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Sequence Number: 12-10-13
Notice ID(s): 2101-2102
File Date: 12/10/13

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Department of Human Services
Division:	Family Assistance Division
Contact Person:	Madeline Brough
Address:	Office of General Counsel Citizens Plaza Building, 15 th Floor 400 Deaderick Street Nashville, Tennessee 37243-1403
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Jeffrey Blackshear
Address:	Office of General Counsel Citizens Plaza Building, 15 th Floor 400 Deaderick Street Nashville, Tennessee 37243-1403
Phone:	615-313-4731
Email:	Jeffrey.Blackshear@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Tennessee Department of Human Services Conference Room		
Address 2:	103 E. Walnut Street		
City:	Johnson City		
Zip:	37601		
Hearing Date :	02/04/14		
Hearing Time:	3:30 PM	<input type="checkbox"/> CST/CDT	<input checked="" type="checkbox"/> EST/EDT

Address 1:	Department of Human Services Large Conference Room		
Address 2:	2700 Middlebrook Pike, Ste. 200		
City:	Knoxville		
Zip:	37921-5667		
Hearing Date :	02/05/14		
Hearing Time:	3:30 PM	<input type="checkbox"/> CST/CDT	<input checked="" type="checkbox"/> EST/EDT

Address 1:	1st Floor Auditorium		
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Address 2:	540 McCallie Ave.		
City:	Chattanooga		
Zip:	37402		
Hearing Date :	02/06/14		
Hearing Time:	3:30 PM	<input type="checkbox"/> CST/CDT	<input checked="" type="checkbox"/> EST/EDT

Address 1:	Davidson County DHS Office Video Conference Room		
Address 2:	1000 2nd Avenue North		
City:	Nashville		
Zip:	37243		
Hearing Date :	02/07/14		
Hearing Time:	3:30 PM	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	Cookeville District Office Multi Purpose Room		
Address 2:	1000 England Drive, Suite B		
City:	Cookeville		
Zip:	38501		
Hearing Date :	02/10/14		
Hearing Time:	3:30 PM	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	Maury County Department of Human Services Office Conference Room		
Address 2:	1400 College Park Drive, Suite B		
City:	Columbia		
Zip:	38401		
Hearing Date :	02/11/14		
Hearing Time:	3:30 PM	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	2 nd Floor Conference Room B, Ste 210 Lowell Thomas State Office Building		
Address 2:	225 Martin Luther King, Jr. Drive		
City:	Jackson		
Zip:	38301		
Hearing Date :	02/13/14		
Hearing Time:	3:30 PM	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	Southwest Tennessee Community College Farris Auditorium		
Address 2:	5983 Macon Cove		
City:	Memphis		
Zip:	38134		
Hearing Date :	02/14/14		
Hearing Time:	3:30 PM	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

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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. If needed, copy and paste additional tables to SS-7037 (October 2011)

accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
1240-01-47	Non-Financial Eligibility Requirements Families First Program
Rule Number	Rule Title
1240-01-47-.16	Personal Responsibility Plan

Chapter Number	Chapter Title
1240-01-58	Electronic Benefit Transfer Card - Prohibited Uses
Rule Number	Rule Title
1240-01-58-.01	Purpose
1240-01-58-.02	Definitions
1240-01-58-.03	Prohibited Uses
1240-01-58-.04	Monitoring and Penalties
1240-01-58-.05	Appeals

Chapter 1240-01-47
Non-Financial Eligibility Requirements Families First Program

Amendment

Rule 1240-01-47-.16 Personal Responsibility Plan is amended by deleting paragraphs (1) and (2) in their entirety and by substituting instead the following, so that, as amended, paragraphs (1) and (2) shall read as follows:

- (1) Personal Responsibility Plans Required for Eligibility.
 - (a) As a condition of eligibility for the entire AU, the caretaker (both parents in a two (2) parent AU) who applies for or receives Families First must sign a Personal Responsibility Plan (PRP). Signing the PRP indicates an intent to comply with the requirements of the plan. The PRP is developed in consultation with the Department and:
 - (b) Requires that all caretakers (both parents in a two (2) parent AU):
 1. Agree to cooperate with child support enforcement activities;
 2. Assure that the children in the AU attend school, including kindergarten when available;
 3. Assure that the children in the AU receive regular immunizations and health checks;
 4. Agree to participate in thirty (30) hours per week of activities as described in 1240-01-49-.03 if not exempt;
 5. Agree not to falsify work and/or educational activities documentation, such as providing a falsified employer's statement, attendance, etc. to verify thirty (30) hours per week of activities; and
 6. Agree not to access public assistance benefits through an electronic benefit transfer card at any point of sale device or automated teller machine located in any liquor store, casino, gambling casino, gaming establishment, or adult cabaret as prohibited under Chapter 1240-01-58.
- (2) As a condition of eligibility for him/herself, the minor parent who is a dependent child in an assistance unit must sign a PRP. Signing the PRP indicates the intent to comply with the requirements of the plan listed in subparagraph (b), parts 1-5 above. Subparagraph (b), part 6 above does not apply to a minor parent who is a dependent child in an assistance unit.

Rules 1240-01-47-.16 Personal Responsibility Plan is amended by adding a new subparagraph under paragraph (5) to be designated subparagraph (d), so that as amended the new subparagraph (d) shall read as follows:

- (d) Failure to comply with the prohibited uses of the electronic benefit transfer card as described under Chapter 1240-01-58 shall result in reimbursement of the transferred funds to the Department and/or prohibition from receipt of public assistance benefits by means of direct cash payment or electronic benefit transfer card.

Authority: T.C.A. §§4-5-201 et seq., 71-3-126, 71-1-105, 71-3-102, 71-3-103 and 71-3-104; 71-3-108(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 603; 42 U.S.C. § 604(i); 42 U.S.C. § 607(c), (d) and (e); 42 U.S.C. § 608(a)(2), (3) and (12), 42 U.S.C. § 608(b)(3); 42 U.S.C. § 609(a)(14) and 42 U.S.C. §§ 654 and 657; 45 C.F.R. § 261.2, 45 C.F.R. § 261.12 and 45 C.F.R. § 261.14; and Public Acts of 1996, Chapter 950, §1115 of the Social Security Act; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31.

Chapter 1240-01-58
Electronic Benefit Transfer Card - Prohibited Uses

New Rules

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1240-01-58-.01 Purpose

The purpose of this Chapter is to prevent public assistance benefits, provided pursuant to the Families First/TANF program, from being used in any EBT transaction in any liquor store, casino, gambling casino, gaming establishment, or adult cabaret.

Authority: T.C.A. §§ 4-5-201 et seq., 57-2-101(1), 71-3-126, 42 U.S.C. § 603; 42 U.S.C. § 608(a)(12).

1240-01-58-.02 Definitions. For purposes of this Chapter:

- (1) "Adult cabaret" is an establishment that features, as a principal use of its business, entertainers, waiters, or bartenders who expose to public view of the patrons within such establishment, at any time, the bare female breast below a point immediately above the top of the areola, human genital, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material, including swim suits, lingerie, or latex covering. "Adult cabaret" includes a commercial establishment that features entertainment of an erotic nature, including exotic dancers, strippers, male or female impersonators, or similar entertainers.
- (2) "Automated teller machine (ATM)" is an electronic cash dispensing device from which an account holder may withdraw cash, including public assistance benefits, using an electronic benefit transfer card.
- (3) "Casino," "gambling casino," or "gaming establishment," means a location or business with the primary purpose of conducting gambling activities, excluding the sale and purchase of lottery tickets. The term "casino," "gambling casino," or "gaming establishment" does not include either:
 - (a) A grocery store which sells groceries including staple foods and which also offers, or is located within the same building or complex as, casino, gambling, or gaming activities; or
 - (b) Any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.
- (4) "Department" means the Department of Human Services.
- (5) "Electronic benefit transfer (EBT) card" is a card issued by the Department which allows the account holder to access public assistance benefits in an EBT account through an ATM or point of sale device.
- (6) "EBT transaction" means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.
- (7) "Families First" refers to the temporary public assistance program provided under Temporary Assistance for Needy Families ("TANF"), pursuant to Title IV-A of the Social Security Act.

- (8) "Intoxicating Liquor" means and includes alcohol, spirits, liquors, wines, and every liquid or solid, patented or not, containing alcohol, spirits, liquor or wine, and capable of being consumed by human beings.
- (9) "Knowingly" means that an EBT card user, merchant, or business entity has actual knowledge that the EBT card contains public assistance benefits and the ATM or point of sale device used for the illegal transaction is located in a liquor store, casino, gambling casino, gaming establishment, or adult cabaret. The term "knowingly" may be established by direct or circumstantial evidence of knowledge that the EBT card contains public assistance benefits and the ATM or point of sale device is located in a liquor store, casino, gambling casino, gaming establishment, or adult cabaret.
- (10) "Liquor store" is any retail establishment which sells exclusively or primarily intoxicating liquor. The term "liquor store" does not include a grocery store which sells both intoxicating liquor and groceries including staple foods.
- (11) "Located in". An ATM, POS device, or other online system used for the withdrawal of funds or processing of payments is "located in" a liquor store, casino, gambling casino, gaming establishment, or adult cabaret, when the ATM, POS device, or other online system is located on any part of the merchant's business property, which is either owned or leased by the merchant, including any common area adjacent to the merchant's business property that the merchant uses to conduct business or facilitate entry into the business.
- (12) "Point of sale (POS) device" is any terminal at which a customer makes a payment to a merchant in exchange for goods or services, including any manual or electronic terminal where a Families First/TANF recipient may complete a retail transaction using an EBT card.
- (13) "Protective payee" is a person, other than the caretaker or grantee relative who is disqualified from directly receiving public assistance benefits under this Chapter, to whom a Families First/TANF grant is made payable for the benefit of the qualified members of the Assistance Unit. A protective payee has responsibility for administering the payment for the benefit of the assistance unit.
- (14) "Public assistance benefits" means money, in cash or in other forms of exchange, provided directly or indirectly to a Families First/TANF recipient through the Families First/TANF program.

Authority: T.C.A. §§ 4-5-201 et seq., 4-51-102, 7-51-1102, 71-3-103, 71-3-126, 42 U.S.C. § 608(a)(12).

1240-01-58-.03 Prohibited Uses.

- (1) It is illegal for any Families First/TANF recipient to knowingly use an EBT card to purchase any goods or services through a POS device or any other online system used to process payments or access public assistance benefits through an ATM located in any of the following businesses:
 - (a) liquor store;
 - (b) casino;
 - (c) gambling casino;
 - (d) gaming establishment; or
 - (e) adult cabaret.
- (2) It is illegal for any person or business entity to knowingly accept public assistance benefits from an EBT card for the purchase of any goods or services in the following locations:
 - (a) liquor store;
 - (b) casino;

- (c) gambling casino;
- (d) gaming establishment; or
- (e) adult cabaret.

Authority: T.C.A. §§ 4-5-201 et seq., 7-51-1102, 71-3-126, 42 U.S.C. § 608(a)(12).

1240-01-58-.04 Monitoring and Penalties.

- (1) All Families First/TANF caretakers must submit to the Department a signed Personal Responsibility Plan (PRP) acknowledging their understanding that it is illegal to use an EBT card containing public assistance benefits at any POS device or ATM located in any liquor store, casino, gambling casino, gaming establishment, or adult cabaret to purchase any goods or services as described in this Chapter.
- (2) The Department shall monitor EBT transactions on a quarterly basis to determine whether there is any illegal use of EBT cards under this Chapter.
 - (a) Any Families First/TANF recipient or caretaker who participates or allows another to use the recipient's EBT card in an EBT transaction at an ATM machine or POS device in any prohibited business location shall be subject to the following penalties:
 - 1. First or Second Violation. The Families First/TANF recipient or caretaker shall be required to reimburse the Department for the amount of the purchase at a POS machine or the amount of the cash withdrawn and used from an ATM.
 - 2. Third or Subsequent Violation. The Families First/TANF recipient or caretaker shall be required to reimburse the Department for the amount of the purchase at the POS machine or the amount of cash withdrawn and used from an ATM, and:
 - (i) The Families First/TANF recipient or caretaker shall be permanently prohibited from accessing temporary public assistance benefits, to the extent permitted by federal law, by means of direct cash payment or an EBT card.
 - (ii) The Department shall afford the Families First/TANF recipient an administrative hearing prior to taking any action to disqualify the individual from direct receipt of public assistance benefits.
 - (iii) The Department shall designate a protective payee to administer the temporary public assistance grant for the benefit of the assistance unit in the event a Families First/TANF recipient or caretaker is prohibited from receipt of public assistance benefits by means of direct cash payment or an EBT card under this Chapter.
 - 3. Any illegal EBT transaction under this Chapter shall be classified as an overpayment and the Department shall initiate collection proceedings pursuant to Chapter 1240-01-52.
 - (b) Any person or business entity that accepts EBT card purchases for any goods or services at any prohibited business location shall be subject to the following penalties:
 - 1. First Violation. The first violation shall result in a civil penalty of one thousand dollars (\$1,000).
 - 2. Second Violation. The second violation within five (5) years of the first violation shall result in a civil penalty of twenty-five hundred dollars (\$2,500).
 - 3. Third or Subsequent Violation. The third or subsequent violation within five (5) years shall result in a civil penalty of five thousand dollars (\$5,000).

4. The Department may refer any person or business entity that violates this Chapter to the district attorney for that district, who may bring an action to suspend the business license and permits of the person or business entity for one (1) year for any violation under this Chapter.
 5. The Department may bring a civil action to enforce any civil penalties assessed to any person or business entity under this Chapter in a complaint filed in the chancery court of the county where the person or business entity is located.
- (3) The Department may, at its discretion and to the extent permitted under federal law, take action to block POS devices, online systems used for the withdrawal of funds or processing of payments, and ATMs located in any prohibited location from accepting an EBT card transaction.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-126, 42 U.S.C. § 608(a)(12).

1240-01-58-.05 Appeals.

Any Families First recipient, merchant, or business entity the Department determines has illegally used an EBT card or unlawfully engaged in an EBT transaction under this Chapter shall have the right to an appeal conducted according to appeal procedures set forth in Chapter 1240-5 and Title 4, Chapter 5, Part 3 of the Uniform Administrative Procedures Act and which shall not be more narrow than those in existence on August 31, 1996.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-126.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: December 13 2013

Signature: [Signature]

Name of Officer: Bill Russell

General Counsel

Title of Officer: Tennessee Department of Human Services



Subscribed and sworn to before me on: December 13 2013

Notary Public Signature: [Signature]

My commission expires on: May 20, 2014

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Filed with the Department of State on: 12/16/13

[Signature]
Tre Hargett
Secretary of State

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