

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

**CHAPTER 0465-02-06
MINIMUM PROGRAM REQUIREMENTS FOR ALL FACILITIES/SERVICES**

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0465-02-06-.01 GOVERNANCE.

- (1) The governing body must ensure that the licensee complies with all applicable federal, state, and local laws, ordinances, rules, and regulations.
- (2) The governing body must ensure that the facility/services are administered and operated in accordance with written policies and procedures.
- (3) The governing body must exercise general direction over the facility/services and establish policies governing the operation of the facility/services and the welfare of the person supported.
- (4) The governing body must designate an individual responsible for the operation of the facility/services.
- (5) The governing body must ensure that the licensee serves only persons whose placement will not cause a violation of its licensed status and capacity based on the distinct licensure category, the life safety occupancy classification, and the required staffing ratios, 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.

0465-02-06-.02 ENVIRONMENTAL REQUIREMENTS FOR ALL LICENSEES.

- (1) The governing body must ensure that a written policies and procedures manual is maintained. The manual must include the following elements:
 - (a) A description of each facility/service provided by the licensee. The description must include the hours of operation and admission and discharge criteria;
 - (b) An organizational chart which clearly shows or describes the lines of authority between the governing body, the chief executive officer, and the staff;
 - (c) Policy and procedures which ensure that someone is delegated the authority to act in the absence of the individual responsible for the operation of the facility/service;
 - (d) A schedule of fees, if any, currently charged to persons supported for all services provided by the licensee;

(Rule 0465-02-06-.02, continued)

- (e) A statement of person supported rights and the grievance procedures to be followed when a suspected violation of person supported rights has been reported;
- (f) Policy and procedures which ensure the confidentiality of the information of a person supported, and which include the following provisions:
 - 1. Staff must comply with applicable confidentiality laws and regulations, (e.g., T.C.A. § 33-3-104(10); federal alcohol and drug regulations, which is found at 42 CFR, Part 2); the Health Insurance Portability and Accountability Act (HIPAA), which is found at 45 CFR, Part 160, Part 162, and Part 164);
 - 2. The person supported must not be required to make public statements, which acknowledge gratitude to the licensee or for the licensee's facility/services;
 - 3. The person supported must not be required to perform in public gatherings; and
 - 4. Identifiable photographs of the person supported must not be used without the written and signed consent of the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian).
- (g) A medication administration policy and control procedures for licensees involved in the administration of medication to persons supported;
- (h) The plans and procedures to be followed in the event of fire evacuation and natural disaster emergencies;
- (i) The plans and procedures to be followed in the event of an emergency involving care of persons supported, which will provide for emergency transportation, emergency medical care, and staff coverage in such event;
- (j) A policy which prohibits persons supported from having any of the following responsibilities:
 - 1. Care of other persons supported;
 - 2. Supervision of other persons supported, unless on-duty/on-site staff are present; and
 - 3. Responsibilities requiring access to confidential information.
- (k) Policy and procedures to be followed in the reporting and investigation of suspected or alleged abuse, or neglect of persons supported, or other critical incidents. The procedures must include provisions for corrective action, if any, to be taken as a result of such reporting and investigation;
- (l) Policy and procedures which ensure that volunteers, if used by the licensee, are in a supportive capacity and are under the supervision of appropriate designated staff members;
- (m) Policy and procedures which govern the use of behavior-management techniques, if used by the licensee;
- (n) Policy regarding the use of human subjects in research, if the licensee is involved in, or planning to be involved in, such research, which includes procedures for the following:
 - 1. Identification of subjects, projects, and staff;

(Rule 0465-02-06-.02, continued)

2. Provisions to protect the personal and civil rights of the subjects;
3. Obtaining the consent of the subjects involved;
4. Assurance that all research projects are conducted under the direction and supervision of professional staff qualified by education and experience to conduct research;
5. Emergency guidelines for problems that may develop during research activities; and
6. Appointment of a licensee representative to act as coordinator of the research activities.

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.

0465-02-06-.03 FINANCIAL MANAGEMENT.

- (1) The licensee holding or receiving funds or property for the person supported as trustee or representative payee will adhere to all laws, state and federal, that govern their position and relation to persons supported.
- (2) The licensee must prohibit staff and proprietors from borrowing money from persons supported.
- (3) The licensee must ensure that all money held and disbursed on behalf of persons supported is for the strict, personal benefit of the person supported.
- (4) The licensee must not mix its funds with those of the person supported.
- (5) The licensee must not take funds or property of the person supported for the licensee's own use or gain.
- (6) The licensee must provide an annual reporting of the funds of the person supported, which are being held and disbursed by the licensee to the person supported or his/her legal representative (conservator, parent, guardian, or legal custodian).

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.

0465-02-06-.04 PERSONNEL AND STAFFING.

- (1) A job description must be maintained, which includes the employment requirements and the job responsibilities for each staff position.
- (2) A personnel record must be maintained which verifies that each employee meets the respective employment requirements for the staff position held.
- (3) Training and development activities, which are appropriate in assisting the staff in meeting the needs of the persons supported, must be provided for each staff member. The provision of such activities must be evidenced by documentation in the records.

(Rule 0465-02-06-.04, continued)

- (4) Training and development activities, which are appropriate in assisting volunteers (if used by the licensee) in implementing their assigned duties, must be provided for each volunteer. The provision of such activities must be evidenced by documentation in the licensee's records.
- (5) Direct Support Staff members must be competent persons aged eighteen (18) years of age or older.
- (6) The personnel records for each employee must contain the following:
 - (a) Evidence of a criminal background check, as required by T.C.A. § 33-2-1202;
 - (b) Evidence of the staff's status on the Tennessee registry of persons who have abused, neglected, or misappropriated the property of vulnerable individuals ("Abuse Registry") maintained by the Department of Health;
 - (c) Evidence of the staff's status on the State's sexual offender registry (After January 1, 2016, no individual or volunteer who is listed on the State's Sex Offender Registry may be hired or otherwise permitted to provide services); and
 - (d) Evidence of the staff's status the Tennessee Felony Offender Information Lookup (FOIL). The information available on this list pertains to Tennessee felony offenders who are or who have been in the custody of the Tennessee Department of Correction or under the Supervision of the Tennessee Board of Probation and Parole. The information is submitted by various jurisdictions within Tennessee. Confirmation and/or elaboration should be obtained from the originating jurisdiction.

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.

0465-02-06-.05 PERSON SUPPORTED RECORDS.

- (1) The governing body must ensure that an individual record for each person supported is maintained which, at a minimum, includes the following information:
 - (a) The name of the person supported;
 - (b) The address of the person supported;
 - (c) The telephone number of the person supported;
 - (d) The gender of the person supported;
 - (e) The date of birth of the person supported;
 - (f) The date of admission of the person supported;
 - (g) The source of referral to the licensee of the person supported;
 - (h) The name, address, and telephone number of an emergency contact person for the person supported;
 - (i) If the licensee charges fees for its services, a written fee agreement dated and signed by the person supported or his/her legal representative (conservator, parent, guardian,

(Rule 0465-02-06-.05, continued)

or legal custodian) prior to provision of any services other than emergency services. This agreement must include, at least, the following information:

1. The fee or fees to be paid by the person supported;
 2. The services covered by such fees; and
 3. Any additional charges for services not covered by the basic service fee.
- (j) Appropriate informed, signed, and dated consent and authorization forms for the release or obtainment of information about the person supported; and
- (k) Written acknowledgement that the person supported and his/her legal representative (conservator, parent, guardian or legal custodian) has been informed of the rights and responsibilities of the person supported and the licensee's general rules affecting 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.

0465-02-06-.06 PERSON SUPPORTED RIGHTS.

- (1) The following rights must be afforded to all persons supported by all licensees and are not subject to modification.
- (a) Persons supported have the right to be fully informed before or upon admission about their rights and responsibilities and about any limitation on these rights imposed by the rules of the licensee. The licensee must ensure that the person supported is given oral and written rights information that includes, at least, the following:
1. A statement of the specific rights guaranteed the person supported by these rules and applicable state laws;
 2. A description of the licensee's grievance procedure;
 3. A listing of available advocacy services; and
 4. A copy of all general licensee rules and regulations for persons supported.
- (b) The information shall be presented in a manner that promotes understanding by persons supported of his/her rights, and the person supported shall be given an opportunity to ask questions about the information. If the person supported who was unable to understand the information at the time of admission later becomes able to do so, the information shall be presented to the person supported at that time. If a person supported is likely to continue indefinitely to be unable to understand the information, the licensee must promptly attempt to provide the required information to his/her legal representative (conservator, parent, guardian, or legal custodian) or other appropriate person or agency responsible for protecting the rights of the person supported;
- (c) Persons supported have the right to voice grievances to staff, to the licensee, and to outside representatives of their choice, with freedom from restraint, interference, coercion, discrimination, or reprisal;
- (d) Persons supported have the right to be treated with consideration, respect, and full recognition of their dignity and individuality;

(Rule 0465-02-06-.06, continued)

- (e) Persons supported have the right to be protected by the licensee from neglect, mistreatment from physical, verbal, and emotional abuse (including corporal punishment), and from all forms of misappropriation and/or exploitation;
 - (f) Persons supported have the right to be assisted by the licensee in the exercise of his/her civil rights;
 - (g) Persons supported have the right to be free of any requirement that they perform services which are ordinarily performed by staff; and
 - (h) If residential services are provided, persons supported must be allowed to send personal mail unopened and to receive mail and packages, which may be opened in the presence of staff when there is reason to believe that the contents thereof may be harmful to the person supported or others.
- (2) Medicaid-reimbursed individuals receiving HCBS services shall be afforded the rights referenced in 42 C.F.R. § 441.301(c)(4) of the HCBS Settings Rule.
- (3) The following rights must be afforded to all persons supported by all licensees, unless modified in accordance with Rules 0465-02-06-.07 and/or 0465-02-06-.08:
- (4) Appropriate safety restraints must be used as required by state and federal law.
- (a) Persons supported have the right to participate in the development of their ISP, and to receive sufficient information about proposed and alternative interventions and program goals to enable them to participate effectively;
 - (b) Persons supported have the right to participate fully, or to refuse to participate, in community activities including cultural, educational, religious, community services, vocational, and recreational activities;
 - (c) If residential services are provided, persons supported must be allowed to have free use of common areas with due regard for privacy, personal possessions, and the right of others;
 - (d) If residential services are provided, persons supported have the right to furnish and decorate their bedroom/sleeping area, within the lease or other agreement;
 - (e) If residential services are provided, persons supported have the right to be given privacy and freedom for the use of bathrooms at all hours;
 - (f) If residential services are provided, persons supported have the right to be given privacy and freedom in the use of their bedroom/sleeping area. If residential services are provided and if married persons are residents, privacy for visits by spouses must be ensured, and if both spouses are residents, they must be permitted to share a room; and
 - (g) If residential services are provided, persons supported have the right to associate and communicate privately with persons of their choice including receiving visitors at any time.

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.

0465-02-06-.07 MODIFICATION OR LIMITATION OF PERSON SUPPORTED RIGHTS BY FACILITY/SERVICES RULES, POLICIES, OR PROCEDURES.

- (1) The rights of all persons supported by a licensee may only be modified or limited under the following conditions:
 - (a) The licensee is not a Medicaid-reimbursed home and community based service (HCBS) provider 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).
 - (b) It is demonstrated and documented that a legitimate purpose cannot reasonably be achieved without such modification or limitation;
 - (c) No modification or limitation may be made solely for the convenience of staff or be more stringent than is necessary to achieve the demonstrated purpose;
 - (d) Persons supported or representatives of persons supported, as appropriate, must be fully informed of proposed rules, policies or procedures modifying or limiting the rights of the person supported, and of the reasons therefore, and must be given an opportunity to object, propose alternatives, and consult with family, friends, and/or advocacy agencies prior to their implementation; and
 - (e) Rules, policies, or procedures which modify or limit the rights of the person supported must be in writing and posted in a conspicuous place.

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.

0465-02-06-.08 MODIFICATION OR LIMITATION OF PERSON SUPPORTED RIGHTS.

- (1) The rights of a person supported may only be modified or limited under the following conditions:
 - (a) It is demonstrated and documented that such modification or limitation is necessary to achieve a legitimate goal in the ISP of the person supported;
 - (b) No modification or limitation may be made solely for the convenience of staff or be more stringent than is necessary;
 - (c) The person supported or his/her legal representative (conservator, parent, guardian, or legal custodian), as appropriate, must be fully informed of the proposed limitation or modification and must be given an opportunity to object, propose alternatives, and consult with family, friends, and/or advocacy agencies prior to implementation of the modifications or limitations; and
 - (d) Any modifications or limitations must be documented in the ISP of the person supported in accordance with the following requirements:
 1. Identify a specific and individualized assessed need;
 2. Document the positive interventions and supports used prior to any modifications to the person-centered service plan;

(Rule 0465-02-06-.08, continued)

3. Document less intrusive methods of meeting the need that have been tried but did not work;
4. Include a clear description of the condition that is directly proportionate to the specific assessed need;
5. Include regular collection and review of data to measure the ongoing effectiveness of the modification;
6. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;
7. Include the informed consent of the person supported; and
8. Include an assurance that interventions and supports will cause no 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, 33-2-404, 33-2-407. **Administrative History:** New rules filed July 6, 2016; effective October 4, 2016.