

Notice of Rulemaking Hearing  
The Tennessee Department of Human Services  
Adult and Family Services Division

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

- (1) Knoxville, Tennessee: January 16, 2007, 6:30 p.m., Knoxville State Office Building, 7<sup>th</sup> Floor, 531 Henley Street, Conference Room, A, Knoxville, TN 37902;
- (2) Columbia, Tennessee: January 16, 2007; 6:30 p.m. Suite B, Lobby, Maury County Department of Human Services Office, 1400 College Park Drive, Columbia, TN 38401;
- (3) Nashville, Tennessee: January 18, 2007, 6:30 p.m., 2<sup>nd</sup> Floor Board Room, Citizens Plaza State Office Building, 400 Deaderick Street,, Nashville, TN 37248;
- (4) Johnson City, Tennessee: January 18, 2007 at 6:30 p.m., Tennessee Department of Human Services, 905 Buffalo Street, 2<sup>nd</sup> Floor Conference Room, Johnson City, TN 37604;
- (5) Chattanooga, Tennessee: January 23, 2007, 6:30 p.m., 1<sup>st</sup> Floor-Auditorium, Chattanooga State Office Building, 540 McCallie Avenue, Chattanooga, TN 37402;
- (6) Jackson, Tennessee: January 23, 2007 6:30 p.m., 2<sup>nd</sup> Floor Conference Room B, Suite 210 Lowell Thomas State Office Building, 225 Martin Luther King Jr. Drive, Jackson, TN 38301;
- (7) Cookeville, Tennessee: January 25, 2007, 6:30 p.m. Putnam County Department of Human Services Office, 269 East South Willow, Cookeville, TN 38501;
- (8) Memphis, Tennessee: January 25, 2007, 6:30 p.m., Second Floor Auditorium, Donnelly J. Hill State Office Building, 170 North Main Street, Memphis, TN 38103.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Human Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services' ADA Coordinator, Anneita Dunbar, at Citizens Plaza Building, 400 Deaderick Street, 3rd Floor, Nashville, Tennessee 37248, telephone number (615) 313-5563 (TTY)-(800) 270-1349.

For a copy of the proposed rule contact: Kim Beals, Director of Legal Services, Department of Human Services, Citizens Plaza Building, 400 Deaderick Street, 15<sup>th</sup> Floor, Nashville, TN 37248, telephone number (615) 313-4731.

Substance of Proposed Rules  
of  
The Tennessee Department of Human Services  
Adult and Family Services Division

Chapter 1240-4-7  
Report Cards and Rated Licensing for Child Care Agencies

Amendments

Rule 1240-4-7-.05 Re-Evaluations and Reviews of Report Cards and Agency Ratings, is amended by deleting the Rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read:

1240-4-7-.05      Reviews, Appeals, and Reassessments.

(1)    Program Reassessment.

- (a)    Upon receiving the results of its report card evaluation, if the agency does not dispute the results of the evaluation, but would like to be reassessed based upon new or changed conditions occurring since the date of the agency's last completed assessment, the child care agency may request in writing a Program Reassessment.
- (b)    The child care agency is responsible for any and all costs, as determined by the Department, associated with the Environment Rating Scales assessment. Any such costs must be paid prior to the agency receiving a Program Reassessment.
- (c)    The Program Reassessment shall be conducted according to the policies and procedures established by the Department and may utilize all of the rated license component areas, including the Environment Rating Scales.
- (d)    Bonus Payments.
  - 1.    During the period of the reassessment, the availability / amount of any bonus payments made by the Department pursuant to 1240-4-7.04(10) shall be determined by the results of the most recently completed assessment.
  - 2.    Following completion of the reassessment, the availability / amount of any bonus payments made by the Department shall be determined by the results of the reassessment.
- (e)    The results of any Program Reassessment conducted pursuant to the provisions of this paragraph:
  - 1.    Shall become effective immediately upon the Department's completion of the Program Reassessment and shall replace, in their entireties, any prior results for program areas which were reassessed; and
  - 2.    Shall not be subject to either Intradepartmental Review or Administrative Hearing, as set forth below.

(2)    Intradepartmental Review.

- (a) Upon receiving the results of its report card evaluation, a child care agency may request an Intradepartmental Review of the result of the evaluation, to be conducted according to the policies and procedures established by the Department.
- (b) The Intradepartmental Review shall provide an informal opportunity for the child care agency to dispute any of the following:
  - 1. The overall agency rating;
  - 2. The Program Assessment rating or scores; and/or
  - 3. The rating of any other component area.
- (c) The request for an Intradepartmental Review shall be in writing and shall include:
  - 1. A statement that identifies the specific information and/or rating that is in dispute; and
  - 2. A statement that identifies the basis upon which the agency is alleging that an error has occurred.
  - 3. The child care agency may also submit supporting documentation with its written request.
  - 4. If the information required in parts (2)(c)1 and 2 is not provided by the child care agency, the appeal may be dismissed at the sole discretion of the Department.
- (d) Issues considered during the Intradepartmental Review shall be limited to:
  - 1. Whether, at the time of the licensing evaluation, the agency was provided proper credit for compliance with the criteria required in each of the report card component areas; and/or
  - 2. Whether the agency's rating was otherwise correctly calculated.
  - 3. Changes made within, or by, the agency after the date of the last complete licensing evaluation or the validity of the evaluation instrument used to conduct the agency's program assessment shall not be considered in the appeal process.
- (e) The written request for Intradepartmental Review must be received by the Department within twenty (20) business days following the date of mailing of the notice of the report card evaluation to the child care agency.
- (f) Intradepartmental Review shall precede, and must be completed before, any Administrative Hearing and shall not be subject to the contested case provisions of the Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq.
- (g) In conducting the review, the Department may take any of the following actions as deemed appropriate in its discretion:
  - 1. Request additional information from the child care agency and/or third parties;

2. Examine additional documentation from the child care agency and/or third parties; and/or
  3. Conduct an informal hearing, not subject to the provisions of T.C.A. §§ 4-5-301 et seq., that may include testimony from the child care agency and/or third parties.
- (h) The Department shall complete the review and render a written decision to the child care agency within forty-five (45) business days of receipt by the Department of the written request for review.
- (i) Bonus Payments.
1. During the Intradepartmental Review process, the agency can elect to receive its bonus payments based upon the results of the previous report card evaluation or based upon the currently disputed report card evaluation.
  2. If the agency chooses to receive bonus payments based upon the results of the previous report card evaluation and the Intradepartmental Review does not result in an increase to the agency's score / rating, the agency will be required to refund to the Department the amount of the overpayment, which may be accomplished through recoupment by the Department of future amounts owed to the child care agency.
  3. If the agency chooses to receive bonus payments based upon the results of the currently disputed report card evaluation and the Intradepartmental Review results in an increase to the agency's score / rating which warrants an increase in the amount of the bonus payment, the Department will pay to the agency the difference between the two amounts that accrued during the Intradepartmental Review process.
- (j) If the agency is not satisfied with the results of the Intradepartmental Review, the agency may request either an Administrative Hearing, as provided for in paragraph (3) below, or a Program Reassessment, as provided for in paragraph (4) below. If the child care agency chooses Program Reassessment, review of the originally disputed report card evaluation by Administrative Hearing shall no longer be available.
- (3) Administrative Hearing.
- (a) A request for Administrative Hearing must be submitted to the Department by the agency within ten (10) business days after the mailing date of the Department's written decision from the Intradepartmental Review.
  - (b) The issues addressed in the Administrative Hearing are limited to the issues raised during the Intradepartmental Review.
  - (c) The Administrative Hearing shall be conducted as a contested case proceeding by the Department's Appeals and Hearings Division according to T.C.A. §§ 4-5-301 et seq.
  - (d) The hearing officer shall render a written decision within thirty (30) business days after the hearing and shall send a copy of such decision to the Department and to the child care agency.

- (e) Bonus Payments.
  - 1. If the agency requests an Administrative Hearing, the agency's bonus payments shall be based upon the results of the currently disputed report card evaluation.
  - 2. If the Administrative Hearing results in an increase to the agency's report card evaluation rating / score which warrants an increase in the amount of the bonus payment, the Department will pay to the agency the difference between the two amounts that accrued during the Administrative Hearing process.
- (4) Program Reassessment Subsequent to Intradepartmental Review.
  - (a) A Program Reassessment requested by the child care agency pursuant to subparagraph (2)(j) shall be conducted pursuant to the same requirements as specified in paragraph (1) above.
  - (b) Bonus Payments.
    - 1. If the agency requests a Program Reassessment, the agency's bonus payments shall be based upon the results of the currently disputed report card evaluation.
    - 2. If the Program Reassessment results in an increase to the agency's report card evaluation rating / score which warrants an increase in the amount of the bonus payment, the new amount will be paid by the Department as of the effective date of the reassessment.
  - (c) The results of the Program Reassessment shall not be subject to either Intradepartmental Review or Administrative Hearing.
- (5) Issuance of a New Report Card and/or Rated License.
  - (a) If the results of any process indicated in paragraphs (1) through (4) above should require the issuance of a new report card, such report card shall be issued to the child care agency within thirty (30) business days of issuance of the written decision.
  - (b) If the results of any process indicated in paragraphs (1) through (4) above should require a change to the overall rating of the child care agency, a new license with the modified rating shall be issued to the child care agency within thirty (30) business days of issuance of the written decision.
  - (c) Immediately upon receipt of the new report card and/or rated license, the child care agency shall post the report card and/or rated license as directed by the Department.

Authority: T.C.A. §§4-5-201 et seq., 4-5-202, 71-3-502(a)(2), 71-3-502(j), and Acts 2001, ch. 453, § 6.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of November, 2006. (11-28-06)