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Sequence Number: 12-20-15
 Rule ID(s): 6090
 File Date (effective date): 12/23/15
 End Effective Date: 6/20/16

Emergency Rule Filing Form

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

Agency/Board/Commission:	Tennessee Department of Health
Division:	Division of Communicable and Environmental Disease and Emergency Preparedness, AIDS Program Division
Contact Person:	Mary Kennedy
Address:	710 James Robertson Parkway, 5th Floor, Nashville, TN 37243
Zip:	37234
Phone:	(615) 253-4878
Email:	mary.kennedy@tn.gov

Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment
 New
 Repeal

Statement of Necessity:

The Ryan White HIV/AIDS Program (RWHAP) is authorized and funded under the Public Health Service Act, 42 U.S. Code, §300ff *et seq.*, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Public Law 111-87, October 30, 2009). Pursuant thereto, the Tennessee Department of Health receives grant funding, of which 75% must be used for direct services to individuals with HIV. Those funds have historically been used to provide drugs to treat the disease and to assist in the payment of insurance premiums for infected individuals. With more insured clients, and with the drug rebates the department has received as a result of the 340b drug pricing program, the department finds a surplus in its grant budget for the grant year ending March 31, 2016. Rather than return funds to the federal government, the department seeks a higher economic eligibility level to increase the number of potential eligible service recipients as 23 other states have done; to achieve this funds must be obligated by January 31, 2016. Available data indicate that service recipients have less need of emergency room and other hospital services, and lower viral loads, which lowers the risk of the spread of disease in the community.

Amendments to Rule Chapter 1200-14-02 are necessary to allow the department to raise the economic eligibility level. However, these amendments must be in place on or before December 31, 2015 to avoid loss of the surplus unexpended funds to the federal government. Therefore, the department finds that adoption of the amendments as emergency rules is necessary under Tenn. Code Ann. § 4-5-208(a)(4), which permits emergency rulemaking if the amendments are required by an agency of the federal government and adoption of the rules through ordinary rulemaking procedures might result in the loss of federal funds.

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

Chapter Number	Chapter Title
1200-14-02	Aids Drugs Assistance Program Rules
Rule Number	Rule Title
1200-14-02-.03	Eligibility Criteria
1200-14-02-.04	Program Limited to Available Funds

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

Emergency Rules

Rule Chapter 1200-14-02 Aids Drugs Assistance Program Rules

Rule 1200-14-02-.03 Eligibility Criteria is amended by deleting paragraph (1) in its entirety including its subparagraphs and substituting instead the following language, so that as amended, the new paragraph (1) shall read:

- (1) To qualify for Ryan White Program services, an applicant must submit a completed and signed Ryan White Program application including evidence that applicant meets the following eligibility requirements:
 - (a) Is a resident of Tennessee;
 - (b) Meets the generally accepted medical criteria for HIV disease;
 - (c) An income level and total liquid assets that do not exceed the limits set by the Department and posted semiannually on its website; and
 - (d) For ADAP applicants, presents certification that applicant has no other source of third party reimbursement for prescription drugs.

Authority: T.C.A. §§ 68-1-103, 68-1-106, and 68-10-109.

Rule 1200-14-02-.04 Program Limited to Available Funds is amended by inserting new paragraph (5) which shall read:

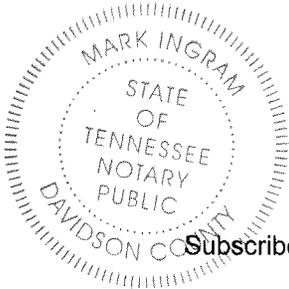
- (5) The Department shall review available funding immediately, and thereafter by March 31 and September 30 of each year, at which time it shall notify all current clients of the maximum income level and liquid assets for program eligibility. The Department will also post this information on its website.

Authority: T.C.A. §§ 68-1-103, 68-1-106, and 68-10-109.

* 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)
N/A					

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



Date: 12-11-15

Signature: *Mary Kennedy*

Name of Officer: Mary Kennedy

Title of Officer: Deputy General Counsel
Department of Health

Subscribed and sworn to before me on: 12/11/15

Notary Public Signature: *Mark Ingram*

My commission expires on: 5/6/19

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

Herbert H. Slatery III
 Herbert H. Slatery III
 Attorney General and Reporter
12/22/2015 Date

Department of State Use Only

Filed with the Department of State on: 12/23/15

Effective for: 180 *days

Effective through: 6/20/16

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

Tre Hargett
 Tre Hargett
 Secretary of State

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Impact on Local Governments

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

The proposed rule amendments should not have a financial impact on local governments.

Regulatory Flexibility Analysis

- (1) **The extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

These rules do not overlap, duplicate, or conflict with other federal, state, or local governmental rules.

- (2) **Clarity, conciseness, and lack of ambiguity in the rule or rules.**

These rules exhibit clarity, conciseness, and lack of ambiguity.

- (3) **The establishment of flexible compliance and/or reporting requirements for small businesses.**

These rules do not affect compliance or reporting requirements for small businesses.

- (4) **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.**

These rules do not affect schedules or reporting requirements for small businesses.

- (5) **The consolidation or simplification of compliance or reporting requirements for small businesses.**

These rules do not consolidate or simplify compliance or reporting requirements for small businesses.

- (6) **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**

These rules do not establish performance standards for small businesses.

- (7) **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.**

These rules do not stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Communicable and Environmental Disease and Emergency Preparedness

Rulemaking hearing date: N/A

- 1. 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, and/or directly benefit from the proposed rule:**

HIV/Aids patients as well as health care providers including social service agencies working with HIV/AIDS patients will benefit from the proposed rule amendments.

- 2. 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 proposed rule amendments will not affect reporting, recordkeeping or administrative costs.

- 3. Statement of the probable effect on impacted small businesses and consumers:**

The rule amendments will affect both consumers and small businesses as the rule amendments will lead to increased access to lifesaving medications, decreased emergency room visits and decreased hospital admissions.

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

There are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose or objectives of the rule amendments.

- 5. Comparison of the proposed rule with any federal or state counterparts:**

Federal: The rule amendments are consistent with 42 U.S.C. 300ff.

State: None.

- 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.**

N/A

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;

Rule 1200-14-02-.03: The amendments to the rule are merging subparagraphs (b) and (c) by removing the currently-stated income level and total liquid assets limits and replacing them with provisions stating that the applicable limits will be set by the Department and posted on its website.

Rule 1200-14-02-.04: New paragraph (5) is being added to state how the Department will review funding and inform clients of their eligibility.

- (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;

42 U.S.C. 300ff.

- (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;

HIV/Aids patients as well as health care providers including social service agencies working with HIV/AIDS patients will be affected by proposed rule amendments.

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

None.

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

These amendments should not result in any increase or decrease in state or local government revenues or expenditures.

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

Mary Kennedy, Deputy General Counsel, Department of Health.

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

Mary Kennedy, Deputy General Counsel, Department of Health.

- (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

Office of General Counsel, Department of Health, 710 James Robertson Parkway, 5th Floor, Nashville, TN, (615) 253-4878, Mary.Kennedy@tn.gov.

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

None.