
- (k) using the name or mark of a person other than the provider when communicating with debtors or creditors in connection with the performance of debt-management services;
- (l) entering into any agreement with a third party that limits the use of any data reflecting either the provider's or the third party's performance of any debt-management services, including data reflecting the payments that either the provider or the third party has processed or is processing in connection with a debt-management plan;
- (m) expressly or impliedly misrepresenting the purpose of any fee or contribution that is paid by clients;
- (n) failing to clearly and conspicuously disclose the nature and types of services that will be provided under any agreement prior to the consumer's agreeing to receive such services;
- (o) debiting, cashing, depositing, or otherwise collecting or attempting to collect monies from a client after a client has asserted a violation of state law, regulation, or rule in connection with the debt-management plan;
- (p) using logos, symbols, business names, or the like that might represent or imply to consumers an affiliation or association with any government entity;
- (q) failing to maintain and make available upon request to the Division full and complete substantiation for any and all claims and representations made to debtors and in any advertising or promotional materials;
- (r) submitting any false, misleading, or deceptive information to the Division relating to a registration application or renewal application; or

- (s) failing to comply with all of the prerequisites for providing debt-management services outlined in T.C.A. § 47-18-5517 and any applicable federal laws, regulations, or rules.

Authority: T.C.A. §§ 47-18-104, 47-18-5515, 47-18-5517, 47-18-5528, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.12 Examinations, Records, and Reports.

(1) Recordkeeping Requirements

- (a) A registrant shall retain copies of all records for five (5) years from the date of completion or cancellation of an educational program, financial analysis, or debt-management services agreement. If the registrant has been notified in writing by the Director to retain records for a longer period of time, the registrant shall retain records beyond this time period as requested.
- (b) Every debt-management services provider registered in this state shall make and keep current the following books and records relating to its business, at a minimum:
  - 1. ledgers reflecting all assets and liabilities, income and expense, and capital accounts;
  - 2. a record or ledger reflecting separately for each client the clearance dates of all money received from each client and all payments made on behalf of each client and in all cases the name of the client in which the money has been received or paid;
  - 3. copies of all communications, correspondence, and other records relating to debt-management services agreements and plans with, about, or on behalf of clients;
  - 4. a separate file containing all written complaints made or submitted by clients to the provider, counselors, or debt specialists relating directly or indirectly to debt-management services and any records received or produced in the course of investigating and resolving complaints;
  - 5. the personnel or contractor records for any employee, agent, or contractor of the provider about whom the provider has received complaints from clients regarding any conduct relative to the provider's services;
  - 6. a client information form for each client. If recommendations are to be made to the client, the form shall include such information as is necessary to determine suitability;
  - 7. a record of the proof of money balances of all trust accounts. Such balances shall be prepared currently at least once a month;
  - 8. all partnership certificates and agreements or, in the case of a corporation, all articles of incorporation, by-laws, minute books, and stock certificate books of the provider; and
  - 9. a separate file containing copies of all advertising circulated by the provider in the conduct of its business.
- (2) Every provider shall make and keep such accounts, correspondence, and other records as the Administrator prescribes by rule.
- (3) All activities, books, accounts, and the records of a provider or a person to which a provider has delegated its obligations under an agreement are subject at any time and from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the Administrator, as the Administrator deems necessary or appropriate in the public interest or for the protection of clients or to ensure compliance with the Act. The cost of such examination shall be borne by the person examined in the same manner as is provided for insurance companies, except that not more than two (2) such examinations shall be charged to such person in any twelve-month period.

Authority: T.C.A. §§ 47-18-5506, 47-18-5512, 47-18-5522, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.13 Fingerprinting.

- (1) Any person required to submit electronically scanned fingerprints pursuant to the Uniform Debt-Management Services Act shall be deemed to have supplied the required sets of fingerprints if that applicant causes a private company contracted by the State to electronically transmit that applicant's classifiable prints directly to the TBI and FBI, which then forward an electronic report based on that applicant's fingerprints to the commissioner.
- (2) Any person required to submit fingerprints by the Uniform Debt-Management Services Act shall make arrangements for the processing of his or her fingerprints with a company contracted by the State to provide electronic fingerprinting services and shall be responsible for the payment of any fees associated with processing of fingerprints to the respective agent authorized by the TBI and FBI. Provided, however, that the Commissioner or the Commissioner's designee may authorize the submission of three (3) sets of classifiable physical fingerprint cards, at the expense of the applicant and rolled by a qualified person acceptable to the Commissioner or the Commissioner's designee, for good cause.
- (3) In the event an applicant furnishes unclassifiable fingerprints or fingerprints that are unclassifiable by nature, the applicant shall submit new electronic fingerprints to a company contracted by the State to provide electronic fingerprinting services, together with any additional fee(s) charged by the TBI and/or FBI for processing the new fingerprints. For the purposes of this rule, "unclassifiable prints" means that the electronic scan or the print of the person's fingerprints cannot be read, and therefore cannot be used to identify the person.
- (4) In the event the State no longer contracts with any company to provide an electronic fingerprinting service, the applicant shall submit three (3) classifiable TBI and FBI fingerprint cards with his or her application and shall pay the Division all processing fees established by the TBI and FBI.
- (5) All sets of classifiable fingerprints required by this rule shall be furnished at the expense of the applicant.
- (6) Applicants shall in all cases be responsible for paying application fees as established by the Commissioner regardless of the manner of fingerprinting.

Authority: T.C.A. §§ 47-18-5506, 47-18-5532.

0780-05-18-.14 Inflationary Adjustment.

- (1) The dollar amounts in T.C.A. §§ 47-18-5502, 47-18-5505, 47-18-5509, 47-18-5513, 47-18-5523, 47-18-5533 and 47-18-5535 shall be those specified in those sections, subject to adjustments made pursuant to this rule.
- (2) Pursuant to T.C.A. § 47-18-5532(f), 2014 is adopted as the base year for the purposes of adjusting the dollar amounts to reflect inflation, as measured by the United States Bureau of Labor and Statistics consumer price index for all urban consumers.
- (3) The Administrator shall on a yearly basis determine the change in the index from the base year as of December 31 of the preceding year. If such change is at least 10 percent, whether positive or negative, the dollar amounts of those specified in T.C.A. §§ 47-18-5502, 47-18-5505, 47-18-5509, 47-18-5513, 47-18-5523, 47-18-5533 and 47-18-5535 shall be adjusted to reflect the change in index from the base year, rounded to the nearest one hundred dollars (\$100.00), to be effective on July 1 of that year, except that the amounts in § 47-18-5523 shall be rounded to the nearest dollar.
- (4) The year in which such adjustment takes place shall become the new base year for the purposes of adjusting the dollar amounts according to T.C.A. § 47-18-5532(f).

- (5) The Administrator shall notify registered providers of any change in dollar amounts made pursuant to this rule, shall make that information available to the public, and shall update that information on all forms. The current base year and all fees, as adjusted, shall be listed on a web site chosen by the Administrator.

Authority: T.C.A. §§ 47-18-5532.

0780-05-18-.15 Accreditation.

- (1) An accreditation from the Council on Accreditation shall meet the requirements of T.C.A. § 47-18-5506(8).
- (2) Notwithstanding the previous paragraph, the Director may approve an independent accrediting organization if the Director finds, based on the totality of the information provided, that the independent accrediting organization provides accreditation that is substantially equivalent to the accreditation provided by the Council on Accreditation. Approval by the Director shall be valid for a period of two (2) years from the date of approval, at which time the independent accrediting organization shall make a new request for approval. An independent accrediting organization shall provide the following information on a form approved by the Director in its request for approval:
- (a) The name of the independent accrediting organization;
  - (b) The phone number, mailing address and e-mail address—if applicable—of the independent accrediting organization;
  - (c) A list of other states that have approved the independent accrediting organization to provide accreditation of debt management companies or similar organizations;
  - (d) The number of years that the independent accrediting organization has offered accreditation for debt management companies or similar organizations;
  - (e) A complete list of the standards that accredited companies must meet; and
  - (f) Such other information as the Director may request in order to determine that the independent accrediting organization is substantially equivalent to the accreditation provided by the Council on Accreditation.
- (3) Notwithstanding any language in this rule to the contrary, any debt management service currently registered with the Division on July 1, 2016, shall have until January 1, 2018, to become accredited in compliance with this rule.

Authority: T.C.A. §§ 47-18-5506, 47-18-5532.

0780-05-18-.16 Certification.

- (1) Certification by the National Foundation for Credit Counseling or the Financial Counseling Association of America shall meet the requirements of T.C.A. § 47-18-5506(9).
- (2) Notwithstanding the previous paragraph, the Director may approve a training program or certifying organization providing certification to be a certified counselor and/or certified debt specialist if the Director finds, based on the totality of the information provided, that the training program or certifying organization meaningfully authenticates the competence of individuals providing services under the Act. Approval by the Director shall be valid for a period of two (2) years from the date of approval, at which time the training program or certifying organization shall make a new request for approval. A training program or certifying organization shall provide the following information in its request for approval:
- (a) The name of the certifying organization or entity providing the training program;
  - (b) The phone number, mailing address and e-mail address – if applicable – of the certifying organization or entity providing the training program;

- (c) A list of other states that have approved the training program or certifying organizations to be approved;
  - (d) The number of years that the training program or certifying organization has offered certification for debt management counseling;
  - (e) A complete list of the curriculum required to be completed, the topics covered, the number of hours to complete the program, and the number of persons currently certified; and
  - (f) Such other information as the Director may request in order to determine that the training program or certifying organization meaningfully authenticates the competence of individuals providing services under the Act.
- (3) Notwithstanding any language in this rule to the contrary, any debt management service currently registered with the Division on July 1, 2016, whose certified counselors or certified debt specialists are certified by a training program or certifying organization not approved under this rule shall have until January 1, 2018, for all employees to become certified by a company approved under this rule and for all future certifications to be done in compliance with such requirement.

Authority: T.C.A. §§ 47-18-5532.  
0780-05-18-.17 Severability.

If any Rule, term, or provision of this Chapter shall be judged invalid for any reason, that judgment shall not affect, impair or invalidate any other Rule, term, or provision of the Chapter, and the remaining Rules, terms, and provisions shall be and remain in full force and effect.

Authority: T.C.A. §§ 47-18-5532 and 47-18-5541. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

Repeal

0780-08-01

Chapter 0780-08-01 is hereby repealed in its entirety.

Authority: Public Chapter 339 (2015).

\* 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 proposed rules, lawfully promulgated and adopted by the TN Debt-Management Services Registration Program on 06/17/2016 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: 8/22/16

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce and Insurance

Subscribed and sworn to before me on: 8/22/16

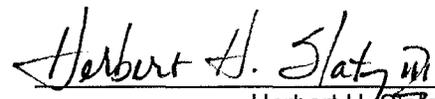
Notary Public Signature: Denise M Lewis

My commission expires on: 1/15/20

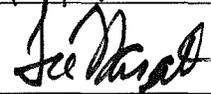
- Rules for the Tennessee Debt Management Services Registration Program
- Chapter 0780-05-18 Debt Management Services
- Rule 0780-05-18-.01 Purpose of Rules
- Rule 0780-05-18-.02 Short Title
- Rule 0780-05-18-.03 Retained Powers
- Rule 0780-05-18-.04 Definitions
- Rule 0780-05-18-.05 Administration of Act
- Rule 0780-05-18-.06 Applicability
- Rule 0780-05-18-.07 Registration Application
- Rule 0780-05-18-.08 Renewal of Registration
- Rule 0780-05-18-.09 Fees
- Rule 0780-05-18-.10 Submission of Information
- Rule 0780-05-18-.11 Standards of Practice
- Rule 0780-05-18-.12 Examinations, Records, and Reports
- Rule 0780-05-18-.13 Fingerprinting
- Rule 0780-05-18-.14 Inflationary Adjustment
- Rule 0780-05-18-.15 Accreditation
- Rule 0780-05-18-.16 Certification
- Rule 0780-05-18-.17 Severability

- Chapter 0780-08-01 Debt Management Services
- Rule 0780-08-01-.01 Purpose of Rules
- Rule 0780-08-01-.02 Short Title
- Rule 0780-08-01-.03 Retained Powers
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- Rule 0780-08-01-.11 Standards of Practice
- Rule 0780-08-01-.12 Examinations, Records, and Reports
- Rule 0780-08-01-.13 Severability

All proposed 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.

  
 Herbert H. Slatery III  
 Attorney General and Reporter  
10/20/2016  
 Date

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Filed with the Department of State on: 10/28/16  
 Effective on: 11/26/17  
  
 Tre Hargett  
 Secretary of State

## Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule:

This rule would affect any small business that qualifies as a Debt-Management Service business. There are currently 30 Debt Management Services businesses in Tennessee.

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

The majority of the rules are being moved from the Consumer Affairs chapter to the Division of Regulatory Boards.

This new fingerprinting rule could create a cost to travel to a location to obtain an electronic fingerprint. However, some licensees may be able to provide fingerprints to an electronic fingerprinting vendor electronically without the need to travel to a location.

The new accreditation and certification rule would only create a cost of submitting materials for evaluation for those businesses relying on accreditations or certifications from entities not yet approved by the commissioner. This could be done electronically at a negligible cost.

3. A statement of the probable effect on impacted small businesses and consumers:

The moved rules will have no effect on small businesses or consumers.

The new fingerprinting rule: Small businesses would potentially decrease their costs in processing fingerprints by \$12 but would have to do such through a private designated vendor. These rules will have no effect on consumers.

The accreditation and certification rules: These new rules ease the requirements to ensure that the accreditations and certifications debt-management servicers need are easier to obtain by opening the competitive field for more entities to offer the accreditations and certifications.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business:

The proposed new rules are minimally burdensome/intrusive to small businesses and there are no known alternative means which are less burdensome.

5. A comparison of the proposed rule with any federal or state counterparts:

There are no federal counterparts to the issues addressed by these rules. Mississippi and Pennsylvania have statutory schemes similar to the Tennessee Uniform Debt-Management Services Act and Pennsylvania seems to have similar rules as counterparts at 10 Pa. Code § 57.1 through 57.33.

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule:

An exemption of small businesses from the aforementioned requirements would create an increased cost to each individual applicant and create an additional administrative process upon the agency, decreasing its standardization and efficiency in processing applications.

## **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)

(Insert statement here)

There is no expected impact on local government by the promulgation of these rules.

**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;

These new rules set out the requirements for the registration, operation and potential discipline for debt-management services businesses in Tennessee. In addition, these rules set forth the requirements for the submissions of fingerprints that are required as a part of the application process for registered companies. This new rule only allows electronic fingerprints to be submitted and those must no longer be submitted to the commission but either directly to the TBI or to an approved vendor to provide to the TBI. This rule was made necessary due to the TBI recently stating that it will no longer accept physical fingerprint cards from the commission. Further, the new rules establish guidelines for the commissioner to approve of different accreditation and certification vendors.

- (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;

There is no known federal law, regulation or state law mandating promulgation of 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;

All current and future debt-management services businesses operating in Tennessee will be affected by these rules. Their position is unknown. The Commissioner urges adoption of these rules.

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

There are no known opinions of the attorney general and reporter or any judicial ruling that directly relates to these rules.

- (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;

There is no probable state increase or decrease in local government revenues and expenditures resulting from the promulgation of these amendments.

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

Benjamin P. Glover  
Assistant General Counsel  
Division of Regulatory Boards  
Department of Commerce and Insurance

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

Benjamin P. Glover  
Assistant General Counsel  
Division of Regulatory Boards  
Department of Commerce and Insurance

- (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

Benjamin P. Glover  
500 James Robertson Parkway  
Nashville, TN. 37243  
615-770-0085  
[Benjamin.glover@tn.gov](mailto:Benjamin.glover@tn.gov)

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

These rules are being promulgated due to a legislative change from T.C.A. § 47-18-5542 which moved this program and several others from the Division of Consumer Affairs and underneath the Division of Regulatory Boards. The purpose of these rules is to allow the Division of Regulatory Boards to be able to enforce the laws governing the programs and also pursue violators of the law and rules in order to protect Tennessee consumers. The new rules added to those that are moving are to ensure fingerprinting that is required and to expand the approved vendors of certification and accreditation for debt-management services businesses.

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Sequence Number: \_\_\_\_\_  
Rule ID(s): \_\_\_\_\_  
File Date: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

## Proposed Rule(s) REDLINE

*Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

**Agency/Board/Commission:** Debt-Management Services  
**Division:** Division of Regulatory Boards  
Department of Commerce and Insurance  
**Contact Person:** Benjamin P. Glover  
**Address:** Davy Crockett Tower  
500 James Robertson Pkwy  
Nashville, Tennessee  
**Zip:** 37243  
**Phone:** 615-770-0085  
**Email:** [benjamin.glover@tn.gov](mailto:benjamin.glover@tn.gov)

**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0780-05-18	Debt Management Services
Rule Number	Rule Title
0780-05-18-.01	Purpose of Rules
0780-05-18-.02	Short Title
0780-05-18-.03	Retained Powers
0780-05-18-.04	Definitions
0780-05-18-.05	Administration of Act
0780-05-18-.06	Applicability
0780-05-18-.07	Registration Application
0780-05-18-.08	Renewal of Registration
0780-05-18-.09	Fees

0780-05-18-.10	Submission of Information
0780-05-18-.11	Standards of Practice
0780-05-18-.12	Examinations, Records, and Reports
0780-05-18-.13	Fingerprinting
0780-05-18-.14	Inflationary Adjustment
0780-05-18-.15	Accreditation
0780-05-18-.16	Certification
0780-05-18-.17	Severability

<b>Chapter Number</b>	<b>Chapter Title</b>
0780-08-01	Debt Management Services
<b>Rule Number</b>	<b>Rule Title</b>
0780-08-01-.01	Purpose of Rules
0780-08-01-.02	Short Title
0780-08-01-.03	Retained Powers
0780-08-01-.04	Definitions
0780-08-01-.05	Administration of Act
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0780-08-01-.10	Submission of Information
0780-08-01-.11	Standards of Practice
0780-08-01-.12	Examinations, Records, and Reports
0780-08-01-.13	Severability

(Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to [http://sos.tn.gov/sites/default/files/forms/Rulemaking\\_Guidelines\\_August2014.pdf](http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf))

Debt-Management Services

New Rules

0780-05-18

0780-05-18

Rules

Of

Tennessee Department Of Commerce And Insurance

Division Of Consumer Affairs

0780-05-18

Rules And Regulations For Debt Management Services

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<u>0780-05-18-.01 Purpose of Rules</u>	<u>0780-05-18-.10 Submission of Information</u>
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<u>0780-05-18-.04 Definitions</u>	<u>0780-05-18-.13 Fingerprinting</u>
<u>0780-05-18-.05 Administration of Act</u>	<u>0780-05-18-.14 Inflationary Adjustment</u>
<u>0780-05-18-.06 Applicability</u>	<u>0780-05-18-.15 Accreditation</u>
<u>0780-05-18-.07 Registration Application</u>	<u>0780-05-18-.16 Certification</u>
<u>0780-05-18-.08 Renewal of Registration</u>	<u>0780-05-18-.17 Severability</u>
<u>0780-05-18-.09 Fees</u>	

0780-05-18-.01 Purpose of Rules.

The purpose of these rules is to institute the registration and regulation of providers of debt-management services and to protect the interests of consumers as required by the Uniform Debt-Management Services Act.

Authority: T.C.A. §§ 47-18-5501 and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.02 Short Title.

These rules may be cited as the Tennessee Debt-Management Services Rules.

Authority: T.C.A. § 47-18-5501. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.03 Retained Powers.

It is the express intent of these rules that such powers as are herein delegated by the Administrator are also retained and may be exercised by the Administrator at the Administrator's election.

Authority: T.C.A. § 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.04 Definitions.

(1) When used in these rules and in the Uniform Debt-Management Services Act, unless the context otherwise requires:

- (a) "Act" shall mean Chapter 469 of the Public Acts of 2009, otherwise known as the Uniform Debt-Management Services Act, and its codification in Tennessee Code Annotated.
  - (b) "Branch office" means any office of a provider within this state other than its principal place of business within this state.
  - (c) "Director" shall mean the Director of the Division of Regulatory Boards of the Department of Commerce and Insurance of the State of Tennessee.
  - (d) "Division" shall mean the Director, staff, employees, and agents of the Division of Regulatory Boards of the Department of Commerce and Insurance of the State of Tennessee or such other agency as shall administer the Act.
  - (e) "UAPA" shall mean the Uniform Administrative Procedures Act as set forth in T.C.A. § 4-5-101, et seq., and any rules promulgated pursuant thereto to the extent such rules are not inconsistent with the Act or these rules.
- (2) Unless the context otherwise requires or a rule expressly provides otherwise, terms defined in the Act shall have the same meaning when used in these rules.

Authority: T.C.A. §§ 47-18-5502 and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.05 Administration of Act.

(1) General

- (a) The Administrator delegates to the Director all of the power and duties granted to and imposed upon the Administrator by the Act except the power:
  - 1. to issue orders and impose any sanction pursuant to T.C.A. §§ 47-18-5533 (a)(1),(2),(3) and (b), or 47-18-5534(b) and (c) in any contested case, as such term is defined in the UAPA; and
  - 2. to adopt any rule as such term is defined in the UAPA.
- (b) Without limiting the foregoing delegation, the Director is expressly empowered to:
  - 1. conduct examinations and investigations as provided by T.C.A. § 47-18-5532(b);
  - 2. issue registrations; and
  - 3. accept on behalf of the Administrator settlement agreements reached between the Division and any person pursuant to T.C.A. § 4-5-105.
- (c) Nothing herein limits the Director's authority, duties, or responsibilities set forth elsewhere in state law, regulation, or rule.

(2) Filing Requirements

- (a) Applications, financial statements, reports, educational materials, and other information shall be filed on good quality white paper, 8½ by 11 or 8½ by 14 inches in size.
- (b) All documents filed with the Division shall be in clear and easily readable form and suitable for photocopying.
- (c) Exhibits may be attached or filed separately and shall be properly marked or identified.

- (d) Each copy of educational materials and financial analysis models must be bound securely. The Division reserves the right to reject any such document the pages of which are not securely bound together.
  - (e) All applications, reports, financial statements, correspondence, educational materials, financial analysis models, exhibits and other information required or requested pursuant to the Act or these rules may be submitted to the Division in the paper format prescribed in this subpart (e) or through electronic data-gathering, access, retrieval, and storage methods acceptable to the Division.
  - (f) Unless expressly required or requested, only the original executed copy of each form is required.
- (3) Upon a request for records under Tennessee's Public Records Act, T.C.A. § 10-7-501 et seq., the Division shall assess reasonable charges for copying and associated labor.

Authority: T.C.A. §§ 47-18-5501, 47-18-5505, 47-18-5506, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.06 Applicability.

- (1) A person forming an agreement to provide debt-management services and any person to whom the account is then transferred are providers subject to the provisions of the Act.
- (2) Any person conducting business in this state as a provider must apply to the Division to become registered.
- (3) Debt-management services do not include:
  - (a) legal services provided by an attorney licensed and in good standing in Tennessee during the entire time services are provided and in an attorney-client relationship;
  - (b) accounting services provided by a certified public accountant licensed and in good standing in Tennessee during the entire time services are provided and in an accountant-client relationship;
  - (c) financial planning services provided in a financial planner-client relationship by a person who is either licensed as an insurance provider and in good standing or registered as an investment adviser representative and in good standing in this state and who holds one of the following professional designations during the entire time services are provided:
    - 1. Certified Financial Planner (CFP), awarded by the Certified Financial Planner Board of Standards, Inc.;
    - 2. Chartered Financial Consultant (ChFC), awarded by the American College of Financial Services, Bryn Mawr, PA;
    - 3. Personal Financial Specialist (PFS), awarded by the American Institute of Certified Public Accountants;
    - 4. Chartered Financial Analyst (CFA), awarded by the Institute of Chartered Financial Analysts; or
    - 5. Chartered Investment Counselor (CIC), awarded by the Investment Counsel Association of America, Inc.
  - (d) services provided within the scope of the business or profession of:
    - 1. a judicial officer or person acting under court order or administrative order;
    - 2. an assignee for the benefit of creditors;

3 a bank or government regulated bank affiliate;

4. a title insurer, escrow company, or person providing bill-paying services if the provision of debt-management services is incidental to the bill-paying services.

Authority: T.C.A. §§ 47-18-5502, 47-18-5503 and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.07 Registration Application.

(1) Applications for registration shall be submitted on forms approved by the Director.

(2) Any application submitted without required information or failing to meet any requirement for registration will be held by the program office, and written notification of the information that is lacking or the reason(s) the application does not meet the requirements for registration will be sent to the applicant. The application will be held in "pending" status for a reasonable period of time, but such period is not to exceed one hundred eighty (180) days from the date of application. If the applicant fails to timely and completely respond to the written notification, the application will be closed.

(3) Upon determination that an application submitted directly to the Division has been abandoned, the Division shall by Order of Abandonment cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

(4) Any application once submitted may be withdrawn, provided, however, that the application fee shall not be refunded.

(5) Applications must be complete before they are submitted for consideration. Applications shall at a minimum include:

(a) a complete and properly executed application form signed under penalty of perjury and before a notary by the person applying;

(b) a non-refundable application fee;

(c) a surety bond as required by T.C.A. § 47-18-5513, or an acceptable surety alternative that complies with the provisions of T.C.A. § 47-18-5514;

(d) evidence of insurance as required by T.C.A. § 47-18-5505(b)(4) in the amount of two hundred and fifty thousand dollars (\$250,000).

1. Any insurance policy submitted by a provider as evidence of insurance required by the Act shall include the insurer's written agreement to provide the Administrator with written notice of termination or reduction of the policy, which shall be sent by certified U.S. mail to the Division.

2. For purposes of administering the Act, the insurer's termination or reduction of liability shall be effective from and after the expiration of sixty (60) days from the Division's receipt of such written notice or on such later date as is stated in the written notice. The insurer's termination or reduction of liability shall not affect, reduce, or release its liability for any acts or practices that occurred during the time the policy was in force and prior to the effective date of termination or reduction of the policy.

(e) the charter or articles of organization of the applicant;

(f) a description of any ownership interest of greater than ten percent (10%) by a director, owner, or employee of the applicant in:

1. any affiliate of the applicant; or
  2. any entity that provides products or services to the applicant or any individual related to the applicant's debt-management services.
- (g) the name and address of each entity that owns an interest in or is otherwise affiliated with or controls, directs, or influences the operations of the applicant;
  - (h) the name and address of each entity in which the applicant owns an interest or is otherwise affiliated with or whose operations are controlled, directed, or influenced by the applicant;
  - (i) the names and addresses of all employers of each of the applicant's directors during the immediately preceding ten (10) years;
  - (j) the names, addresses, and amounts of compensation for the five (5) most highly compensated employees of the applicant for each of the three (3) years immediately preceding the application, or the period of the applicant's existence if less than three (3) years, if the applicant meets any of the criteria outlined in T.C.A. § 47-18-5506(17);
  - (k) the identity of each director who is an affiliate as defined by T.C.A. § 47-18-5502(2);
  - (l) evidence of tax-exempt status under the Internal Revenue Code, 26 U.S.C. §501, if applicant is a not-for-profit corporation and exempt from taxation;
  - (m) consent to jurisdiction of the State of Tennessee and venue in Davidson County, Tennessee;
  - (n) disclosure of and identification information for all trust accounts;
  - (o) irrevocable consent to the authority of the Administrator to review and examine all trust accounts;
  - (p) applicant's financial statements prepared in accordance with the provisions of T.C.A. § 47-18-5506(7);
  - (q) evidence of the applicant's accreditation by an independent accrediting organization approved by the Director;
  - (r) evidence of certification by an independent certifying program approved by the Director of all counselors and debt specialists conducting business in this state on behalf of the applicant;
  - (s) detailed descriptions of the three most common education programs provided by the applicant to Tennessee consumers and copies of all materials associated with the education programs;
  - (t) a description of the applicant's financial analysis and initial budget plan, including any form or electronic model used by the applicant to evaluate the financial conditions of Tennessee consumers;
  - (u) copies of each agreement form provided by the applicant to Tennessee consumers and any other documents or information required to be signed by or provided to a Tennessee consumer;
  - (v) a schedule of all fees and charges, including any recommended donations, provided by the applicant to Tennessee consumers;
  - (w) sworn criminal history records checks, including fingerprints, conducted within the immediately preceding twelve (12) months for the purpose of providing debt-management services, for every officer of the applicant and every employee or agent who is authorized to have access to the applicant's trust account(s). The sworn criminal history records check must be submitted directly by the criminal history records check provider to the Division. Applicants who have had these sworn criminal history records checks performed for the purpose of providing debt-management services in another state within twelve (12) months prior to submitting the application may have

the results of those records checks submitted directly by the other state to the Division as certified business records of the other state.

(x) disclosure of any debt-management services agreements or plans entered into with Tennessee consumers since June 23, 2009; and

(y) any other information required to determine whether the application should be approved or denied.

(6) An applicant shall notify the Division within ten (10) days after a change occurs in any information originally reported in the initial registration application.

Authority: T.C.A. §§ 47-18-5504, 47-18-5505, 47-18-5506, 47-18-5507, 47-18-5508, 47-18-5509, 47-18-5510, 47-18-5513, 47-18-5514, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.08 Renewal of Registration.

(1) Registrations shall expire on the last day of the twenty-fourth (24<sup>th</sup>) month following their issuance or renewal and shall become invalid on such date unless renewed prior to their expiration date.

(2) Renewal applications must be received by the Division not less than thirty (30) days or more than sixty (60) days prior to the expiration of a registration.

(3) A provider choosing not to renew its registration shall notify the Division of its intention prior to the expiration date of the registration and shall surrender the registration certificate to the Division immediately upon its expiration.

(4) Applications for the renewal of registrations shall be made on forms provided by the Director.

(5) Applications for renewals will not be considered filed until the applicable fee prescribed in these rules and all other information required pursuant to the Act and these rules are received.

(6) Applicants are responsible for annual renewal whether or not a notice of renewal is received from the Administrator.

(7) A provider's application for renewal of its registration shall include at a minimum:

(a) a complete and properly executed renewal application form signed by the provider's representative under penalty of perjury before a notary;

(b) the applicable non-refundable renewal application fee as provided in Rule 0780-05-18-.09, below;

(c) a surety bond as required by T.C.A. § 47-18-5513, or an acceptable surety alternative that complies with the provisions of T.C.A. § 47-18-5514;

(d) evidence of insurance as required by T.C.A. § 47-18-5505(b)(4) in the amount of two hundred and fifty thousand dollars (\$250,000);

1. Any insurance policy submitted by a provider as evidence of insurance required by the Act shall include the insurer's written agreement to provide the Administrator with written notice of termination or reduction of the policy, which shall be sent by certified U.S. mail to the Division.

2. For purposes of administering the Act, the insurer's termination or reduction of liability shall be effective from and after the expiration of sixty (60) days from the Division's receipt of such written notice or on such later date as is stated in the written notice. The insurer's termination or reduction of liability shall not affect, reduce, or release its liability for any acts or practices that occurred during the time the policy was in force and prior to the effective date of termination or reduction of the policy.

- (e) disclosure of any changes of information reported in the initial registration application or the immediately previous renewal application, as applicable;
  - (f) the applicant's financial statements prepared in accordance with the provisions of T.C.A. § 47-18-5506(7);
  - (g) evidence of the applicant's accreditation by an independent accrediting organization approved by the Director;
  - (h) evidence of certification, by an independent certifying program approved by the Director, of all counselors and debt specialists conducting business in this state on behalf of the applicant;
  - (i) sworn criminal history records checks, including fingerprints, conducted within the immediately preceding twelve (12) months for the purpose of providing debt-management services, for every officer of the applicant and every employee or agent who is authorized to have access to the applicant's trust account(s). The criminal history records check must be submitted directly to the Division by the criminal history check provider. Applicants that have had a criminal records check performed for the purpose of registration as a provider in another state within twelve (12) months prior to submitting the registration application may have the results of that background check submitted directly from the other state to the Division as a certified business record of the other state;
  - (j) disclosure of the total amount of money received by the applicant from or on behalf of Tennessee consumers pursuant to debt-management services agreements and plans during the preceding twelve (12) month period and the total amount of money distributed to creditors of those Tennessee consumers during the same twelve (12) month period;
  - (k) disclosure of the gross amount accumulated during the preceding twelve (12) month period pursuant to debt-management services plans by or on behalf of Tennessee consumers with whom the applicant has debt-management services agreements; and
  - (l) any other information required to determine whether the application should be approved or denied.
- (8) An applicant shall notify the Division within ten (10) days after a change occurs in any of the information originally reported in the renewal application.

Authority: T.C.A. §§ 47-18-5504, 47-18-5506, 47-18-5511, 47-18-5513, 47-18-5514, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.09 Fees.

- (1) Nonrefundable debt-management services registration.....\$4,000.00
- (2) Nonrefundable renewal fee for debt-management services.....\$4,000.00

Authority: T.C.A. §§ 47-18-5505, 47-18-5511, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.10 Submission of Information.

- (1) An applicant or registrant shall inform the Division in writing of any change in business name or business structure at least ten (10) days before the change occurs. Registrations are non-transferable.
- (2) An applicant or registrant shall inform the Division in writing within thirty (30) days of receipt of notice and provide a copy of:

- (a) any indictment or information filed in any court of competent jurisdiction naming the applicant or registrant, any affiliate, partner, officer, director, owner, or agent of the applicant or registrant, or any person occupying a similar status with or performing similar functions for the applicant or registrant, alleging the commission of any felony regardless of subject matter, or of any misdemeanor involving a security or any aspect of the debt-management services business;
  - (b) any complaint filed in any court of competent jurisdiction naming the applicant or registrant, any affiliate, partner, officer, director, owner, or agent, or any person occupying a similar status with or performing similar functions for the applicant or registrant, seeking a permanent or temporary injunction enjoining any of such person's conduct or practice involving any aspect of the debt-management services business;
  - (c) any complaint or order filed by a federal or state regulatory agency or the United States Postal Service naming the applicant or registrant, any affiliate, partner, officer, director, owner or agent, or any person occupying a similar status with or performing a similar function for the applicant or registrant, related to the debt-management services business.
- (3) Within ten (10) days of filing, an applicant or registrant shall file with the Division a copy of any answer, response, or reply to any complaint, indictment, or information described in subparts (2)(a) through (2)(c) above.
  - (4) Within ten (10) days of receipt, an applicant or registrant shall file with the Division a copy of any decision, order, or sanction that is made, entered, or imposed with respect to any proceedings described in subparts (2)(a) through (2)(c) above.
  - (5) Nothing in paragraphs (2), (3), or (4) is intended to relieve the applicant or registrant from any duty to comply with the legal process or any reporting requirements elsewhere specified in these rules or in the Act.
- (6) Trust Accounts
    - (a) An applicant or registrant shall file with the Division a notice of any relocation of trust accounts from one bank to another bank thirty (30) days prior to the date on which the relocation of the trust accounts becomes effective.
    - (b) In the event of the relocation of trust accounts from one bank to another, the applicant or registrant shall provide the new trust account numbers to the Division no later than two (2) days after receiving the new trust account numbers.
    - (c) An applicant or registrant shall notify the Division of a theft from a trust account within five (5) days of discovery of the theft.

Authority: T.C.A. §§ 47-18-5507, 47-18-5522, 47-18-5529, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

#### 0780-05-18-.11 Standards of Practice.

- (1) Upon any request for additional information or upon receipt of notice of any written complaint against the provider, the provider shall, within ten (10) business days, file with the Division a written answer to the request for additional information or to the complaint.
- (2) A provider shall immediately determine the state of residence of a potential client during the first contact with the potential client. If the potential client is a resident of the state of Tennessee, the provider shall notify the potential client in writing of its current registration status in the state of Tennessee.
- (3) No later than thirty (30) days prior to the opening of a branch office, a provider shall notify the Division in writing of the opening of the branch office as well as the name of the person responsible for the branch office and the certified counselor(s) and certified debt specialist(s) working in the branch office.

- (4) A provider shall comply with all applicable federal and state laws and rules in providing debt-management services and otherwise comply with all federal and state laws and rules applicable to the provider.
- (5) A provider shall keep each client reasonably informed about the status of the debt-management services being performed for the client and shall promptly comply with the client's reasonable requests for information.
- (6) A provider shall not use improper or questionable methods of soliciting clients, including but not limited to misleading or deceiving clients or utilizing scare tactics or other improper tactics and shall not pay another person or accept payment from another person for engaging in improper methods.
- (7) A provider shall not associate its business with any business or person that engages in or attempts to engage in unfair, deceptive, or misleading practices or acts in its dealings with clients.
- (8) Unless responding to a request for information, subpoena, or order issued by a regulatory agency, law enforcement agency, or court of competent jurisdiction, a provider shall not disclose any client information obtained relative to a debt-management services agreement or plan to someone other than the client unless the disclosure is expressly authorized in writing by the client.
- (9) A provider shall not misrepresent its debt-management services or the features of any service or make unwarranted claims about the merits of a service that the provider offers.
- (10) A provider shall not accept or offer commissions or allowances, directly or indirectly, from other parties dealing with the client in connection with work for which the provider is responsible.
- (11) Before the execution of an agreement for debt-management services, a provider shall clearly and conspicuously disclose to the client any interest the provider has in a business that may affect the client. No provider shall allow its interest in any business to affect the quality or results of the debt-management services that the provider may be called upon to perform.
- (12) A provider shall fully comply with all Federal Trade Commission rules, regulations, and guidelines, including but not limited to the Guides Concerning Use of Endorsements and Testimonials in Advertising, 16 C.F.R. pt. 255.
- (13) A provider shall not engage in false or misleading advertising.
- (14) A provider shall not perform or recommend any debt-management services that would violate applicable federal or state laws.
- (15) A provider shall not engage in deceptive or unfair trade practices. Examples of deceptive or unfair trade practices include but are not limited to:
  - (a) proposing or communicating any alteration of a material term of a debt-management services agreement or plan to a client or a client's creditor without first receiving explicit written instructions from the client directing the provider to make a specific alteration;
  - (b) expressly or impliedly representing that any of its goods or services are "free" if the client will be asked to make any payment in connection with the goods or services, other than a payment that will be forwarded in its entirety to the client's creditors. A provider may represent that a consultation or other initial contact is "free" if the consultation or contact is provided with no obligation on the part of the client to make any payment in connection with the consultation or contact;
  - (c) expressly or impliedly representing that any payments made by clients in connection with providers are voluntary contributions or are payments to support a non-profit organization, unless more than fifty percent (50%) of the payment is paid to or for the benefit of the non-profit organization for purposes other than to pay the provider for services rendered to a non-profit organization;

- (d) expressly or impliedly misrepresenting the effects of a debt-management plan on a client's ability to obtain credit;
- (e) enrolling a debtor in a debt-management plan unless, prior to enrollment, the debtor has received credit counseling from a credit counselor who has sufficient experience and training to counsel in financial literacy, money management, budgeting, and responsible use of credit and is advised of the various options available to the debtor for addressing the debtor's financial problems;
- (f) enrolling a debtor in a debt-management plan if the debtor's estimated monthly living expenses and estimated monthly provider payments exceed his or her income. A debtor in this situation may be enrolled in a debt-management plan if the debtor is specifically advised not to enroll in a debt-management plan because the debtor cannot afford the debt-management plan payment and the debtor independently states that he or she believes that he or she can afford the debt-management plan payment by reducing expenses, obtaining additional income or funds from another source, or otherwise adjusting the budget estimate to make the debt-management plan affordable;
- (g) disclosing or using any individual's private financial and personal information that the provider receives in connection with providing debt-management services except in accordance with and as permitted by applicable law, including but not limited to the Gramm-Leach-Bliley Act, 15 U.S.C.A. § 6801, et seq.;
- (h) entering into any agreement with any person that contains any standards or criteria under which the person must enroll debtors into a debt-management plan;
- (i) entering into any agreement with any person that sets any minimum enrollment rate or other standard mandating the number of individuals who must be enrolled in debt-management plans or an amount that the person must collect from clients;
- (j) entering into any agreement with any person that sets any minimum revenues or other standards mandating the amount of revenue that must be generated through a debt-management plan;
- (k) using the name or mark of a person other than the provider when communicating with debtors or creditors in connection with the performance of debt-management services;
- (l) entering into any agreement with a third party that limits the use of any data reflecting either the provider's or the third party's performance of any debt-management services, including data reflecting the payments that either the provider or the third party has processed or is processing in connection with a debt-management plan;
- (m) expressly or impliedly misrepresenting the purpose of any fee or contribution that is paid by clients;
- (n) failing to clearly and conspicuously disclose the nature and types of services that will be provided under any agreement prior to the consumer's agreeing to receive such services;
- (o) debiting, cashing, depositing, or otherwise collecting or attempting to collect monies from a client after a client has asserted a violation of state law, regulation, or rule in connection with the debt-management plan;
- (p) using logos, symbols, business names, or the like that might represent or imply to consumers an affiliation or association with any government entity;
- (q) failing to maintain and make available upon request to the Division full and complete substantiation for any and all claims and representations made to debtors and in any advertising or promotional materials;
- (r) submitting any false, misleading, or deceptive information to the Division relating to a registration application or renewal application; or

- (s) failing to comply with all of the prerequisites for providing debt-management services outlined in T.C.A. § 47-18-5517 and any applicable federal laws, regulations, or rules.

Authority: T.C.A. §§ 47-18-104, 47-18-5515, 47-18-5517, 47-18-5528, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18- 12 Examinations, Records, and Reports.

(1) Recordkeeping Requirements

- (a) A registrant shall retain copies of all records for five (5) years from the date of completion or cancellation of an educational program, financial analysis, or debt-management services agreement. If the registrant has been notified in writing by the Director to retain records for a longer period of time, the registrant shall retain records beyond this time period as requested.
- (b) Every debt-management services provider registered in this state shall make and keep current the following books and records relating to its business, at a minimum:
1. ledgers reflecting all assets and liabilities, income and expense, and capital accounts;
  2. a record or ledger reflecting separately for each client the clearance dates of all money received from each client and all payments made on behalf of each client and in all cases the name of the client in which the money has been received or paid;
  3. copies of all communications, correspondence, and other records relating to debt-management services agreements and plans with, about, or on behalf of clients;
  4. a separate file containing all written complaints made or submitted by clients to the provider, counselors, or debt specialists relating directly or indirectly to debt-management services and any records received or produced in the course of investigating and resolving complaints;
  5. the personnel or contractor records for any employee, agent, or contractor of the provider about whom the provider has received complaints from clients regarding any conduct relative to the provider's services;
  6. a client information form for each client. If recommendations are to be made to the client, the form shall include such information as is necessary to determine suitability;
  7. a record of the proof of money balances of all trust accounts. Such balances shall be prepared currently at least once a month;
  8. all partnership certificates and agreements or, in the case of a corporation, all articles of incorporation, by-laws, minute books, and stock certificate books of the provider; and
  9. a separate file containing copies of all advertising circulated by the provider in the conduct of its business.
- (2) Every provider shall make and keep such accounts, correspondence, and other records as the Administrator prescribes by rule.
- (3) All activities, books, accounts, and the records of a provider or a person to which a provider has delegated its obligations under an agreement are subject at any time and from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the Administrator, as the Administrator deems necessary or appropriate in the public interest or for the protection of clients or to ensure compliance with the Act. The cost of such examination shall be borne by the person examined in the same manner as is provided for insurance companies, except that not more than two (2) such examinations shall be charged to such person in any twelve-month period.

Authority: T.C.A. §§ 47-18-5506, 47-18-5512, 47-18-5522, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

0780-05-18-.13 Fingerprinting.

- (1) Any person required to submit electronically scanned fingerprints pursuant to the Uniform Debt-Management Services Act shall be deemed to have supplied the required sets of fingerprints if that applicant causes a private company contracted by the State to electronically transmit that applicant's classifiable prints directly to the TBI and FBI, which then forward an electronic report based on that applicant's fingerprints to the commissioner.
- (2) Any person required to submit fingerprints by the Uniform Debt-Management Services Act shall make arrangements for the processing of his or her fingerprints with a company contracted by the State to provide electronic fingerprinting services and shall be responsible for the payment of any fees associated with processing of fingerprints to the respective agent authorized by the TBI and FBI. Provided, however, that the Commissioner or the Commissioner's designee may authorize the submission of three (3) sets of classifiable physical fingerprint cards, at the expense of the applicant and rolled by a qualified person acceptable to the Commissioner or the Commissioner's designee, for good cause.
- (3) In the event an applicant furnishes unclassifiable fingerprints or fingerprints that are unclassifiable by nature, the applicant shall submit new electronic fingerprints to a company contracted by the State to provide electronic fingerprinting services, together with any additional fee(s) charged by the TBI and/or FBI for processing the new fingerprints. For the purposes of this rule, "unclassifiable prints" means that the electronic scan or the print of the person's fingerprints cannot be read, and therefore cannot be used to identify the person.
- (4) In the event the State no longer contracts with any company to provide an electronic fingerprinting service, the applicant shall submit three (3) classifiable TBI and FBI fingerprint cards with his or her application and shall pay the Division all processing fees established by the TBI and FBI.
- (5) All sets of classifiable fingerprints required by this rule shall be furnished at the expense of the applicant.
- (6) Applicants shall in all cases be responsible for paying application fees as established by the Commissioner regardless of the manner of fingerprinting.

Authority: T.C.A. §§ 47-18-5506, 47-18-5532.

0780-05-18-.14 Inflationary Adjustment.

- (1) The dollar amounts in T.C.A. §§ 47-18-5502, 47-18-5505, 47-18-5509, 47-18-5513, 47-18-5523, 47-18-5533 and 47-18-5535 shall be those specified in those sections, subject to adjustments made pursuant to this rule.
- (2) Pursuant to T.C.A. § 47-18-5532(f), 2014 is adopted as the base year for the purposes of adjusting the dollar amounts to reflect inflation, as measured by the United States Bureau of Labor and Statistics consumer price index for all urban consumers.
- (3) The Administrator shall on a yearly basis determine the change in the index from the base year as of December 31 of the preceding year. If such change is at least 10 percent, whether positive or negative, the dollar amounts of those specified in T.C.A. §§ 47-18-5502, 47-18-5505, 47-18-5509, 47-18-5513, 47-18-5523, 47-18-5533 and 47-18-5535 shall be adjusted to reflect the change in index from the base year, rounded to the nearest one hundred dollars (\$100.00), to be effective on July 1 of that year, except that the amounts in § 47-18-5523 shall be rounded to the nearest dollar.
- (4) The year in which such adjustment takes place shall become the new base year for the purposes of adjusting the dollar amounts according to T.C.A. § 47-18-5532(f).

- (5) The Administrator shall notify registered providers of any change in dollar amounts made pursuant to this rule, shall make that information available to the public, and shall update that information on all forms. The current base year and all fees, as adjusted, shall be listed on a web site chosen by the Administrator.

Authority: T.C.A. §§ 47-18-5532.

0780-05-18-.15 Accreditation.

- (1) An accreditation from the Council on Accreditation shall meet the requirements of T.C.A. § 47-18-5506(8).
- (2) Notwithstanding the previous paragraph, the Director may approve an independent accrediting organization if the Director finds, based on the totality of the information provided, that the independent accrediting organization provides accreditation that is substantially equivalent to the accreditation provided by the Council on Accreditation. Approval by the Director shall be valid for a period of two (2) years from the date of approval, at which time the independent accrediting organization shall make a new request for approval. An independent accrediting organization shall provide the following information on a form approved by the Director in its request for approval:
- (a) The name of the independent accrediting organization;
  - (b) The phone number, mailing address and e-mail address—if applicable—of the independent accrediting organization;
  - (c) A list of other states that have approved the independent accrediting organization to provide accreditation of debt management companies or similar organizations;
  - (d) The number of years that the independent accrediting organization has offered accreditation for debt management companies or similar organizations;
  - (e) A complete list of the standards that accredited companies must meet; and
  - (f) Such other information as the Director may request in order to determine that the independent accrediting organization is substantially equivalent to the accreditation provided by the Council on Accreditation.
- (3) Notwithstanding any language in this rule to the contrary, any debt management service currently registered with the Division on July 1, 2016, shall have until January 1, 2018, to become accredited in compliance with this rule.

Authority: T.C.A. §§ 47-18-5506, 47-18-5532.

0780-05-18-.16 Certification.

- (1) Certification by the National Foundation for Credit Counseling or the Financial Counseling Association of America shall meet the requirements of T.C.A. § 47-18-5506(9).
- (2) Notwithstanding the previous paragraph, the Director may approve a training program or certifying organization providing certification to be a certified counselor and/or certified debt specialist if the Director finds, based on the totality of the information provided, that the training program or certifying organization meaningfully authenticates the competence of individuals providing services under the Act. Approval by the Director shall be valid for a period of two (2) years from the date of approval, at which time the training program or certifying organization shall make a new request for approval. A training program or certifying organization shall provide the following information in its request for approval:
- (a) The name of the certifying organization or entity providing the training program;
  - (b) The phone number, mailing address and e-mail address – if applicable – of the certifying organization or entity providing the training program;

- (c) A list of other states that have approved the training program or certifying organizations to be approved;
  - (d) The number of years that the training program or certifying organization has offered certification for debt management counseling;
  - (e) A complete list of the curriculum required to be completed, the topics covered, the number of hours to complete the program, and the number of persons currently certified; and
  - (f) Such other information as the Director may request in order to determine that the training program or certifying organization meaningfully authenticates the competence of individuals providing services under the Act.
- (3) Notwithstanding any language in this rule to the contrary, any debt management service currently registered with the Division on July 1, 2016, whose certified counselors or certified debt specialists are certified by a training program or certifying organization not approved under this rule shall have until January 1, 2018, for all employees to become certified by a company approved under this rule and for all future certifications to be done in compliance with such requirement.

Authority: T.C.A. §§ 47-18-5532.  
0780-05-18-.17 Severability.

If any Rule, term, or provision of this Chapter shall be judged invalid for any reason, that judgment shall not affect, impair or invalidate any other Rule, term, or provision of the Chapter, and the remaining Rules, terms, and provisions shall be and remain in full force and effect.

Authority: T.C.A. §§ 47-18-5532 and 47-18-5541. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.

Repeal

0780-08-01

Chapter 0780-08-01 is hereby repealed in its entirety.

Authority: Public Chapter 339 (2015).

RULES  
 OF  
 TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE  
 DIVISION OF CONSUMER AFFAIRS  
 0780-08-01  
 RULES AND REGULATIONS FOR DEBT MANAGEMENT SERVICES  
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~~0780-08-01-.01 PURPOSE OF RULES.~~

~~The purpose of these rules is to institute the registration and regulation of providers of debt management services and to protect the interests of consumers as required by the Uniform Debt Management Services Act.~~

~~Authority: T.C.A. §§ 47-18-5501 and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.~~

~~0780-08-01-.02 SHORT TITLE.~~

~~These rules may be cited as the Tennessee Debt Management Services Rules.~~

~~Authority: T.C.A. § 47-18-5501. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.~~

~~0780-08-01-.03 RETAINED POWERS.~~

~~It is the express intent of these rules that such powers as are herein delegated by the Administrator are also retained and may be exercised by the Administrator at the Administrator's election.~~

~~Authority: T.C.A. § 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.~~

~~0780-08-01-.04 DEFINITIONS.~~

~~(1) When used in these rules and in the Uniform Debt Management Services Act, unless the context otherwise requires:~~

- ~~(a) "Act" shall mean Chapter 469 of the Public Acts of 2009, otherwise known as the Uniform Debt Management Services Act, and its codification in Tennessee Code Annotated.~~
- ~~(b) "Branch office" means any office of a provider within this state other than its principal place of business within this state.~~
- ~~(c) "Director" shall mean the Director of the Consumer Affairs Division of the Department of Commerce and Insurance of the State of Tennessee.~~
- ~~(d) "Division" shall mean the Director, staff, employees, and agents of the Consumer Affairs Division of the Department of Commerce and Insurance of the State of Tennessee or such other agency as shall administer the Act.~~
- ~~(e) "UAPA" shall mean the Uniform Administrative Procedures Act as set forth in T.C.A. § 4-5-101, et seq., and any rules promulgated pursuant thereto to the extent such rules are not inconsistent with the Act or these rules.~~

~~(2) Unless the context otherwise requires or a rule expressly provides otherwise, terms defined in the Act shall have the same meaning when used in these rules.~~

~~Authority: T.C.A. §§ 47-18-5502 and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.~~

~~0780-08-01-.05 ADMINISTRATION OF THE ACT.~~

~~(1) General~~

- ~~(a) The Administrator delegates to the Director all of the power and duties granted to and imposed upon the Administrator by the Act except the power:
  - ~~1. to issue orders and impose any sanction pursuant to T.C.A. §§ 47-18-5533 (a)(1),(2),(3) and (b), or 47-18-5534(b) and (c) in any contested case, as such term is defined in the UAPA; and~~
  - ~~2. to adopt any rule as such term is defined in the UAPA.~~~~
- ~~(b) Without limiting the foregoing delegation, the Director is expressly empowered to:
  - ~~1. conduct examinations and investigations as provided by T.C.A. § 47-18-5532(b);~~
  - ~~2. issue registrations; and~~~~

- ~~3. accept on behalf of the Administrator settlement agreements reached between the Division and any person pursuant to T.C.A. § 4-5-105.~~
- ~~(c) Nothing herein limits the Director's authority, duties, or responsibilities set forth elsewhere in state law, regulation, or rule.~~

~~(2) Filing Requirements~~

- ~~(a) Applications, financial statements, reports, educational materials, and other information shall be filed on good quality white paper, 8½ by 11 or 8½ by 14 inches in size.~~
- ~~(b) All documents filed with the Division shall be in clear and easily readable form and suitable for photocopying.~~
- ~~(c) Exhibits may be attached or filed separately and shall be properly marked or identified.~~
- ~~(d) Each copy of educational materials and financial analysis models must be bound securely. The Division reserves the right to reject any such document the pages of which are not securely bound together.~~
- ~~(e) All applications, reports, financial statements, correspondence, educational materials, financial analysis models, exhibits and other information required or requested pursuant to the Act or these rules may be submitted to the Division in the paper format prescribed in this subpart (e) or through electronic data gathering, access, retrieval, and storage methods acceptable to the Division.~~
- ~~(f) Unless expressly required or requested, only the original executed copy of each form is required.~~

~~(3) Upon a request for records under Tennessee's Public Records Act, T.C.A. § 10-7-501 et seq., the Division shall assess reasonable charges for copying and associated labor.~~

~~Authority: T.C.A. §§ 47-18-5501, 47-18-5505, 47-18-5506, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.~~

~~0780-08-01-.06 APPLICABILITY.~~

~~(1) A person forming an agreement to provide debt management services and any person to whom the account is then transferred are providers subject to the provisions of the Act.~~

~~(2) Any person conducting business in this state as a provider must apply to the Division to become registered.~~

~~(3) Debt management services do not include:~~

- ~~(a) legal services provided by an attorney licensed and in good standing in Tennessee during the entire time services are provided and in an attorney-client relationship;~~
- ~~(b) accounting services provided by a certified public accountant licensed and in good standing in Tennessee during the entire time services are provided and in an accountant-client relationship;~~
- ~~(c) financial planning services provided in a financial planner-client relationship by a person who is either licensed as an insurance provider and in good standing or registered as an investment adviser representative and in good standing in this state and who holds one of the following professional designations during the entire time services are provided:~~
- ~~1. Certified Financial Planner (CFP), awarded by the Certified Financial Planner Board of Standards, Inc.;~~
  - ~~2. Chartered Financial Consultant (ChFC), awarded by the American College, Bryn Mawr, PA;~~
  - ~~3. Personal Financial Specialist (PFS), awarded by the American Institute of Certified Public Accountants;~~
  - ~~4. Chartered Financial Analyst (CFA), awarded by the Institute of Chartered Financial Analysts; or~~
  - ~~5. Chartered Investment Counselor (CIC), awarded by the Investment Counsel Association of America, Inc.~~
- ~~(d) services provided within the scope of the business or profession of:~~
- ~~1. a judicial officer or person acting under court order or administrative order;~~
  - ~~2. an assignee for the benefit of creditors;~~
  - ~~3. a bank or government regulated bank affiliate;~~
  - ~~4. a title insurer, escrow company, or person providing bill paying services if the provision of debt management services is incidental to the bill paying services.~~

~~0780-08-01-.07 REGISTRATION APPLICATION.~~

~~(1) Applications for registration shall be submitted on forms approved by the Director.~~

~~(2) Any application submitted without required information or failing to meet any requirement for registration will be held by the program office, and written notification of the information that is lacking or the reason(s) the application does not meet the requirements for registration will be sent to the applicant. The application will be held in "pending" status for a reasonable period of time, but such period is not to exceed one hundred eighty (180) days from the date of application. If the applicant fails to timely and completely respond to the written notification, the application will be closed.~~

~~(3) Upon determination that an application submitted directly to the Division has been abandoned, the Division shall by Order of Abandonment cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.~~

~~(4) Any application once submitted may be withdrawn, provided, however, that the application fee shall not be refunded.~~

~~(5) Applications must be complete before they are submitted for consideration. Applications shall at a minimum include:~~

~~(a) a complete and properly executed application form signed under penalty of perjury and before a notary by the person applying;~~

~~(b) a non-refundable application fee;~~

~~(c) a surety bond as required by T.C.A. § 47-18-5513, or an acceptable surety alternative that complies with the provisions of T.C.A. § 47-18-5514;~~

~~(d) evidence of insurance as required by T.C.A. § 47-18-5505(b)(4) in the amount of two hundred and fifty thousand dollars (\$250,000).~~

~~1. Any insurance policy submitted by a provider as evidence of insurance required by the Act shall include the insurer's written agreement to provide the Administrator with written notice of termination or reduction of the policy, which shall be sent by certified U.S. mail to the Division.~~

~~2. For purposes of administering the Act, the insurer's termination or reduction of liability shall be effective from and after the expiration of sixty (60) days from the Division's receipt of such written notice or on such later date as is stated in the written notice. The insurer's termination or reduction of liability shall not affect, reduce, or release its liability for any acts or practices that occurred during the time the policy was in force and prior to the effective date of termination or reduction of the policy.~~

~~(e) the articles of incorporation and by-laws of the applicant;~~

~~(f) a description of any ownership interest of greater than ten percent (10%) by a Director, owner, or employee of the applicant in:~~

~~1. any affiliate of the applicant; or~~

~~2. any entity that provides products or services to the applicant or any individual related to the applicant's debt management services.~~

~~(g) the name and address of each corporate person that owns an interest in or is otherwise affiliated with or controls, directs, or influences the operations of the applicant;~~

~~(h) the name and address of each corporate person in which the applicant owns an interest or is otherwise affiliated with or whose operations are controlled, directed, or influenced by the applicant;~~

~~(i) the names and addresses of all employers of each of the applicant's Directors during the immediately preceding ten (10) years;~~

~~(j) the names, addresses, and amounts of compensation for the five (5) most highly compensated employees of the applicant for each of the three (3) years immediately preceding the application, or the period of the applicant's existence if less than three (3) years, if the applicant meets any of the criteria outlined in T.C.A. § 47-18-5506(17);~~

~~(k) the identity of each Director who is an affiliate as defined by T.C.A. § 47-18-5502(2);~~

~~(l) evidence of tax exempt status under the Internal Revenue Code, 26 U.S.C. §501, if applicant is a not-for-profit corporation and exempt from taxation;~~

- ~~(m) consent to jurisdiction of the State of Tennessee and venue in Davidson County, Tennessee;~~
- ~~(n) disclosure of and identification information for all trust accounts;~~
- ~~(o) irrevocable consent to the authority of the Administrator to review and examine all trust accounts;~~
- ~~(p) applicant's financial statements prepared in accordance with the provisions of T.C.A. § 47-18-5506(7);~~
- ~~(q) evidence of the applicant's accreditation by an independent accrediting organization approved by the Director;~~
- ~~(r) evidence of certification by an independent certifying program approved by the Director of all counselors and debt specialists conducting business in this state on behalf of the applicant;~~
- ~~(s) detailed descriptions of the three most common education programs provided by the applicant to Tennessee consumers and copies of all materials associated with the education programs;~~
- ~~(t) a description of the applicant's financial analysis and initial budget plan, including any form or electronic model used by the applicant to evaluate the financial conditions of Tennessee consumers;~~
- ~~(u) copies of each agreement form provided by the applicant to Tennessee consumers and any other documents or information required to be signed by or provided to a Tennessee consumer;~~
- ~~(v) a schedule of all fees and charges, including any recommended donations, provided by the applicant to Tennessee consumers;~~
- ~~(w) sworn criminal history records checks, including fingerprints, conducted within the immediately preceding twelve (12) months for the purpose of providing debt management services, for every officer of the applicant and every employee or agent who is authorized to have access to the applicant's trust account(s). The sworn criminal history records check must be submitted directly by the criminal history records check provider to the Division. Applicants who have had these sworn criminal history records checks performed for the purpose of providing debt management services in another state within twelve (12) months prior to submitting the application may have the results of those records checks submitted directly by the other state to the Division as certified business records of the other state.~~
- ~~(x) disclosure of any debt management services agreements or plans entered into with Tennessee consumers since June 23, 2009; and~~
- ~~(y) any other information required to determine whether the application should be approved or denied.~~

~~(6) An applicant shall notify the Division within ten (10) days after a change occurs in any information originally reported in the initial registration application.~~

~~Authority: T.C.A. §§ 47-18-5504, 47-18-5505, 47-18-5506, 47-18-5507, 47-18-5508, 47-18-5509, 47-18-5510, 47-18-5513, 47-18-5514, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.~~

#### ~~0780-08-01-08 RENEWAL OF REGISTRATION.~~

~~(1) Registrations shall expire on the last day of the twelfth (12<sup>th</sup>) month following their issuance or renewal and shall become invalid on such date unless renewed prior to their expiration date.~~

~~(2) Renewal applications must be received by the Division not less than thirty (30) days or more than sixty (60) days prior to the expiration of a registration.~~

~~(3) A provider choosing not to renew its registration shall notify the Division of its intention prior to the expiration date of the registration and shall surrender the registration certificate to the Division immediately upon its expiration.~~

~~(4) Applications for the renewal of registrations shall be made on forms provided by the Director.~~

~~(5) Applications for renewals will not be considered filed until the applicable fee prescribed in these rules and all other information required pursuant to the Act and these rules are received.~~

~~(6) Applicants are responsible for annual renewal whether or not a notice of renewal is received from the Administrator.~~

~~(7) A provider's application for renewal of its registration shall include at a minimum:~~

- ~~(a) a complete and properly executed renewal application form signed by the provider's representative under penalty of perjury before a notary;~~
- ~~(b) the applicable non-refundable renewal application fee as provided in Rule 0780-05-18-09, below;~~

~~(c) a surety bond as required by T.C.A. § 47-18-5513, or an acceptable surety alternative that complies with the provisions of T.C.A. § 47-18-5514;~~

~~(d) evidence of insurance as required by T.C.A. § 47-18-5505(b)(4) in the amount of two hundred and fifty thousand dollars (\$250,000).~~

~~1. Any insurance policy submitted by a provider as evidence of insurance required by the Act shall include the insurer's written agreement to provide the Administrator with written notice of termination or reduction of the policy, which shall be sent by certified U.S. mail to the Division.~~

~~2. For purposes of administering the Act, the insurer's termination or reduction of liability shall be effective from and after the expiration of sixty (60) days from the Division's receipt of such written notice or on such later date as is stated in the written notice. The insurer's termination or reduction of liability shall not affect, reduce, or release its liability for any acts or practices that occurred during the time the policy was in force and prior to the effective date of termination or reduction of the policy.~~

~~(e) disclosure of any changes of information reported in the initial registration application or the immediately previous renewal application, as applicable;~~

~~(f) the applicant's financial statements prepared in accordance with the provisions of T.C.A. § 47-18-5506(7);~~

~~(g) evidence of the applicant's accreditation by an independent accrediting organization approved by the Director;~~

~~(h) evidence of certification, by an independent certifying program approved by the Director, of all counselors and debt specialists conducting business in this state on behalf of the applicant;~~

~~(i) sworn criminal history records checks, including fingerprints, conducted within the immediately preceding twelve (12) months for the purpose of providing debt management services, for every officer of the applicant and every employee or agent who is authorized to have access to the applicant's trust account(s). The criminal history records check must be submitted directly to the Division by the criminal history check provider. Applicants that have had a criminal records check performed for the purpose of registration as a provider in another state within twelve (12) months prior to submitting the registration application may have the results of that background check submitted directly from the other state to the Division as a certified business record of the other state.~~

~~(j) disclosure of the total amount of money received by the applicant from or on behalf of Tennessee consumers pursuant to debt management services agreements and plans during the preceding twelve (12) month period and the total amount of money distributed to creditors of those Tennessee consumers during the same twelve (12) month period;~~

~~(k) disclosure of the gross amount accumulated during the preceding twelve (12) month period pursuant to debt management services plans by or on behalf of Tennessee consumers with whom the applicant has debt management services agreements; and~~

~~(l) any other information required to determine whether the application should be approved or denied.~~

~~(8) An applicant shall notify the Division within ten (10) days after a change occurs in any of the information originally reported in the renewal application.~~

~~Authority: T.C.A. §§ 47-18-5504, 47-18-5506, 47-18-5511, 47-18-5513, 47-18-5514, and 47-18-5532.~~

~~Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.~~

#### ~~0780-08-01-.09 FEES.~~

~~(1) Nonrefundable debt management services registration.....\$2,000.00~~

~~(2) Nonrefundable renewal fee for debt management services.....\$2,000.00~~

~~Authority: T.C.A. §§ 47-18-5505, 47-18-5511, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.~~

#### ~~0780-08-01-.10 SUBMISSION OF INFORMATION.~~

~~(1) An applicant or registrant shall inform the Division in writing of any change in business name or business structure at least ten (10) days before the change occurs. Registrations are non-transferable.~~

~~(2) An applicant or registrant shall inform the Division in writing within thirty (30) days of receipt of notice and provide a copy of:~~

~~(a) any indictment or information filed in any court of competent jurisdiction naming the applicant or registrant, any affiliate, partner, officer, Director, owner, or agent of the applicant or registrant, or any person occupying a similar status with or performing similar functions for the applicant or registrant, alleging the commission of any felony regardless of subject matter, or of any misdemeanor involving a security or any aspect of the debt management services business;~~

~~(b) any complaint filed in any court of competent jurisdiction naming the applicant or registrant, any affiliate, partner, officer, Director, owner, or agent, or any person occupying a similar status with or performing similar functions for the applicant or registrant, seeking a permanent or temporary injunction enjoining any of such person's conduct or practice involving any aspect of the debt management services business;~~

~~(c) any complaint or order filed by a federal or state regulatory agency or the United States Postal Service naming the applicant or registrant, any affiliate, partner, officer, Director, owner or agent, or any person occupying a similar status with or performing a similar function for the applicant or registrant, related to the debt management services business.~~

~~(3) Within ten (10) days of filing, an applicant or registrant shall file with the Division a copy of any answer, response, or reply to any complaint, indictment, or information described in subparts (2)(a) through (2)(c) above.~~

~~(4) Within ten (10) days of receipt, an applicant or registrant shall file with the Division a copy of any decision, order, or sanction that is made, entered, or imposed with respect to any proceedings described in subparts (2)(a) through (2)(c) above.~~

~~(5) Nothing in paragraphs (2), (3), or (4) is intended to relieve the applicant or registrant from any duty to comply with the legal process or any reporting requirements elsewhere specified in these rules or in the Act.~~

#### ~~(6) Trust Accounts~~

~~(a) An applicant or registrant shall file with the Division a notice of any relocation of trust accounts from one bank to another bank thirty (30) days prior to the date on which the relocation of the trust accounts becomes effective.~~

~~(b) In the event of the relocation of trust accounts from one bank to another, the applicant or registrant shall provide the new trust account numbers to the Division no later than two (2) days after receiving the new trust account numbers.~~

~~(c) An applicant or registrant shall notify the Division of a theft from a trust account within five (5) days of discovery of the theft.~~

~~Authority: T.C.A. §§ 47-18-5507, 47-18-5522, 47-18-5529, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.~~

#### ~~0780-08-01-.11 STANDARDS OF PRACTICE.~~

~~(1) Upon any request for additional information or upon receipt of notice of any written complaint against the provider, the provider shall, within ten (10) business days, file with the Division a written answer to the request for additional information or to the complaint.~~

~~(2) A provider shall immediately determine the state of residence of a potential client during the first contact with the potential client. If the potential client is a resident of the state of Tennessee, the provider shall notify the potential client in writing of its current registration status in the state of Tennessee.~~

~~(3) No later than thirty (30) days prior to the opening of a branch office, a provider shall notify the Division in writing of the opening of the branch office as well as the name of the person responsible for the branch office and the certified counselor(s) and certified debt specialist(s) working in the branch office.~~

~~(4) A provider shall comply with all applicable federal and state laws and rules in providing debt management services and otherwise comply with all federal and state laws and rules applicable to the provider.~~

~~(5) A provider shall keep each client reasonably informed about the status of the debt management services being performed for the client and shall promptly comply with the client's reasonable requests for information.~~

~~(6) A provider shall not use improper or questionable methods of soliciting clients, including but not limited to misleading or deceiving clients or utilizing scare tactics or other improper tactics and shall not pay another person or accept payment from another person for engaging in improper methods.~~

~~(7) A provider shall not associate its business with any business or person that engages in or attempts to engage in unfair, deceptive, or misleading practices or acts in its dealings with clients.~~

~~(8) Unless responding to a request for information, subpoena, or order issued by a regulatory agency, law enforcement agency, or court of competent jurisdiction, a provider shall not disclose any client information obtained relative to a debt management services agreement or plan to someone other than the client unless the disclosure is expressly authorized in writing by the client.~~

~~(9) A provider shall not misrepresent its debt management services or the features of any service or make unwarranted claims about the merits of a service that the provider offers.~~

~~(10) A provider shall not accept or offer commissions or allowances, directly or indirectly, from other parties dealing with the client in connection with work for which the provider is responsible.~~

~~(11) Before the execution of an agreement for debt management services, a provider shall clearly and conspicuously disclose to the client any interest the provider has in a business that may affect the client. No provider shall allow its interest in any business to affect the quality or results of the debt management services that the provider may be called upon to perform.~~

~~(12) A provider shall fully comply with all Federal Trade Commission rules, regulations, and guidelines, including but not limited to the Guides Concerning Use of Endorsements and Testimonials in Advertising, 16 C.F.R. pt. 255.~~

~~(13) A provider shall not engage in false or misleading advertising.~~

~~(14) A provider shall not perform or recommend any debt management services that would violate applicable federal or state laws.~~

~~(15) A provider shall not engage in deceptive or unfair trade practices. Examples of deceptive or unfair trade practices include but are not limited to:~~

~~(a) proposing or communicating any alteration of a material term of a debt management services agreement or plan to a client or a client's creditor without first receiving explicit written instructions from the client directing the provider to make a specific alteration;~~

~~(b) expressly or impliedly representing that any of its goods or services are "free" if the client will be asked to make any payment in connection with the goods or services, other than a payment that will be forwarded in its entirety to the client's creditors. A provider may represent that a consultation or other initial contact is "free" if the consultation or contact is provided with no obligation on the part of the client to make any payment in connection with the consultation or contact;~~

~~(c) expressly or impliedly representing that any payments made by clients in connection with providers are voluntary contributions or are payments to support a non-profit organization, unless more than fifty percent (50%) of the payment is paid to or for the benefit of the non-profit organization for purposes other than to pay the provider for services rendered to a non-profit organization;~~

~~(d) expressly or impliedly misrepresenting the effects of a debt management plan on a client's ability to obtain credit;~~

~~(e) enrolling a debtor in a debt management plan unless, prior to enrollment, the debtor has received credit counseling from a credit counselor who has sufficient experience and training to counsel in financial literacy, money management, budgeting, and responsible use of credit and is advised of the various options available to the debtor for addressing the debtor's financial problems;~~

~~(f) enrolling a debtor in a debt management plan if the debtor's estimated monthly living expenses and estimated monthly provider payments exceed his or her income. A debtor in this situation may be enrolled in a debt management plan if the debtor is specifically advised not to enroll in a debt management plan because the debtor cannot afford the debt management plan payment and the debtor independently states that he or she believes that he or she can afford the debt management plan payment by reducing~~

- ~~expenses, obtaining additional income or funds from another source, or otherwise adjusting the budget estimate to make the debt management plan affordable;~~
- ~~(g) disclosing or using any individual's private financial and personal information that the provider receives in connection with providing debt management services except in accordance with and as permitted by applicable law, including but not limited to the Gramm-Leach-Bliley Act, 15 U.S.C.A. §6801, et seq.;~~
- ~~(h) entering into any agreement with any person that contains any standards or criteria under which the person must enroll debtors into a debt management plan;~~
- ~~(i) entering into any agreement with any person that sets any minimum enrollment rate or other standard mandating the number of individuals who must be enrolled in debt management plans or an amount that the person must collect from clients;~~
- ~~(j) entering into any agreement with any person that sets any minimum revenues or other standards mandating the amount of revenue that must be generated through a debt management plan;~~
- ~~(k) using the name or mark of a person other than the provider when communicating with debtors or creditors in connection with the performance of debt management services;~~
- ~~(l) entering into any agreement with a third party that limits the use of any data reflecting either the provider's or the third party's performance of any debt management services, including data reflecting the payments that either the provider or the third party has processed or is processing in connection with a debt management plan;~~
- ~~(m) expressly or impliedly misrepresenting the purpose of any fee or contribution that is paid by clients;~~
- ~~(n) failing to clearly and conspicuously disclose the nature and types of services that will be provided under any agreement prior to the consumer's agreeing to receive such services;~~
- ~~(o) debiting, cashing, depositing, or otherwise collecting or attempting to collect monies from a client after a client has asserted a violation of state law, regulation, or rule in connection with the debt management plan;~~
- ~~(p) using logos, symbols, business names, or the like that might represent or imply to consumers an affiliation or association with any government entity;~~
- ~~(q) failing to maintain and make available upon request to the Division full and complete substantiation for any and all claims and representations made to debtors and in any advertising or promotional materials;~~
- ~~(r) submitting any false, misleading, or deceptive information to the Division relating to a registration application or renewal application; or~~
- ~~(s) failing to comply with all of the prerequisites for providing debt management services outlined in T.C.A. § 47-18-5517 and any applicable federal laws, regulations, or rules.~~

~~Authority: T.C.A. §§ 47-18-104, 47-18-5515, 47-18-5517, 47-18-5528, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.~~

## ~~0780-08-01-12 EXAMINATIONS, RECORDS, AND REPORTS.~~

### ~~(1) Recordkeeping Requirements~~

- ~~(a) A registrant shall retain copies of all records for five (5) years from the date of completion or cancellation of an educational program, financial analysis, or debt management services agreement. If the registrant has been notified in writing by the Director to retain records for a longer period of time, the registrant shall retain records beyond this time period as requested.~~
- ~~(b) Every debt management services provider registered in this state shall make and keep current the following books and records relating to its business, at a minimum:~~
  - ~~1. ledgers reflecting all assets and liabilities, income and expense, and capital accounts.~~
  - ~~2. a record or ledger reflecting separately for each client the clearance dates of all money received from each client and all payments made on behalf of each client and in all cases the name of the client in which the money has been received or paid.~~
  - ~~3. copies of all communications, correspondence, and other records relating to debt management services agreements and plans with, about, or on behalf of clients.~~
  - ~~4. a separate file containing all written complaints made or submitted by clients to the provider, counselors, or debt specialists relating directly or indirectly to debt management services and any records received or produced in the course of investigating and resolving complaints.~~
  - ~~5. the personnel or contractor records for any employee, agent, or contractor of the provider about whom the provider has received complaints from clients regarding any conduct relative to the provider's services.~~

- ~~6. a client information form for each client. If recommendations are to be made to the client, the form shall include such information as is necessary to determine suitability.~~
- ~~7. a record of the proof of money balances of all trust accounts. Such balances shall be prepared currently at least once a month.~~
- ~~8. all partnership certificates and agreements or, in the case of a corporation, all articles of incorporation, by laws, minute books, and stock certificate books of the provider.~~
- ~~9. a separate file containing copies of all advertising circulated by the provider in the conduct of its business.~~

~~(2) Every provider shall make and keep such accounts, correspondence, and other records as the Administrator prescribes by rule.~~

~~(3) All activities, books, accounts, and the records of a provider or a person to which a provider has delegated its obligations under an agreement are subject at any time and from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the Administrator, as the Administrator deems necessary or appropriate in the public interest or for the protection of clients or to ensure compliance with the Act. The cost of such examination shall be borne by the person examined in the same manner as is provided for insurance companies, except that not more than two (2) such examinations shall be charged to such person in any twelve-month period.~~

~~Authority: T.C.A. §§ 47-18-5506, 47-18-5512, 47-18-5522, and 47-18-5532. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.~~

#### ~~0780-08-01-.13 SEVERABILITY.~~

~~If any Rule, term, or provision of this Chapter shall be judged invalid for any reason, that judgment shall not affect, impair or invalidate any other Rule, term, or provision of the Chapter, and the remaining Rules, terms, and provisions shall be and remain in full force and effect.~~

~~Authority: T.C.A. §§ 47-18-5532 and 47-18-5541. Administrative History: Original rule filed May 16, 2014; effective August 14, 2014.~~

\* 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 proposed rules, lawfully promulgated and adopted by the TN Debt-Management Services Registration Program on 06/17/2016 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce and Insurance

Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

My commission expires on: \_\_\_\_\_

Rules for the Tennessee Debt Management Services Registration Program

Chapter 0780-05-18 Debt Management Services

- Rule 0780-05-18-.01 Purpose of Rules
- Rule 0780-05-18-.02 Short Title
- Rule 0780-05-18-.03 Retained Powers
- Rule 0780-05-18-.04 Definitions
- Rule 0780-05-18-.05 Administration of Act
- Rule 0780-05-18-.06 Applicability
- Rule 0780-05-18-.07 Registration Application
- Rule 0780-05-18-.08 Renewal of Registration
- Rule 0780-05-18-.09 Fees
- Rule 0780-05-18-.10 Submission of Information
- Rule 0780-05-18-.11 Standards of Practice
- Rule 0780-05-18-.12 Examinations, Records, and Reports
- Rule 0780-05-18-.13 Fingerprinting
- Rule 0780-05-18-.14 Inflationary Adjustment
- Rule 0780-05-18-.15 Accreditation
- Rule 0780-05-18-.16 Certification
- Rule 0780-05-18-.17 Severability

Chapter 0780-08-01 Debt Management Services

- Rule 0780-08-01-.01 Purpose of Rules
- Rule 0780-08-01-.02 Short Title
- Rule 0780-08-01-.03 Retained Powers
- Rule 0780-08-01-.04 Definitions
- Rule 0780-08-01-.05 Administration of Act
- Rule 0780-08-01-.06 Applicability
- Rule 0780-08-01-.07 Registration Application
- Rule 0780-08-01-.08 Renewal of Registration
- Rule 0780-08-01-.09 Fees
- Rule 0780-08-01-.10 Submission of Information
- Rule 0780-08-01-.11 Standards of Practice
- Rule 0780-08-01-.12 Examinations, Records, and Reports
- Rule 0780-08-01-.13 Severability

All proposed 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.

\_\_\_\_\_  
Herbert H. Slatery III  
Attorney General and Reporter

\_\_\_\_\_  
Date

**Department of State Use Only**

Filed with the Department of State on: \_\_\_\_\_

Effective on: \_\_\_\_\_

\_\_\_\_\_  
Tre Hargett  
Secretary of State

## Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule:

This rule would affect any small business that qualifies as a Debt-Management Service business. There are currently 30 Debt Management Services businesses in Tennessee.

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

The majority of the rules are being moved from the Consumer Affairs chapter to the Division of Regulatory Boards.

This new fingerprinting rule could create a cost to travel to a location to obtain an electronic fingerprint. However, some licensees may be able to provide fingerprints to an electronic fingerprinting vendor electronically without the need to travel to a location.

The new accreditation and certification rule would only create a cost of submitting materials for evaluation for those businesses relying on accreditations or certifications from entities not yet approved by the commissioner. This could be done electronically at a negligible cost.

3. A statement of the probable effect on impacted small businesses and consumers:

The moved rules will have no effect on small businesses or consumers.

The new fingerprinting rule: Small businesses would potentially decrease their costs in processing fingerprints by \$12 but would have to do such through a private designated vendor. These rules will have no effect on consumers.

The accreditation and certification rules: These new rules ease the requirements to ensure that the accreditations and certifications debt-management servicers need are easier to obtain by opening the competitive field for more entities to offer the accreditations and certifications.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business:

The proposed new rules are minimally burdensome/intrusive to small businesses and there are no known alternative means which are less burdensome.

5. A comparison of the proposed rule with any federal or state counterparts:

There are no federal counterparts to the issues addressed by these rules. Mississippi and Pennsylvania have statutory schemes similar to the Tennessee Uniform Debt-Management Services Act and Pennsylvania seems to have similar rules as counterparts at 10 Pa. Code § 57.1 through 57.33.

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule:

An exemption of small businesses from the aforementioned requirements would create an increased cost to each individual applicant and create an additional administrative process upon the agency, decreasing its standardization and efficiency in processing applications.

## **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)

(Insert statement here)

There is no expected impact on local government by the promulgation of these rules.

**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;

These new rules set out the requirements for the registration, operation and potential discipline for debt-management services businesses in Tennessee. In addition, these rules set forth the requirements for the submissions of fingerprints that are required as a part of the application process for registered companies. This new rule only allows electronic fingerprints to be submitted and those must no longer be submitted to the commission but either directly to the TBI or to an approved vendor to provide to the TBI. This rule was made necessary due to the TBI recently stating that it will no longer accept physical fingerprint cards from the commission. Further, the new rules establish guidelines for the commissioner to approve of different accreditation and certification vendors.

- (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;

There is no known federal law, regulation or state law mandating promulgation of 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;

All current and future debt-management services businesses operating in Tennessee will be affected by these rules. Their position is unknown. The Commissioner urges adoption of these rules.

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

There are no known opinions of the attorney general and reporter or any judicial ruling that directly relates to these rules.

- (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;

There is no probable state increase or decrease in local government revenues and expenditures resulting from the promulgation of these amendments.

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

Benjamin P. Glover  
Assistant General Counsel  
Division of Regulatory Boards  
Department of Commerce and Insurance

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

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Division of Regulatory Boards  
Department of Commerce and Insurance

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

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

These rules are being promulgated due to a legislative change from T.C.A. § 47-18-5542 which moved this program and several others from the Division of Consumer Affairs and underneath the Division of Regulatory Boards. The purpose of these rules is to allow the Division of Regulatory Boards to be able to enforce the laws governing the programs and also pursue violators of the law and rules in order to protect Tennessee consumers. The new rules added to those that are moving are to ensure fingerprinting that is required and to expand the approved vendors of certification and accreditation for debt-management services businesses.