

**RULES
OF THE
TENNESSEE DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES
OFFICE OF LICENSURE**

**CHAPTER 0465-02-02
LICENSURE ADMINISTRATION AND PROCEDURES**

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0465-02-02-.01 STATEMENT OF AUTHORITY. The Department of Intellectual and Developmental Disabilities (“DIDD” or “Department”) is authorized to license facilities and services operated for the provision of intellectual and developmental disabilities, and personal support services in the State of Tennessee by T.C.A. title 33, chapter 2, part 4.

- (1) Notwithstanding any law or rule to the contrary, a residential facility or provider licensed by DIDD to provide residential services to persons with intellectual or developmental disabilities shall not be prohibited from providing residential services to the elderly or adults with physical disabilities, so long as the services are adequate to ensure the health, safety, and welfare of each resident.
- (2) Medicaid-reimbursed home and community based service (HCBS) providers are required to comply with the federal home-based and community-based setting final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014).
 - (a) HCBS providers and facilities licensed on or before March 31, 2015, shall have performed the required Self-Assessment and shall have submitted the same to the respective DIDD Regional Office. Providers who self-reported or were assessed to be non-compliant with the HCBS Settings Rule shall have a completed and validated Provider Transition Plan on file with the respective DIDD Regional Office.
 - (b) HCBS providers and facilities receiving an initial license on or after April 1, 2015, shall have on file with the DIDD Provider Enrollment Coordinator acceptable policies addressing quality assessment, assurance, and improvement, including a description of how the provider meets compliance with the HCBS Settings Rule (these are required elements which must be submitted with a New Provider Application For Long Term Services).

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.02 TYPES AND CONDITIONS OF LICENSES.

- (1) Initial License - An initial license is issued to a facility or service to give the licensee an opportunity to implement minimum program requirements and to give DIDD an opportunity to evaluate the facilities' or service's compliance performance. Initial licenses will not exceed a period of twelve (12) months.
- (2) Full License - A full license is valid for up to one (1) year from the date of issuance and is issued to a facility or service when the licensee demonstrates compliance with the licensure law and applicable rules as determined by DIDD.
- (3) Provisional License - A provisional license may be issued to a facility or service when it does not meet all of the requirements for a full license. The Department may grant a provisional license, for a period not to exceed six (6) months, if all of the conditions below are satisfied:
 - (a) The facility or service is making a diligent effort to comply with the licensure law and rules. A "diligent effort to comply with rules" is determined by past performance of the facility or service in meeting rules and correcting deficiencies and by commitments to correct existing deficiencies within time frames agreed to by the Department;
 - (b) The continued operation of the facility or service will not endanger the health or safety of persons supported.
 - (c) The facility or service has submitted an acceptable compliance plan specifying how and when deficiencies will be corrected. The Department will consider the seriousness of the deficiencies and the past performances of the facility or service in determining whether the compliance plan is acceptable; and
 - (d) The facility or service has substantially met the commitments made in the preceding year's compliance plan, if any.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.03 UNLAWFUL OPERATION.

No organization may begin the provision of service delivery until the Department issues a license. Providing intellectual and developmental disability, or personal support services without a license is unlawful and may result in civil and/or criminal sanctions pursuant to T.C.A. §§ 33-2-405 and 33-2-412.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.04 APPLICATION FORMS.

- (1) The application for a license is to be made on forms prepared and supplied to the applicant by the Department.
- (2) Each application for a license must be submitted in a legible format with all the information requested on the application. The information gathered by the Department on the application is needed pursuant to T.C.A. § 33-2-406 to determine the applicant's responsible and reputable character and the applicant's ability to meet the minimum standards for the operation of a facility or service.

(Rule 0465-02-02-.05, continued)

- (3) The information to be supplied to the Department is as follows:
 - (a) The name, address, and other background and identifying information of the applicant;
 - (b) A description of the location, design, and type of facility or service to be licensed;
 - (c) The name, address, and other background and identifying information of the individual or individuals responsible for the operation of the facility or service to be licensed, including social security number, date of birth, place of residence during the past five (5) years, place of birth, proof of citizenship or evidence of legal immigration status, and criminal background check;
 - (d) Personal character references;
 - (e) The signature of the licensee applicant or of the individual charged by the licensee applicant for certifying the correctness and completeness of the application and for ensuring compliance with the licensure rules; and
 - (f) Any such other information as the Department may require.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.05 FEES.

- (1) The applicant must submit fees for the processing of the application prior to the Department’s determination to grant or to deny licensure. Each initial and renewal application for licensure must be submitted with the appropriate fees. All fees submitted are non-refundable. The fee rate is based on the number of distinct categories of service or facility, as applicable, to be operated at each site. For a residential site, the fee rate is based on the number of beds to be licensed. A fee must be submitted for each facility and/or service for which licensure is being sought under the following schedule:

Non-Residential Facility Fees Per Site:

One (1)	Distinct Category of Service or Facility	\$ 810.00
Two (2)	Distinct Categories of Services and/or Facilities	\$ 1,010.00
Three (3)	Distinct Categories of Services and/or Facilities	\$ 1,220.00
Four (4)	Distinct Categories of Services and/or Facilities	\$ 1,420.00
More Than (4)	Distinct Categories of Services and/or Facilities	\$ 1,620.00

Residential Facility Fees Per Site:

Institutional Habilitation Facilities (per bed)	\$ 175.00
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All Other Residential Facilities:

2-3 Beds	\$ 200.00
4-10 Beds	\$ 280.00
11-15 Beds	\$ 410.00
16-50 Beds	\$ 810.00
more than 50 Beds	\$ 1,220.00

(Rule 0465-02-02-.05, continued)

- (2) In addition to the fees associated with initial and renewal applications outlined above, other fees may be charged as follows:
 - (a) Inspection - a fee of fifty dollars (\$50.00) for the inspection or re-inspection of any facility or service.
 - (b) Change of Status - a fee of one hundred dollars (\$100.00) for changes in:
 1. Organization Name;
 2. Executive Director;
 3. Bed Capacity; or
 4. Life Safety Occupancy/Classification.
 - (c) Relocation - a fee of three hundred dollars (\$300.00) for any change in the physical address of a facility service.
- (3) The Department shall invoice the applicant or licensee the appropriate fee(s). The applicant or licensee shall pay the fee(s) within thirty (30) days after receipt of the invoice, unless the current license expires before the end of the thirty (30) day period. If the current license expires before the end of the thirty (30) day period, the licensee shall pay the fee(s) before the expiration of the current license.
- (4) The Department may withhold the issuance of a license or suspend an existing license pending the payment of fees.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.06 APPLICATION PROCESS FOR INITIAL LICENSE.

- (1) The applicant must submit application forms as required by the Department.
- (2) The applicant must submit the required fees for application processing.
- (3) The applicant is responsible for any fees charged by other regulatory agencies whose inspection of the facility or service is necessary for the issuance of licenses.
- (4) Upon receipt of the completed application and the required fees, the Department will arrange for needed inspections of the proposed site or sites, when applicable.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.07 APPLICATION PROCESS FOR LICENSE RENEWAL.

- (1) Prior to the expiration of an initial, full, or provisional license, the Department will notify the licensee of the need to submit an application for license renewal. The Department will advise the licensee of the information, fees, and the documents needed to process the renewal application.

(Rule 0465-02-02-.07, continued)

- (2) The applicant must submit the renewal application, fees, and other information required by licensure.
- (3) The applicant is responsible for any fees charged by other regulatory agencies whose inspection of the facility or service is necessary for the issuance of licenses.
- (4) The Department, when applicable, will conduct or arrange for inspections of the facility's or service's current life safety and environmental conditions, and review the facility's or service's program performance history. Dates for unannounced inspections will be random and will vary from year to year.
- (5) Upon receipt of the application material and the required fees, the Department will review the application material, the current life safety and environmental conditions, when applicable, and the performance history of the facility or service and take one of the following actions:
 - (a) If the Department determines that all facilities or services operated by the licensee are in compliance with the applicable licensure law and rules, then a full license will be issued;
 - (b) If the Department determines that all facilities or services operated by the licensee do not comply with the applicable licensure law and rules, a provisional license may be issued covering the facility or service not in full compliance; or
 - (c) If the Department determines that a license should not be issued to one (1) or more facilities or services operated by the licensee, the licensee shall be notified of the denial of licensure. Within fifteen (15) calendar days of such notification of denial of licensure, the licensee may file a written request for a hearing before the Licensure Review Panel on the denial.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.08 DISTINCT CATEGORIES OF FACILITIES AND SERVICES.

The licensure rules identify and define distinct categories of facilities or services. These facilities and services must meet applicable life safety and environmental rules, as well as minimum program rules based on the type of program services and the needs of the persons supported.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.09 NUMBER OF LICENSES REQUIRED.

Each licensee will be issued one (1) license for each site at which the licensee is operating a facility or service. The license for each site will indicate what category or categories of facility and/or service is authorized to be operated at that site. However, when a licensee operates more than one (1) category at a single site, two (2) licenses may be issued if one (1) or more of the categories at the site require an initial or a provisional license, and one (1) or more are eligible for a full license.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.10 CHANGE OF OWNERSHIP OR LOCATION.

Licenses are not assignable or transferable except as provided by law. A new application must be made and a new license issued before services are provided when there is a change in the ownership of a facility/service or a change of location.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.11 TIME LIMITS.

Upon inspection of any facility or service making application for or holding a license, the Department may allow a reasonable time period for the facility or service to correct any deficiencies that are found by inspection.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.12 DEEMED COMPLIANCE.

- (1) A facility or service which is accredited or certified by any of the following may be deemed by the Department to be in compliance (“deemed compliance status”) with applicable licensure program requirements:
 - (a) The Joint Commission (TJC), formerly Joint Commission on Accreditation of Health Care Organizations (JCAHO);
 - (b) Council on Accreditation of Rehabilitation Facilities (CARF);
 - (c) Social Security Act, Title XIX, Public Law 89-98, as amended (Medicaid) for Intermediate Care Facilities for the Mentally Retarded (ICF/IID) only;
 - (d) The Accreditation Council on Services for People with Disabilities;
 - (e) Council on Accreditation for Children and Family Service;
 - (f) National Commission on Accreditation for Special Education Services (NCASES);
 - (g) Council on Quality and Leadership (CQL); or
 - (h) Department of Education Early Intervention (Certification for center based facilities, Approval for community based facilities).
- (2) In addition, a licensee that received a rating of Fair or above (or their equivalents) from their most recent survey by the DIDD Quality Assurance unit may be deemed to be in compliance (“deemed compliance status”) with applicable licensure program requirements.
- (3) To be considered for a deemed compliance status determination under this section, the licensee must submit written and official evidence of accreditation, certification, and/or acceptable survey results to the Department including any cited deficiencies with a plan of correction.
- (4) Licensees receiving deemed compliance status must also demonstrate compliance with the life safety and environmental rules. Deemed compliance status of the licensee does not alter

(Rule 0465-02-02-.12, continued)

the operator's obligation to correct any deficiencies cited during the unannounced inspections required by T.C.A. § 33-2-413, or to cooperate with investigations conducted by the Department of reports of abuse, dereliction, or deficiency in the operation of the facility or service. Notwithstanding deemed compliance of the licensee is subject to the suspension or revocation of its license under the terms and procedures established in T.C.A. § 33-2-407 and the rules of this chapter.

- (5) Pursuant to T.C.A. § 33-2-403(c), a facility or service which can demonstrate compliance with regulations and standards by a previously acquired license from another state agency is considered in compliance with rules promulgated by the Department to the extent that duplicate inspection and enforcement is necessary.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.13 ACCESS TO PREMISES AND INFORMATION.

With or without giving notice, representatives of the Department shall have the right to enter upon or into the premises of any facility or service providing intellectual and/or developmental disabilities or personal support services in order to make inspections deemed necessary to determine compliance with licensure law and rules. The licensee must comply with all reasonable requests of the Department and allow it to obtain information from third parties, including, but not limited to, the person supported, and/or to review all records of the facility or service.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.14 GROUNDS FOR DENIAL, REVOCATION, OR SUSPENSION

- (1) The maintenance and renewal of a license is contingent upon evidence of continued compliance with rules and regulations. The Department may deny, suspend, or revoke a license on any of the following grounds:
- (a) Violation of licensure law or rules;
 - (b) Permitting, aiding, or abetting the commission of any illegal act in a licensed facility or service;
 - (c) Conduct or practice detrimental to the welfare of a person supported by a licensed or service;
 - (d) The submission of false information to the Department; or
 - (e) The use of subterfuge (e.g., filing through a second party after an individual has been denied a license).
- (2) Unless the Department finds that summary suspension of a license is necessary, the procedure for revocations, suspension, and denials is as follows:
- (a) The licensee shall be notified in writing of the basis for the revocation, suspension or denial.

(Rule 0465-02-02-.14, continued)

- (b) Within fifteen (15) days of the notification the licensee may file a written request for review by the Licensure Review Panel appointed under T.C.A., Title 33 Part. 2. Review shall be held at the earliest possible date.
 - (c) The Licensure Review Panel shall report its recommendations to the Commissioner of the Department. The Commissioner shall determine whether the original action shall remain effective and notify the licensee.
 - (d) Within fifteen (15) days of notification the licensee may file a written request for hearing before the Department. The hearing shall be conducted under the U.A.P.A. Title 4 Chapter 5.
- (3) Summary suspension may only occur when the Department determines that continued operation of a licensed facility or service presents an immediate threat to the health, safety or welfare of persons supported. When a summary suspension occurs, proceedings for revocation or other action against the licensee shall be promptly instituted and determined in accordance with the Uniform Administrative Procedures Act.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.15 EXPIRATION OF LICENSES.

The expiration date of all licenses issued by the Department will be indicated on the face of the license. However, when a licensee has made timely and sufficient application for a new license (including payment of the required fees), the existing license does not expire until the status of the application has been determined by the Department. When the application is denied or the terms of the new license limited, the existing license does not expire until the last day for seeking review of the order or a later date fixed by an order of the reviewing court.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.16 POSTING OF LICENSES.

The license certificate must be posted for public viewing in a conspicuous place at the facility or service.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.17 SURRENDER REQUIREMENTS.

The license certificate must be surrendered to the Department upon revocation or suspension of the license, upon transfer of ownership of the facility or service, or when the facility or service otherwise ceases to operate.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.18 EXCLUSIONS FROM LICENSURE.

- (1) The following facilities or services are excluded from the licensure jurisdiction of the Department:
 - (a) A facility that is appropriately licensed by the Department of Health, and whose primary purpose is not the provision of intellectual and/or developmental disability services.
 - (b) A satellite hospital, as defined by rules of the Department of Health, whose primary purpose may be the provision of intellectual, mental, or developmental disability services, and other facilities appropriately licensed by the Department of Health pursuant to T.C.A. § 68-11-201, et. seq.
 - (c) A facility which is operated by the Department of Education, the Department of Correction, the Department of Human Services, or the Department of Children's Services, and that affirmatively states that its primary purpose is not the provision of intellectual and/or developmental disabilities services or personal support services.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.19 WAIVER AUTHORITY

The Department may waive any rule determined to be irrelevant or to pose a hardship. A hardship waiver may be granted only when strict enforcement of a particular requirement would not be in the best interest of persons supported. All waivers granted will be made in writing and entered in the official record of the licensed service or facility. This written document shall include the justification for the waiver. All waivers will be reviewed by the Department and the Licensure Review Panel.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.20 INVESTIGATION OF ABUSE, DERELICTION, OR DEFICIENCY IN OPERATION OF A FACILITY OR SERVICE.

- (1) The Department will investigate reports or suspicion of abuse, dereliction, or deficiency in the operation of a licensed service or facility in accordance with T.C.A. § 33-2-416.
- (2) The licensee shall post a sign in the facility or service displaying the Department's regional toll-free telephone number which informs persons supported, families, and the public that they may file a complaint with the Department. Any exemptions to posting signs will be determined by the Department.
- (3) The licensee must report to the Department any serious allegations or suspicion of abuse, dereliction, or deficiency in the operation of the facility or service.
- (4) The licensee must report to the Department any significant occurrences involving the facility/service or person supported and staff. "Significant occurrences" may include, but is not be limited to, occurrences such as accidents, injuries, or death regarding the person supported; fires, loss of heat/air conditioning, and/or other structural problems with the building(s).

(Rule 0465-02-02-.20, continued)

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.21 NOTICE OF NON-COMPLIANCE AND PLAN OF COMPLIANCE.

- (1) The Department will give a Notice of Non-Compliance to the licensee on a form prepared and provided by the Department when an inspection or investigation of a licensee reveals non-compliance with licensure law or rules.
- (2) The licensee must submit, by the date specified on the Notice of Non-Compliance, a written Plan of Compliance in response to the Notice of Non-Compliance.
- (3) The licensee's written Plan of Compliance shall include a description of the action taken or to be taken in correcting deficiencies, and the date by which each corrective action is completed or to be completed.
- (4) The Department will notify the licensee in writing whether the Plan of Compliance is acceptable and the basis for the decision. When the Plan of Compliance is not acceptable, the Department and licensee may continue to seek agreement. If agreement cannot be reached in a reasonable time, as determined by the Department, the Department may institute sanctions against the license.
- (5) The licensee shall maintain copies of the most recent compliance plans in a central location.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.22 UNANNOUNCED INSPECTION.

The Department shall make at least one (1) unannounced inspection of each licensed facility/service yearly.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.23 ASSISTANCE TO PERSONS SUPPORTED WHEN A LICENSE IS DENIED, SUSPENDED, OR REVOKED.

When a license is to be denied, suspended, or revoked, the Department will notify the appropriate state and local agencies, which may be able to provide assistance to persons supported by coordinating placement and/or services.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.

0465-02-02-.24 CIVIL PENALTIES FOR LICENSEES.

- (1) The Department may, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a licensure law or rule.
- (2) The procedure for imposing a civil penalty shall be as follows:

(Rule 0465-02-02-.24, continued)

- (a) Department staff shall verbally notify a licensee that a civil penalty may be imposed due to the licensee's violation of a licensure law or rule.
 - (b) Within six (6) business days of the verbal notification, the licensee shall be notified in writing of the basis for the civil penalty and the amount imposed.
 - (c) Within fifteen (15) days of the notification the licensee may file a written request for review by the Licensure Review Panel appointed under T.C.A., Title 33 Part. 2. Review shall be held at the earliest possible date.
 - (d) The Licensure Review Panel shall report its recommendations to the Commissioner of the Department. The Commissioner shall determine whether the original action shall remain effective and notify the licensee.
 - (e) Within fifteen (15) days of notification the licensee may file a written request for hearing before the Department. The hearing shall be conducted under the U.A.P.A. Title 4 Chapter 5.
 - (f) The civil penalty shall be effective beginning on the date the written notification of the decision is issued.
 - (g) The Department may impose a penalty for each day a licensee remains in violation of a licensure rule, regulation, ordinance or law. Each licensure law, rule, regulation or ordinance violated shall constitute a separate offense.
- (3) In determining the amount of the daily penalty, the commissioner may consider the following:
- (a) The severity of the violation and the harm or risk of harm to a person supported;
 - (b) The willfulness of the violation;
 - (c) The circumstances leading to the violation;
 - (d) The efforts made by the licensee to attain compliance;
 - (e) Any extraordinary enforcement cost incurred by the Department;
 - (f) The interest of the public; and
 - (g) Whether the civil penalty imposed will be an economic deterrent to the non-compliant activity.
- (4) The Department may impose a civil penalty in accordance with the following schedule:
- (a) First Offense
 - 1. Priority 1/Critical Offenses - \$500.00
 - 2. All other offenses - \$250.00
 - (b) Second or subsequent offense of same type within a twelve (12) month period:
 - 1. Priority 1/Critical Offense - \$2,500.00 to \$5,000.00

(Rule 0465-02-02-.24, continued)

2. All other offenses - \$500.00 to \$2,500.00
- (5) The Department may continue to work with a licensee to seek compliance with any licensure law or rule. The Department may waive any penalty determined by the Department to impose a hardship. A hardship waiver of a civil penalty may be granted only when strict enforcement of a particular requirement would not be in the best interest of persons supported.
- (6) A "Priority 1 offense," for the purposes of these rules is defined as a substantiated investigation involving the death of a person supported; neglect, physical or sexual abuse of the person supported by the licensee or staff; and/or a serious injury to a person supported. A "critical offense," for purposes of these rules, is defined as those Department-designated administrative rules whose violation could result in serious harm to the person supported.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-201, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-3-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.