

**RULES  
OF  
THE TENNESSEE DEPARTMENT OF HEALTH  
BOARD FOR LICENSING HEALTH CARE FACILITIES**

**CHAPTER 1200-08-28  
STANDARDS FOR HIV SUPPORTIVE LIVING CENTERS**

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**1200-08-28-.01 DEFINITIONS.**

- (1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.
- (2) Administrator. An individual appointed by a governing body who is responsible for the day to day management of the HIV Supportive Living Facility.
- (3) Adult. An individual who has capacity and is at least 18 years of age.
- (4) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.
- (5) Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.
- (6) Bereavement Counseling. Counseling services provided to the individual's family and/or significant other both prior to and after the individual's death.
- (7) Bereavement Counselor. An individual who has at least a bachelor's degree in social work, counseling, psychology, pastoral care, or specialized training or experience in bereavement theory and counseling.
- (8) Board. The Tennessee Board for Licensing Health Care Facilities.
- (9) Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a resident to make health care decisions while having the capacity to do so. A resident shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a resident shall have the burden of proving lack of capacity.
- (10) Cardiopulmonary Resuscitation (CPR). The administering of any means or device to support cardiopulmonary functions in a resident, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilations or respirations, defibrillation, the administration of drugs and/or

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chemical agents intended to restore cardiac and/or respiratory functions in a resident where cardiac or respiratory arrest has occurred or is believed to be imminent.

- (11) Certified Master Social Worker. A person currently certified as such by the Tennessee Board of Social Worker Certification and Licensure.
- (12) Clinical Fellow. A Speech Language Pathologist who is in the process of obtaining his or her paid professional experience, as defined by a Communications Disorders and Sciences Board-approved accreditation agency, before being qualified for licensure.
- (13) Clinical Note. A written and dated notation containing a resident assessment, responses to medications, treatments and services and/or any changes in condition signed by a health professional who made contact with the resident, family or significant other.
- (14) Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.
- (15) Competent. A resident who has capacity.
- (16) Core Services. Services consisting of nursing, medical social services, physician services and counseling services.
- (17) Department. The Tennessee Department of Health.
- (18) Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.
- (19) Dietitian. A person currently licensed as such by the Tennessee Board of Dietitian/Nutritionist Examiners.
- (20) Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.
- (21) Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.
- (22) Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.
- (23) Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.
- (24) Hazardous Waste. Materials whose handling, use, storage, and disposal are governed by local, state, or federal regulations.
- (25) Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).
- (26) Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.
- (27) Health Care Decision-maker. In the case of a resident who lacks capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as

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specified in an advance directive, the resident's court-appointed guardian or conservator with health care decision-making authority, the resident's surrogate as determined pursuant to Rule 1200-08-28-.13 or T.C.A. § 33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

- (28) Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.
- (29) Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.
- (30) Home Care Organization. As defined by T.C.A. § 68-11-201 "home care organizations" provides home health services, home medical equipment services or hospice services to residents on an outpatient basis in either their regular or temporary place of residence.
- (31) Hospice Services. As defined by T.C.A. § 68-11-201, "hospice services" means a coordinated program of care, under the direction of an identifiable hospice administrator, providing palliative and supportive medical and other services to hospice patients and their families in the patient's regular or temporary place of residence. Hospice services shall be provided twenty-four (24) hours a day, seven (7) days a week.
- (32) Incompetent. A resident who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.
- (33) Individual instruction. An individual's direction concerning a health care decision for the individual.
- (34) Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.
- (35) Involuntary Transfer. The movement of a resident without the consent of the resident, the resident's legal guardian, next of kin or representative, with required notification to the appropriate agencies.
- (36) Licensed Clinical Social Worker. A person currently licensed as such by the Tennessee Board of Social Workers.
- (37) Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.
- (38) Licensed Psychologist. A person currently licensed as such by the Tennessee Board of Examiners in Psychology.
- (39) Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.
- (40) Life Threatening Or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.
- (41) Medical Director. A licensed physician employed by the HIV supportive living facility to be responsible for medical care in the facility.
- (42) Medical Emergency. A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could

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reasonably be expected to result in placing the resident's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

- (43) **Medically Inappropriate Treatment.** Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the resident or other medical or surgical treatments to achieve the expressed goals of the informed resident. In the case of the incompetent resident, the resident's representative expresses the goals of the resident.
- (44) **Medical Social Services.** When provided, shall be given by a certified master social worker, a licensed clinical social worker, or by a social worker or social work assistant employed by a home care organization or by contract with the facility and under the supervision of a certified master social worker or licensed clinical social worker, and in accordance with the plan of care. The medical social services provider shall assist the physician and other team members in understanding the significant social and emotional factors related to the health problems, participate in the development of the plan of care, prepare clinical and progress notes, work with the family, utilize appropriate community resources, participate in discharge planning and inservice programs, and act as a consultant to other organization personnel.
- (45) **Misappropriation of Patient/Resident Property.** The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.
- (46) **Neglect.** The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.
- (47) **N.F.P.A.** The National Fire Protection Association.
- (48) **Occupational Therapist.** A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.
- (49) **Occupational Therapy Assistant.** A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.
- (50) **Palliative.** The reduction or abatement of pain or troubling symptoms by appropriate coordination of all elements of the health care team to achieve needed relief of distress.
- (51) **Person.** An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (52) **Personal Care Aide.** A nursing assistant or a person who can demonstrate through other education or experience that he or she is qualified to provide assistance with basic care services, including simple procedures such as feeding, personal grooming, ambulating, socializing, medication prompting, exercising and other household services essential to health care.
- (53) **Personally Informing.** A communication by any effective means from the resident directly to a health care provider.
- (54) **Pharmacist.** A person currently licensed as such by the Tennessee Board of Pharmacy.

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- (55) Physical Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.
- (56) Physical Therapist Assistant. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.
- (57) Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.
- (58) Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.
- (59) Physician Orders for Scope of Treatment or POST. Written orders that:
  - (a) Are on a form approved by the Board for Licensing Health Care Facilities;
  - (b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and
  - (c)
    - 1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;
    - 2. Specify other medical interventions that are to be provided or withheld; or
    - 3. Specify both 1 and 2.
- (60) Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.
- (61) Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.
- (62) Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the resident's health care needs. Such availability shall include, but not be limited to, availability by telephone.
- (63) Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.
- (64) Resident. An individual who has been diagnosed with symptomatic HIV (human immunodeficiency virus) disease, who has a physician who acts as the primary care provider, and who has voluntarily requested admission to, and been accepted by a licensed residential facility.
- (65) Resident File. Medical histories, records, reports, clinical notes, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, and other written electronics, or graphic data prepared, kept, made or maintained in the facility that pertains to confinement or services rendered to residents.

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- (66) Respiratory Therapist. A person currently licensed as such by the Tennessee Board of Respiratory Care.
- (67) Respiratory Therapy Technician. A person currently licensed as such by the Tennessee Board of Respiratory Care.
- (68) Respite Care. A short-term period of inpatient care provided to a hospice patient only when necessary to relieve the family members or other persons caring for the patient.
- (69) Secured Unit. A facility or distinct part of a facility where the residents are intentionally denied egress by any means.
- (70) Shall or Must. Compliance is mandatory.
- (71) Social Worker. An individual who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education and has one (1) year of social work experience in a health care setting.
- (72) Social Work Assistant. A person who has a baccalaureate degree in social work, psychology, sociology, or other field related to social work, and has at least one (1) year of social work experience in a health care setting. Social work related fields include bachelor/masters degrees in psychology, sociology, human services (behavioral sciences, not human resources), masters degree in counseling fields (psychological guidance and guidance counseling) and degrees in gerontology.
- (73) Speech Language Pathologist. As defined in T.C.A. § 63-17-103, a person currently licensed as such by the Tennessee Board of Communications Disorders and Sciences.
- (74) Spiritual Counselor. A person who has met the requirements of a religious organization to serve the constituency of that organization.
- (75) State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.
- (76) Student. A person currently enrolled in an accredited course of study that is approved by the appropriate licensing board or equivalent body.
- (77) Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.
- (78) Supervision. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Periodic supervision must be provided if the person is not a licensed or certified assistant, unless otherwise provided in accordance with these regulations.
- (79) Surrogate. An individual, other than a resident's agent or guardian, authorized to make a health care decision for the resident.
- (80) Terminally ill. An individual with a medical prognosis that his or her life expectancy is six (6) months or less if the illness runs its normal course.
- (81) Transfer. The movement of a resident at the direction of a physician or other qualified or certified professionals when a physician is not readily available, but does not include such movement of a resident who leaves the facility against medical advice.

(Rule 1200-08-28-.01, continued)

- (82) Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the resident.
- (83) Volunteer. An individual who agrees to provide services to a resident, staff, significant other and/or family member(s), without monetary compensation, with appropriate supervision by the facility.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-216, 68-11-224, and 68-11-1802. **Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendments filed December 15, 2005; effective February 28, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015. Amendment filed September 15, 2015; effective December 14, 2015.

### 1200-08-28-.02 LICENSING PROCEDURES.

- (1) No person, partnership, association, corporation, or state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any HIV supportive living center without having a license. A license shall be issued to the person or persons named and for the premises listed in the application for licensure at the time of the original licensing. The name of the HIV supportive living center shall not be changed without first notifying the department in writing. Licenses are not transferable or assignable and shall expire and become invalid annually on the anniversary date of their original issuance. The license shall be conspicuously posted in the HIV supportive living center.
- (2) In order to make application for a license:
- (a) The applicant shall submit an application on a form prepared by the department.
- (b) Each applicant for a license shall pay an annual license fee based on the number of beds as follows:
- |    |                            |            |
|----|----------------------------|------------|
| 1. | Less than 25 beds          | \$1,040.00 |
| 2. | 25 to 49 beds, inclusive   | \$1,300.00 |
| 3. | 50 to 74 beds, inclusive   | \$1,560.00 |
| 4. | 75 to 99 beds, inclusive   | \$1,820.00 |
| 5. | 100 to 124 beds, inclusive | \$2,080.00 |
| 6. | 125 to 149 beds, inclusive | \$2,340.00 |
| 7. | 150 to 174 beds, inclusive | \$2,600.00 |
| 8. | 175 to 199 beds, inclusive | \$2,860.00 |

For HIV supportive living facilities of two hundred (200) beds or more the fee shall be two thousand eight hundred and sixty dollars (\$2,860.00) plus two hundred dollars (\$200.00) for each twenty-five (25) beds or fraction thereof in excess of one hundred ninety-nine (199) beds. The fee shall be submitted with the application or renewal and is not refundable.

(Rule 1200-08-28-.02, continued)

- (c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the department. Residents shall not be admitted to the HIV supportive living facility until a license has been issued. Applicants shall not hold themselves out to the public as being a HIV supportive living facility until the license has been issued. A license shall not be issued until the facility is in substantial compliance with these rules, including submission of all information required by T.C.A. § 68-11-206(1) or as later amended, and all information required by the Commissioner.
  - (d) The applicant must prove the ability to meet the financial needs of the HIV supportive living facility.
  - (e) The applicant shall answer each question provided in the application fully and truthfully, shall not supply false or misleading information and shall not use any deceptive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license or has had a license disciplined or has attempted to avoid inspection and Review process.
  - (f) The applicant shall allow the HIV supportive living facility to be inspected by a Department surveyor. In the event that deficiencies are noted, the applicant shall submit a plan of corrective action to the Board that must be accepted by the Board. Once the deficiencies have been corrected, then the Board shall consider the application for licensure.
- (3) A proposed change of ownership, including a change in a controlling interest, must be reported to the department a minimum of thirty (30) days prior to the change. A new application and fee must be received by the department before the license may be issued.
- (a) For the purposes of licensing, the licensee of a HIV supportive living facility has the ultimate responsibility for the operation of the HIV supportive living facility, including the final authority to make or control operational decisions and legal responsibility for the business management. A change of ownership occurs whenever this ultimate legal authority for the responsibility of the HIV supportive living facility's operation is transferred.
  - (b) A change of ownership occurs whenever there is a change in the legal structure by which the HIV supportive living facility is owned and operated.
  - (c) Transactions constituting a change of ownership include, but are not limited to the following:
    - 1. Transfer of the HIV supportive living facility's legal title;
    - 2. Lease of the HIV supportive living facility's operations;
    - 3. Dissolution of any partnership that owns, or owns a controlling interest in, the HIV supportive living facility;
    - 4. One partnership is replaced by another through the removal, addition or substitution of a partner;
    - 5. Removal of the general partner or general partners, if the HIV supportive living facility is owned by a limited partnership;

(Rule 1200-08-28-.02, continued)

6. Merger of a HIV supportive living facility owner (a corporation) into another corporation where, after the merger, the owner's shares of capital stock are canceled;
  7. The consolidation of a corporate HIV supportive living facility owner with one or more corporations; or,
  8. Transfers between levels of government.
- (d) Transactions which do not constitute a change of ownership include, but are not limited to, the following:
1. Changes in the membership of a corporate board of directors for board of trustees;
  2. Two (2) or more corporations merge and the originally licensed corporation survives;
  3. Changes in the membership of a non-profit corporation;
  4. Transfers between departments of the same level of government; or,
  5. Corporate stock transfers or sales, even when a controlling interest.
- (e) Management agreements are generally not changes of ownership if the owner continues to retain ultimate authority for the operation of the HIV supportive living facility. However, if the ultimate authority is surrendered and transferred from the owner to a new manager, then a change of ownership has occurred.
- (f) Sale/lease-back agreements shall not be treated as changes in ownership if the lease involves the HIV supportive living facility's entire real and personal property and if the identity of the lessee, who shall continue the operation, retains the exact same legal form as the former owner.
- (4) Renewal.
- (a) In order to renew a license, each HIV supportive living facility shall submit to periodic inspections by Department surveyors for compliance with these rules. If deficiencies are noted, the licensee shall submit an acceptable plan of corrective action and shall remedy the deficiencies. In addition, each licensee shall submit a renewal form approved by the board and applicable renewal fee prior to the expiration date of the license.
  - (b) If a licensee fails to renew its license prior to the date of its expiration but submits the renewal form and fee within sixty (60) days thereafter, the licensee may renew late by paying, in addition to the renewal fee, a late penalty of one hundred dollars (\$100) per month for each month or fraction of a month that renewal is late; provided that the late penalty shall not exceed twice the renewal fee.
  - (c) In the event that a licensee fails to renew its license within the sixty (60) day grace period following the license expiration date, then the licensee shall reapply for a license by submitting the following to the Board office:
    1. A completed application for licensure; and
    2. The license fee provided in rule 1200-08-28-.02(2)(b).

(Rule 1200-08-28-.02, continued)

- (d) Upon reapplication, the licensee shall submit to an inspection of the facility by Department of Health surveyors.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-206(a)(5), 68-11-209, 68-11-209(a)(1), 68-11-210, 68-11-216, and Chapter 846 of the Public Acts of 2008, § 1.  
**Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed November 19, 2003; effective February 2, 2004. Amendment filed January 19, 2007; effective April 4, 2007. Public necessity rules filed April 29, 2009; effective through October 11, 2009. Emergency rules filed October 9, 2009; effective through April 7, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendment filed December 16, 2013; effective March 16, 2014. Amendments filed March 26, 2019; effective June 24, 2019.

### 1200-08-28-.03 DISCIPLINARY PROCEDURES.

- (1) The board may suspend or revoke a license for:
  - (a) Violation of federal or state statutes;
  - (b) Violation of the rules set forth in this chapter;
  - (c) Permitting, aiding or abetting the commission of any illegal act in the HIV supportive living facility;
  - (d) Conduct or practice found by the board to be detrimental to the health, safety, or welfare of the residents of the HIV supportive living facility; or
  - (e) Failure to renew the license.
- (2) The board may consider all factors which it deems relevant, including but not limited to the following when determining sanctions:
  - (a) The degree of sanctions necessary to ensure immediate and continued compliance;
  - (b) The character and degree of impact of the violation on the health, safety and welfare of the residents in the HIV supportive living facility;
  - (c) The conduct of the HIV supportive living facility in taking all feasible steps or procedures necessary or appropriate to comply or correct the violation; and,
  - (d) Any prior violations by the HIV supportive living facility of statutes, regulations or orders of the board.
- (3) When a facility is found by the department to have committed a violation of this chapter, the department will issue to the facility a statement of deficiencies. Within ten (10) days of the receipt of the statement of deficiencies the facility must return a plan of correction indicating the following:
  - (a) How the deficiency will be corrected;
  - (b) The date upon which each deficiency will be corrected;
  - (c) What measures or systematic changes will be put in place to ensure that the deficient practice does not recur; and

(Rule 1200-08-28-.03, continued)

- (d) How the corrective action will be monitored to ensure that the deficient practice does not recur.
- (4) Either the failure to submit a plan of correction in a timely manner or a finding by the department that the plan of correction is unacceptable shall subject the facility license to possible disciplinary action.
- (5) Any licensee or applicant for a license aggrieved by a decision or action of the department or board pursuant to this chapter may request a hearing before the board. The proceedings and judicial Review of the board's decision shall be in accordance with the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101, et seq.
- (6) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-04-01-.18 regarding petitions for reconsiderations and stays in that case.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-208, and 68-11-209. **Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed March 1, 2007; effective May, 2007.

#### **1200-08-28-.04 ADMINISTRATION.**

- (1) The HIV supportive living facility shall have a full-time (working at least 32 hours per week) administrator. Any change of administrators shall be reported in writing to the department within fifteen (15) days. The administrator shall designate in writing an individual to act in his/her absence in order to provide the HIV supportive living facility with administrative direction at all times. The administrator shall assure the provision of appropriate fiscal resources and personnel required to meet the needs of the residents.
- (2) The HIV supportive living facility must organize, manage, and administer its HIV care services to attain and maintain the highest obtainable quality of life for each resident in a manner consistent with acceptable standards of practice.
- (3) The HIV supportive living facility shall ensure a framework for addressing issues related to care at the end of life.
- (4) The HIV supportive living facility shall provide a process that assesses pain in all patients. There shall be an appropriate and effective pain management program.
- (5) Nursing services, physician services, drugs and biologicals shall routinely be available on a 24-hour basis.
- (6) All other HIV services shall be available on a 24-hour basis to the extent necessary to meet the needs of individuals for care that is reasonable and necessary for the palliation and management of terminal illness or conditions directly attributable to the HIV diagnosis.
- (7) An HIV supportive living facility may contract for another individual or entity to furnish services, other than core services, to the HIV supportive living facility's residents. If services are provided under agreement or contract, the HIV supportive living facility must meet the following standards:
  - (a) Continuity of care. The HIV supportive living facility assures the continuity of resident and family care.

(Rule 1200-08-28-.04, continued)

- (b) Written agreement. The HIV supportive living facility has a legally binding written agreement for the provision of contracted HIV care services. The agreement must include at least the following:
    - 1. Identification of the services to be provided.
    - 2. A stipulation that services may be provided only with the express authorization of the HIV supportive living facility.
    - 3. The manner in which the contracted services are coordinated, supervised, and evaluated by the HIV supportive living facility.
    - 4. The delineation of the role(s) of the HIV supportive living facility and the contractor in the admission process, resident and family assessment, and the interdisciplinary group care conferences.
    - 5. Requirements for documenting that services are furnished in accordance with the agreement.
    - 6. The qualifications of the personnel providing the services.
  - (c) Professional management responsibility. The HIV supportive living facility retains professional management responsibility for those contracted services and ensures that they are furnished in a safe and effective manner by persons meeting the qualifications of this part, and in accordance with the resident's plan of care and the other requirements of this part.
  - (d) Financial responsibility. The HIV supportive living facility retains responsibility for payment for services.
- (8) The facility shall make reasonable efforts to safeguard personal property and promptly investigate complaints of such loss. A record shall be prepared of all clothing, personal possessions, and money brought by the resident to the HIV supportive living facility. One copy of the record shall be given to the resident or the resident's representative and the original shall be maintained in the HIV supportive living facility record. This record shall be updated as additional personal property is brought to the facility.
  - (9) If the facility keeps resident funds, such funds shall be kept in an account separate from the facility's funds. Resident funds shall not be used by the facility. The facility shall maintain and allow each resident access to a written record of all financial arrangements and transactions involving the individual resident's funds. The facility shall provide each resident or his/her representative with a written itemized statement at least quarterly of all financial transactions involving the resident's funds.
  - (10) Within thirty (30) days of a resident's death, the facility shall provide an accounting of the resident's funds held by the facility and an inventory of the resident's personal property held by the facility to the resident's executor, administrator or other person authorized by law to receive the decedent's property. The facility shall obtain a signed receipt from any person to whom the decedent's property is transferred.
  - (11) Upon the sale of the facility, the seller shall provide written verification that all the resident's funds and property have been transferred and shall obtain a signed receipt from the new owner. Upon receipt, the buyer shall provide, to the residents, an accounting of funds and property held on their behalf.

(Rule 1200-08-28-.04, continued)

- (12) When licensure is applicable for a particular job, verification of the current license must be included as a part of the personnel file. Each personnel file shall contain accurate information as to the education, training, experience and personnel background of the employee or volunteer. Documentation that references were verified shall be on file. Adequate medical screenings to exclude communicable disease shall be required of each employee.
- (13) Whenever the rules and regulations of this chapter require that a licensee develop a written policy, plan, procedure, technique, or system concerning a subject, the licensee shall develop the required policy, maintain it and adhere to its provisions. A HIV supportive living facility which violates a required policy also violates the rule and regulation establishing the requirement.
- (14) Policies and procedures shall be consistent with professionally recognized standards of practice.
- (15) No HIV supportive living facility shall retaliate against or, in any manner, discriminate against any person because of a complaint made in good faith and without malice to the board, the department, the Department of Human Services Adult Protective Services, the long term care ombudsman, the Comptroller of the State Treasury, or any government agency. A HIV supportive living facility shall neither retaliate, nor discriminate, because of information lawfully provided to these authorities, because of a person's cooperation with them, or because a person is subpoenaed to testify at a hearing involving one of these authorities.
- (16) Each HIV supportive living facility shall adopt safety policies for the protection of residents from accident and injury.
- (17) A record pertaining to the payment agreement between the HIV supportive living facility and the resident shall be accomplished prior to admission. A copy of the agreement record shall be given to the resident and the original shall be maintained in the facility's records.
- (18) All health care facilities licensed pursuant to T.C.A. §§ 68-11-201, et seq. shall post the following in the main public entrance:
  - (a) Contact information including statewide toll-free number of the division of adult protective services, and the number for the local district attorney's office;
  - (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and
  - (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.
- (19) "No smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted at every entrance.
- (20) The facility shall develop a concise statement of its charity care policies and shall post such statement in a place accessible to the public.

(Rule 1200-08-28-.04, continued)

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 39-17-1803, 39-17-1805, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-268, and 71-6-121. **Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed June 18, 2002; September 1, 2002. Amendment filed April 20, 2006; effective July 4, 2006. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed February 22, 2010; effective May 23, 2010.

**1200-08-28-.05 ADMISSIONS, DISCHARGES, AND TRANSFERS.**

- (1) The HIV supportive living facility shall have a policy to admit only residents who meet the following criteria:
  - (a) Has been diagnosed with symptomatic HIV disease;
  - (b) Has a physician who acts as the primary care provider; and
  - (c) Has voluntarily requested admission to, and been accepted by, a licensed HIV supportive living facility.
- (2) Residents shall be admitted to receive HIV care supportive living services, on the basis of a reasonable expectation that the resident's medical, nursing and psychosocial needs can be met adequately by the HIV supportive living facility.
- (3) Care shall follow a written plan of care established and reviewed by the attending physician, the medical director, or the physician's designee and the interdisciplinary group. Care shall continue under the supervision of the attending physician.
- (4) The HIV supportive living facility staff shall determine that the resident's needs can be met by the facility's services and capabilities.
- (5) Every person admitted for care or treatment to any HIV supportive living facility covered by these rules shall be under the supervision of a physician who holds a license in good standing to practice in Tennessee. The name of the resident's attending physician shall be recorded in the resident's file.
- (6) The HIV supportive living facility staff shall obtain the resident's written consent for HIV care services.
- (7) The signed consent form shall be included with the resident's individual file.
- (8) A diagnosis must be entered in the admission records of the HIV supportive living facility for every person admitted for care or treatment.
- (9) Any admission in excess of the licensed bed capacity is prohibited except when an emergency admission is approved by the department.
- (10) A resident file shall be developed and maintained for each resident admitted.
- (11) No resident shall be discharged without a written order from the attending physician or the medical director stating the resident does not meet HIV care criteria, or through other legal processes, and timely notification of next of kin and/or the authorized representative.
- (12) When a resident is discharged, a summary of the significant findings and events of the resident's care, the resident's condition on discharge and the recommendation and arrangement for future care, if any, is required.

(Rule 1200-08-28-.05, continued)

- (13) When a resident is transferred, a summary of treatment given at the HIV supportive living facility, condition of the resident at time of transfer and date and place to which he or she is transferred shall be entered in the file. If the transfer is due to an emergency, this information will be recorded, within forty-eight (48) hours, otherwise, it will precede the transfer of the resident.
- (14) When a resident is transferred, a copy of the clinical summary shall, with consent of the resident, be sent to the facility that will continue the care of the resident.
- (15) Except when the Board has revoked or suspended the license, a HIV supportive living facility which intends to close, cease doing business, or reduce its licensed bed capacity by ten percent (10%) or more shall notify both the Department and the area long term care ombudsman at the earliest moment of the decision, but not later than thirty (30) days before the action is to be implemented. The facility shall establish a protocol, subject -to the Department's approval, for the transfer or discharge of the residents. Should the HIV supportive living facility violate the provisions of this subsection, the department shall request the Attorney General of the State of Tennessee to intervene to protect the residents, as is provided by T.C.A. § 68-11-213(a).
- (16) The HIV supportive living facility shall ensure that no person on the grounds of race, color, national origin, or handicap, will be excluded from participation in, be denied benefits of, or otherwise subjected to discrimination in the provision of any care or service of the HIV supportive living facility. The HIV supportive living facility shall protect the civil rights of residents under the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.
- (17) Facilities utilizing secured units must be able to provide survey staff with twelve (12) months of the following performance information specific to the secured unit and its residents:
  - (a) Documentation that each secured resident has been evaluated by an interdisciplinary team consisting of at least a physician, a social worker, a registered nurse, and a family member and/or significant other (or resident care advocate) prior to admittance to the unit;
  - (b) Ongoing and up-to-date documentation of quarterly review by each resident's interdisciplinary team as to the appropriateness of placement in the secured unit;
  - (c) A current listing of the number of deaths and hospitalizations with diagnoses that have occurred on the unit;
  - (d) A current listing of all unusual incidents and/or complications on the unit;
  - (e) An up-to-date staffing pattern and staff ratios for the unit that is recorded on a daily basis. The staffing pattern must ensure that there is a minimum of one (1) attendant, awake, on duty, and physically located on the unit twenty-four (24) hours per day, seven (7) days per week at all times;
  - (f) A formulated calendar of daily group activities scheduled including a resident attendance record for the previous three (3) months;
  - (g) An up-to-date listing of any incidences of decubitus and/or nosocomial infections, including resident identifiers; and,
  - (h) Documentation showing that 100% of the staff working on the unit receives and has received annual in-service training which shall include, but not be limited to the following subject areas:

(Rule 1200-08-28-.05, continued)

1. Basic facts about the causes, progression and management of HIV and related disorders;
  2. Dealing with dysfunctional behavior and catastrophic reactions in the residents;
  3. Identifying and alleviating safety risks to the resident;
  4. Providing assistance in the activities of daily living for the resident; and,
  5. Communicating with families and other persons interested in the resident.
- (18) Any residential facility licensed by the board of licensing health care facilities shall upon admission provide to each resident the division of adult protective services' statewide toll-free number: 888-277-8366.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 71-6-121. **Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 20, 2006; effective July 4, 2006.

#### **1200-08-28-.06 BASIC HIV SUPPORTIVE LIVING FACILITY FUNCTIONS.**

- (1) A HIV supportive living facility must ensure that substantially all core services are routinely provided directly by HIV supportive living facility employees. A HIV supportive living facility may use contracted staff if necessary to supplement HIV supportive living facility employees in order to meet the needs of residents.
- (a) Nursing services. The HIV supportive living facility must provide nursing care and services by, or under the supervision of, a registered nurse (R.N.) at all times.
1. Nursing services must be directed and staffed to assure the nursing needs of residents are met.
  2. Resident care responsibilities of nursing personnel must be specified.
  3. HIV care services must be provided in accordance with recognized standards of practice.
- (b) Medical Social Services. Medical Social Services must be provided by a qualified social worker under the direction of a physician.
- (c) Physician Services. In addition to palliation and management of HIV care, physician employees of the HIV supportive living facility including the physician member(s) of the interdisciplinary group, must also meet the general medical needs of the residents to the extent these needs are not met by the attending physician.
- (d) Counseling Services. Counseling services must be made available to the individual, the individual's family and/or significant other, and staff. Counseling includes bereavement counseling, provided both prior to and after the resident's death, as well as dietary, therapeutic, spiritual and any other counseling services identified in the plan of care for the individual and family and/or significant other while the individual is a resident of the HIV supportive living facility.
1. Bereavement counseling. There must be an organized program for the provision of bereavement services under the supervision of a qualified professional. The

(Rule 1200-08-28-.06, continued)

- plan of care for these services should reflect family/significant other needs, services to be provided, and the frequency of services.
2. Dietary counseling. Dietary counseling, when required, must be provided by a qualified individual.
  3. Spiritual counseling. Spiritual counseling must include notice to residents as to the availability of clergy.
  4. Additional counseling. Counseling may be provided by other members of the interdisciplinary group as well as by other qualified professionals as determined by the HIV supportive living facility.
- (2) Plan of Care. A written plan of care must be established and maintained for each individual admitted to a HIV supportive living facility, and the care provided to an individual must be in accordance with the plan.
- (a) Establishment of plan. The plan must be established by the attending physician, the medical director or the physician's designee and the interdisciplinary group prior to providing care.
  - (b) Review of plan. The plan must be reviewed and updated as the resident's condition changes, but at intervals of no more than (14) days, by the attending physician, the medical director or the physician's designee and the interdisciplinary group. These reviews must be documented.
  - (c) Content of plan. The plan must include an assessment of the individual's needs and identification of the HIV care services required including the management of discomfort and symptom relief. It must state in detail the scope and frequency of services needed to meet the resident's and family's/significant other's needs.
  - (d) Coordinator. The HIV supportive living facility must designate a licensed professional nurse to coordinate the implementation of the plan of care of each resident.
  - (e) Volunteers. The HIV supportive living facility may use volunteers, in defined roles, under the supervision of a designated HIV supportive living facility employee.
    1. Training. The HIV supportive living facility must provide appropriate orientation and training that is consistent with acceptable standards of HIV supportive living facility practice.
    2. Role. Volunteers shall be used in administrative or direct resident care roles.
    3. Recruiting and retaining. The HIV supportive living facility must document active and ongoing efforts to recruit and train volunteers.
    4. Availability of clergy. The HIV supportive living facility must make reasonable efforts to arrange for visits of clergy and other members of religious organizations in the community to residents who request such visits and must advise residents of this opportunity.
- (3) Continuation of Care. A HIV supportive living facility must assist in coordinating continued care should the resident be transferred or discharged from the HIV supportive living facility.
- (4) Drugs and treatments shall be administered by appropriately licensed facility personnel acting within the scope of their license. Oral orders for drugs and treatments shall be given to

(Rule 1200-08-28-.06, continued)

appropriately licensed personnel acting within the scope of their licenses, immediately recorded, signed and dated, and countersigned and dated by the physician within ten (10) days of issuance of the oral order.

- (5) Performance Improvement Program. The HIV supportive living facility must ensure that there is an effective facility-wide performance improvement program to evaluate resident care and performance of the organization. The administrator shall assure that a Performance Improvement Committee, composed of a physician, a licensed professional nurse, a social worker and a pastoral or other counselor, is in place to ensure that the facility has adequate policies and procedures in place, to review performance monitoring and activities, and to provide oversight and address identified care issues within the facility. The performance improvement program must be ongoing and have a written plan of implementation which assures that:
- (a) All organized services related to resident care, including services furnished by a contractor, are evaluated;
  - (b) Nosocomial infections and medication therapy are evaluated;
  - (c) All services performed in the facility are evaluated as to the appropriateness of diagnosis and treatment;
  - (d) The HIV supportive living facility must have an ongoing plan, consistent with available community and facility resources, to provide or make available services that meet the medically-related needs of its HIV care residents;
  - (e) The facility must develop and implement plans for improvement to address deficiencies identified by the performance improvement program and must document the outcome of the remedial action;
  - (f) Performance Improvement Program records are not disclosable except when such disclosure is required to demonstrate compliance with this section;
  - (g) Good faith attempts by the Performance Improvement Program Committee to identify and correct deficiencies will not be used as a basis for sanctions.
- (6) Infection Control.
- (a) The HIV supportive living facility must provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There must be an active program for the prevention, control, and investigation of infections and communicable diseases.
  - (b) The administrator shall assure that an Infection Control Committee, including the medical director and members of the nursing staff and administrative staff, develops guidelines and techniques for the prevention, surveillance, control and reporting of facility infections. Duties of the committee shall include the establishment of:
    - 1. Written infection control policies;
    - 2. Techniques and systems for identifying, reporting, investigating and controlling infections in the facility;
    - 3. Written procedures governing the use of aseptic techniques and procedures in the facility;

(Rule 1200-08-28-.06, continued)

4. Written procedures concerning food handling, laundry practices, disposal of environmental and resident wastes, traffic control and visiting rules, sources of air pollution, and routine culturing of autoclaves and sterilizers;
  5. A log of incidents related to infectious and communicable diseases;
  6. Formal provisions to educate and orient all appropriate personnel in the practice of aseptic techniques such as handwashing, proper grooming, masking and dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of resident equipment and supplies; and
  7. Continuing education for all facility personnel on the cause, effect, transmission, prevention, and elimination of infections.
- (c) A HIV Supportive Living Center shall have an annual influenza vaccination program which shall include at least:
1. The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The HIV Supportive Living Center will encourage all staff and independent practitioners to obtain an influenza vaccination;
  2. A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at <http://tennessee.gov/health/topic/hcf-provider>);
  3. Education of all employees about the following:
    - (i) Flu vaccination,
    - (ii) Non-vaccine control measures, and
    - (iii) The diagnosis, transmission, and potential impact of influenza;
  4. An annual evaluation of the influenza vaccination program and reasons for non-participation; and
  5. A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee.
- (d) The administrator, the medical director and a licensed professional nurse must ensure that the facility-wide performance improvement program and training programs address problems identified by the infection control program and must be responsible for the implementation of successful corrective action plans in affected problem areas.
- (e) The facility shall develop policies and procedures for testing a resident's blood for the presence of blood borne infections in the event that an employee of the facility, a student studying at the facility, or other health care provider rendering services at the facility is exposed to a resident's blood or other body fluid. The testing shall be performed at no charge to the resident, and the test results shall be confidential.
- (f) The facility and its employees shall adopt appropriate policies to evaluate staff for exposure to blood-borne pathogens, and utilize standard or universal precautions for preventing transmission of infections, HIV, and communicable diseases.

(Rule 1200-08-28-.06, continued)

- (g) Precautions shall be taken to prevent the contamination of sterile supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents, decontamination and preparation areas shall be separated.
  - (h) Space and facilities for housekeeping equipment and supply storage shall be provided in each service area. Storage for bulk supplies and equipment shall be located away from resident care areas. The building shall be kept in good repair, clean, sanitary and safe at all times.
  - (i) The facility shall appoint a housekeeping supervisor who shall be responsible for:
    - 1. Organizing and coordinating the facility's housekeeping service;
    - 2. Acquiring and storing sufficient housekeeping supplies and equipment for facility maintenance; and,
    - 3. Assuring the clean and sanitary condition of the facility to provide a safe hygienic environment for residents and staff. Cleaning shall be accomplished in accordance with the infection control rules and regulations herein and facility policy.
  - (j) Laundry facilities located in the HIV supportive living facility shall:
    - 1. Be equipped with an area for receiving, processing, storing and distributing clean linen;
    - 2. Be located in an area that does not require transportation for storage of soiled or contaminated linen through food preparation, storage or dining areas;
    - 3. Provide space for storage of clean linen and for bulk storage within clean areas of the facility; and
    - 4. Provide carts, bags or other acceptable containers appropriately marked to identify those used for soiled linen and those used for clean linen to prevent dual utilization of the equipment and cross contamination.
  - (k) The facility shall name an individual who is responsible for laundry service. This individual shall be responsible for:
    - 1. Establishing a laundry service, either within the HIV supportive living facility or by contract, that provides the facility with sufficient clean, sanitary linen at all times;
    - 2. Knowing and enforcing infection control rules and regulations for the laundry service;
    - 3. Assuring the collection, packaging, transportation and storage of soiled, contaminated, and clean linen is in accordance with all applicable infection control rules, regulations and procedures; and,
    - 4. Assuring that a contract laundry service complies with all applicable infection control rules, regulations and procedures.
- (7) Personal Care Services. Aide services must be available and adequate in frequency to meet the needs of the residents.

(Rule 1200-08-28-.06, continued)

- (a) The personal care aide shall be assigned to a particular resident by a licensed professional nurse. Written instructions for resident care shall be prepared by a registered nurse or therapist as appropriate. Duties may include the performance of simple procedures to assist residents with basic care services, including simple procedures such as feeding, personal grooming, ambulating, socializing, medication prompting, reporting changes in the resident's condition and needs, completing appropriate records, exercising and other household services essential to health care.
  - (b) The registered nurse shall monitor and assess the aide's competence in providing care and determine whether goals are being met.
  - (c) There shall be regularly scheduled continuing in-service programs which include on-the-job training as needed.
- (8) Physical therapy, occupational therapy, respiratory therapy and speech language pathology. Physical therapy services, occupational therapy services, respiratory therapy services and speech-language pathology services must be available, and when provided, offered in a manner consistent with accepted standards of practice.
- (9) Speech therapy services shall be provided only by or under supervision of a qualified speech language pathologist in good standing, or by a person qualified as a Clinical Fellow subject to Tennessee Board of Communications Disorders and Sciences Rule 1370-01-.10.
- (10) Medical supplies. Medical supplies and appliances including drugs and biologicals, must be provided as needed for the palliation and management of HIV or conditions directly attributable to the HIV diagnosis.
- (a) Administration. All drugs and biologicals must be administered in accordance with accepted standards of practice and only by appropriately licensed employees of the HIV supportive living facility.
  - (b) The HIV supportive living facility must have a policy for the disposal of controlled drugs when those drugs are no longer needed by the resident.
  - (c) Drugs and biologicals may be administered by the resident or a family member or significant other if the resident's attending physician has approved.
- (11) Resident File.
- (a) A resident file containing past and current findings in accordance with accepted professional standards shall be maintained for every HIV care resident. The record must be complete, promptly and accurately documented, readily accessible and systematically organized to facilitate retrieval. Each file is a comprehensive compilation of information. Entries are made for all services provided. Entries are made and signed by the person providing the services. The record includes all services whether furnished directly or under arrangements made by the HIV supportive living facility. Each individual's record must contain:
    - 1. The initial and subsequent assessments;
    - 2. The plan of care;
    - 3. Identification data;
    - 4. Consent and authorization and election forms;

(Rule 1200-08-28-.06, continued)

5. Pertinent medical history; and
  6. Complete documentation of all services, volunteers and events (including evaluations, treatments, progress notes, etc.).
- (b) All resident records, either written, electronic, graphic or otherwise acceptable form, must be retained in their original or legally reproduced form for a minimum period of at least (10) years after which such records may be destroyed. However, in cases of residents under mental disability or minority, their complete HIV supportive living facility records shall be retained for the period of minority or known mental disability, plus one (1) year, or ten (10) years following the discharge of the resident, whichever is longer. Records destruction shall be accomplished by burning, shredding or other effective method in keeping with the confidential nature of the contents. The destruction of records must be made in the ordinary course of business, must be documented and in accordance with the HIV supportive living facility's policies and procedures, and no record may be destroyed on an individual basis.
- (c) Even if the HIV supportive living facility discontinues operations, records shall be maintained as mandated by these rules and the Tennessee Medical Records Act (see T.C.A. § 68-11-308). If a resident is transferred to another health care facility or agency, a copy of the record or an abstract shall accompany the resident when the HIV supportive living facility is directly involved in the transfer.
- (d) The HIV supportive living facility must have a procedure for ensuring the confidentiality of resident records. Information from, or copies of, records may be released only to authorized individuals, and the facility must ensure that unauthorized, individuals cannot gain access to, or alter, resident records. Original resident records must be released by the facility only in accordance with federal and state laws.
- (e) For purposes of this rule, the requirements for signature or countersignature by a physician or other person responsible for signing, countersigning and entry may be satisfied by the electronic entry by such person of a unique code assigned exclusively to him or her, or by entry of other unique electronic or mechanical symbols, provided that such person has adopted same as his or her signature in accordance with established protocol or rules.
- (f) All entries must be legible, complete, dated and authenticated according to facility policy.
- (12) Pharmaceutical Services.
- (a) The HIV supportive living facility shall have pharmaceutical services that meet the needs of the residents and are in accordance with the Tennessee Board of Pharmacy statutes and regulations. The facility is responsible for developing policies and procedures that minimize drug errors.
- (b) All internal and external medications and preparations intended for human use shall be stored separately. They shall be properly stored in medicine compartments, including cabinets on wheels, or drug rooms. Such cabinets or drug rooms shall be kept securely locked when not in use and the key must be in the possession of the supervising nurse or other authorized persons. Poisons or external medications shall not be stored in the same compartment and shall be labeled as such.
- (c) Schedule II drugs must be stored behind two (2) separately locked doors at all times and accessible only to persons in charge of administering medication.

(Rule 1200-08-28-.06, continued)

- (d) Every HIV supportive living facility shall comply with all state and federal regulations governing Schedule II drugs.
  - (e) A notation shall be made in a Schedule II drug book and in the resident's nursing notes each time a Schedule II drug is given. The notation shall include the name of the resident receiving the drug, name of the drug, the dosage given, the method of administration, the date and time given and the name of the physician prescribing the drug.
  - (f) All oral orders shall be immediately recorded, designated as such and signed by the person receiving them and countersigned by the physician within ten (10) days.
  - (g) All orders for drugs, devices and related materials must be in writing and signed by the practitioner or practitioners responsible for the care of the resident. Electronic and computer-generated records and signature entries are acceptable. When telephone or oral orders must be used, they shall be:
    - 1. Accepted only by personnel that are authorized to do so by the medical staff policies and procedures, consistent with federal and state law; and,
    - 2. Signed or initialed by the prescribing practitioner according to HIV supportive living facility policy.
  - (h) Medications not specifically limited as to time or number of doses when ordered are controlled by automatic stop orders or other methods in accordance with written policies. No Schedule II drug shall be given or continued beyond seventy-two (72) hours without a written order by the physician.
  - (i) Medication administration records (MAR) shall be checked against the physician's orders. Each dose shall be properly recorded in the clinical record after it has been administered.
  - (j) Preparation of doses for more than one scheduled administration time shall not be permitted.
  - (k) Medication shall be administered only by licensed medical or licensed nursing personnel or other licensed health professionals acting within the scope of their license.
  - (l) Unless the unit dose package system is used, individual prescriptions of drugs shall be kept in the original container with the original label intact showing the name of the resident, the drug, the physician, the prescription number and the date dispensed.
  - (m) Legend drugs shall be dispensed by a licensed pharmacist.
  - (n) Any unused portions of prescriptions shall be turned over to the resident only on a written order by the physician. A notation of drugs released to the resident shall be entered into the medical record. All unused prescriptions left in a HIV supportive living facility must be destroyed on the premises and recorded by a pharmacist. Such record shall be kept in the HIV supportive living facility.
- (13) Laboratory Services. The HIV supportive living facility must maintain or have available, either directly or through a contractual agreement, adequate laboratory services to meet the needs of the residents. The HIV supportive living facility must ensure that all laboratory services provided to its residents are performed in a facility licensed in accordance with the Tennessee Medical Laboratory Act (TMLA). All technical laboratory staff shall be licensed in

(Rule 1200-08-28-.06, continued)

accordance with the TMLA and shall be qualified by education, training and experience for the type of services rendered.

(14) Food and Dietetic Services.

- (a) The HIV supportive living facility must designate a person, either directly or by contractual agreement, to serve as the food and dietetic services director with responsibility for the daily management of the dietary services.
- (b) There must be a qualified dietitian, full time, part-time, or on a consultant basis who is responsible for the development and implementation of a nutrition care process to meet the needs of residents for health maintenance, disease prevention and, when necessary, medical nutrition therapy to treat an illness, injury or condition.
- (c) Menus must meet the needs of the residents.
  - 1. Therapeutic diets must be prescribed by the practitioner or practitioners responsible for the care of the residents and must be prepared and served as prescribed.
  - 2. Special diets shall be prepared and served as ordered.
  - 3. Nutritional needs must be met in accordance with recognized dietary practices and in accordance with orders of the practitioner or practitioners responsible for the care of the residents.
  - 4. A current therapeutic diet manual approved by the dietitian and medical director must be readily available to all medical, nursing, and food service personnel.
- (d) Education programs, including orientation, on-the-job training, inservice education, and continuing education shall be offered to dietetic services personnel on a regular basis. Programs shall include instruction in the use of equipment, personal hygiene, proper inspection, and the handling, preparing and serving of food.
- (e) A minimum of three (3) meals in each twenty-four (24) hour period shall be offered. A supplemental night meal shall be offered if more than fourteen (14) hours lapse between supper and breakfast. Additional nourishment shall be provided to residents with special dietary needs. A minimum of three (3) days supply of food shall be on hand.
- (f) Food shall be protected from dust, flies, rodents, unnecessary handling, droplet infection, overhead leakage and other sources of contamination<sup>0</sup> whether in storage or while being prepared and served and/or transported through hallways.
- (g) Perishable food shall not be allowed to stand at room temperature except during necessary periods of preparation or serving. Prepared foods shall be kept hot (140°F or above) or cold (45°F or less). Appropriate equipment for temperature maintenance, such as hot and cold serving units or insulated containers, shall be used.
- (h) Dishwashing machines shall be used according to manufacturer specifications.
- (i) All dishes, glassware and utensils used in the preparation and serving of food and drink shall be cleaned and sanitized after each use.

(Rule 1200-08-28-.06, continued)

- (j) The cleaning and sanitizing of handwashed dishes shall be accomplished by using a three-compartment sink according to the current U.S. Public Health Service Sanitation Manual.
- (k) The kitchen shall contain sufficient refrigeration equipment and space for the storage of perishable foods.
- (l) All refrigerators and freezers shall have thermometers. Refrigerators shall be kept at a temperature not to exceed 45°F. Freezers shall be kept at a temperature not to exceed 0°F.
- (m) Written policies and procedures shall be followed concerning the scope of food services in accordance with the current edition of the "U.S. Public Health Service Recommended Ordinance and Code Regulating Eating and Drinking Establishments" and the current U.S. Public Health Service Sanitation Manual should be used as a guide to food sanitation.

**Authority:** T.C.A. §§ 4-5-202, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.

**Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed September 15, 2015; effective December 14, 2015. Amendments filed July 18, 2016; effective October 16, 2016.

**1200-08-28-.07 RESERVED.**

**1200-08-28-.08 BUILDING STANDARDS.**

- (1) An HIV supportive living facility shall construct, arrange, and maintain the condition of the physical plant and the overall HIV supportive living facility environment in such a manner that the safety and well-being of the residents are assured.
- (2) After the applicant has submitted an application and licensure fees, the applicant must submit the building construction plans to the department. All facilities shall conform to the current edition of the following applicable codes as approved by the Board for Licensing Health Care Facilities: International Building Code (excluding Chapters 1 and 11) including referenced International Fuel Gas Code, International Mechanical Code, and International Plumbing Code; National Fire Protection Association (NFPA) NFPA 101 Life Safety Code excluding referenced NFPA 5000; Guidelines for Design and Construction of Health Care Facilities (FGI) including referenced Codes and Standards; U.S. Public Health Service Food Code; and Americans with Disabilities Act (ADA) Standards for Accessible Design. When referring to height, area or construction type, the International Building Code shall prevail. Where there are conflicts between requirements in local codes, the above listed codes, regulations and provisions of this chapter, the most stringent requirements shall apply.
- (3) The codes in effect at the time of submittal of plans and specifications, as defined by these rules, shall be the codes to be used throughout the project.
- (4) The licensed contractor shall perform all new construction and renovations to HIV supportive living facilities, other than minor alterations not affecting fire and life safety or functional issues, in accordance with the specific requirements of these regulations governing new construction in HIV supportive living facilities, including the submission of phased construction plans and the final drawings and the specifications to each.
- (5) No new HIV supportive living facility shall be constructed, nor shall major alterations be made to an existing HIV supportive living facility without prior written approval of the department, and unless in accordance with plans and specifications approved in advance by the department. Before any new HIV supportive living facility is licensed or before any alteration

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or expansion of a licensed HIV supportive living facility can be approved, the applicant must furnish two (2) complete sets of plans and specifications to the department, together with fees and other information as required. Plans and specifications for new construction and major renovations, other than minor alterations not affecting fire and life safety or functional issues, shall be prepared by or under the direction of a licensed architect and/or a licensed engineer and in accordance with the rules of the Board of Architectural and Engineering Examiners.

- (6) Final working drawings and specifications shall be accurately dimensioned and include all necessary explanatory notes, schedules and legends. The working drawings and specifications shall be complete and adequate for contract purposes.
- (7) Detailed plans shall be drawn to a scale of at least one-eighth inch equals one foot ( $1/8" = 1'$ ), and shall show the general arrangement of the building, the intended purpose and the fixed equipment in each room, with such additional information as the department may require. An architect or engineer licensed to practice in the State of Tennessee shall prepare the plans the department requires.
  - (a) The project architect or engineer shall forward two (2) sets of plans to the appropriate section of the department for review. After receipt of approval of phased construction plans, the owner may proceed with site grading and foundation work prior to receipt of approval of final plans and specifications with the owner's understanding that such work is at the owner's own risk and without assurance that final approval of final plans and specifications shall be granted. The project architect or engineer shall submit final plans and specifications for review and approval. The department must grant final approval before the project proceeds beyond foundation work.
  - (b) Review of plans does not eliminate responsibility of owner and/or architect to comply with all rules and regulations.
- (8) Specifications shall supplement all drawings. They shall describe the characteristics of all materials, products and devices, unless fully described and indicated on the drawings. Specification copies should be bound in an 8½ x 11 inch folder.
- (9) Drawings and specifications shall be prepared for each of the following branches of work: Architectural, Structural, Mechanical, Electrical and Sprinkler.
- (10) Architectural drawings shall include where applicable:
  - (a) Plot plan(s) showing property lines, finish grade, location of existing and proposed structures, roadways, walks, utilities and parking areas;
  - (b) Floor plan(s) showing scale drawings of typical and special rooms, indicating all fixed and movable equipment and major items of furniture;
  - (c) Separate life safety plans showing the compartment(s), all means of egress and exit markings, exits and travel distances, dimensions of compartments and calculation and tabulation of exit units. All fire and smoke walls must be identified;
  - (d) The elevation of each facade;
  - (e) The typical sections throughout the building;
  - (f) The schedule of finishes;
  - (g) The schedule of doors and windows;

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- (h) Roof plans;
  - (i) Details and dimensions of elevator shaft(s), car platform(s), doors, pit(s), equipment in the machine room, and the rates of car travel must be indicated for elevators; and
  - (j) Code analysis.
- (11) Structural drawings shall include where applicable:
- (a) Plans of foundations, floors, roofs and intermediate levels which show a complete design with sizes, sections and the relative location of the various members;
  - (b) Schedules of beams, girders and columns; and
  - (c) Design live load values for wind, roof, floor, stairs, guard, handrails, and seismic.
- (12) Mechanical drawings shall include where applicable:
- (a) Specifications which show the complete heating, ventilating, fire protection, medical gas systems and air conditioning systems;
  - (b) Water supply, sewerage and HVAC piping systems;
  - (c) Pressure relationships shall be shown on all floor plans;
  - (d) Heating, ventilating, HVAC piping, medical gas systems and air conditioning systems with all related piping and auxiliaries to provide a satisfactory installation;
  - (e) Water supply, sewage and drainage with all lines, risers, catch basins, manholes and cleanouts clearly indicated as to location, size, capacities, etc., and location and dimensions of septic tank and disposal field; and
  - (f) Color coding to show clearly supply, return and exhaust systems.
- (13) Electrical drawings shall include where applicable:
- (a) A seal, certifying that all electrical work and equipment is in compliance with all applicable codes and that all materials are currently listed by recognized testing laboratories;
  - (b) All electrical wiring, outlets, riser diagrams, switches, special electrical connections, electrical service entrance with service switches, service feeders and characteristics of the light and power current, and transformers when located within the building;
  - (c) An electrical system that complies with applicable codes;
  - (d) Color coding to show all items on emergency power;
  - (e) Circuit breakers that are properly labeled; and
  - (f) Ground-Fault Circuit Interrupters (GFCI) that are required in all wet areas, such as kitchens, laundries, janitor closets, bath and toilet rooms, etc, and within six (6) feet of any lavatory.

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- (14) The electrical drawings shall not include knob and tube wiring, shall not include electrical cords that have splices, and shall not show that the electrical system is overloaded.
- (15) In all new facilities or renovations to existing electrical systems, the installation must be approved by an inspector or agency authorized by the State Fire Marshal.
- (16) Sprinkler drawings shall include where applicable:
  - (a) Shop drawings, hydraulic calculations, and manufacturer cut sheets;
  - (b) Site plan showing elevation of fire hydrant to building, test hydrant, and flow data (Data from within a 12 month period); and
  - (c) Show "Point of Service" where water is used exclusively for fire protection purposes.
- (17) The licensed contractor shall not install a system of water supply, plumbing, sewage, garbage or refuse disposal nor materially alter or extend any existing system until the architect or engineer submits complete plans and specifications for the installation, alteration or extension to the department demonstrating that all applicable codes have been met and the department has granted necessary approval.
  - (a) Before the HIV supportive living facility is used, Tennessee Department of Environment and Conservation shall approve the water supply system.
  - (b) Sewage shall be discharged into a municipal system or approved package system where available; otherwise, the sewage shall be treated and disposed of in a manner of operation approved by the Department of Environment and Conservation and shall comply with existing codes, ordinances and regulations which are enforced by cities, counties or other areas of local political jurisdiction.
  - (c) Water distribution systems shall be arranged to provide hot water at each hot water outlet at all times. Hot water at shower, bathing and hand washing facilities shall be between 105°F and 115°F.
- (18) It shall be demonstrated through submission of plans and specifications that in each HIV supportive living facility:
  - (a) A negative air pressure shall be maintained in the soiled utility area, toilet room, janitor's closet, dishwashing and other such soiled spaces, and a positive air pressure shall be maintained in all clean areas including, but not limited to, clean linen rooms and clean utility rooms;
  - (b) A minimum of eighty (80) square feet of bedroom space must be provided each resident. No bedroom shall have more than two (2) beds. Privacy screens or curtains must be provided and used when required by the resident;
  - (c) Living room and dining areas capable of accommodating all residents shall be provided, with a minimum of fifteen (15) square feet per resident per dining area; and
  - (d) Each toilet, lavatory, bath or shower shall serve no more than six (6) persons. Grab bars and non-slip surfaces shall be installed at tubs and showers.
- (19) The department shall acknowledge that it has reviewed plans and specifications in writing with copies sent to the project architect, the project engineer, the owner, the manager or other executive of the institution. The department may modify the distribution of such review at its discretion.

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- (20) In the event submitted materials do not appear to satisfactorily comply with 1200-08-28-.08(2), the department shall furnish a letter to the party submitting the plans which shall list the particular items in question and request further explanation and/or confirmation of necessary modifications.
- (21) The licensed contractor shall execute all construction in accordance with the approved plans and specifications.
- (22) If construction begins within one hundred eighty (180) days of the date of department approval, the department's written notification of satisfactory review constitutes compliance with 1200-08-28-.08(2). This approval shall in no way permit and/or authorize any omission or deviation from the requirements of any restrictions, laws, regulations, ordinances, codes or rules of any responsible agency.
- (23) Prior to final inspection, a CD Rom disc, in TIF or PDF format, of the final approved plans including all shop drawings, sprinkler, calculations, hood and duct, addenda, specifications, etc., shall be submitted to the department.
- (24) The department requires the following alarms that shall be monitored twenty-four (24) hours per day:
  - (a) Fire alarms; and
  - (b) Generators (if applicable).
- (25) With the submission of plans the facility shall specify the evacuation capabilities of the patients as defined in the National Fire Protection Code (NFPA). This declaration will determine the design and construction requirements of the facility.
- (26) Each HIV supportive living facility shall ensure that an emergency keyed lock box is installed next to each bank of functioning elevators located on the main level. Such lock boxes shall be permanently mounted seventy-two inches (72") from the floor to the center of the box, be operable by a universal key no matter where such box is located, and shall contain only fire service keys and drop keys to the appropriate elevators.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-261.  
**Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed February 18, 2003; effective May 4, 2003. Repeal and new rule filed December 15, 2005; effective February 28, 2006. Amendment filed February 23, 2007; effective May 9, 2007. Repeal and new rule filed December 20, 2011; effective March 19, 2012. Amendment filed January 21, 2016; effective April 20, 2016.

#### **1200-08-28-.09 LIFE SAFETY.**

- (1) Any HIV supportive living facility which complies with the required applicable building and fire safety regulations at the time the board adopts new codes or regulations will, so long as such compliance is maintained (either with or without waivers of specific provisions), be considered to be in compliance with the requirements of the new codes or regulations.
- (2) The HIV supportive living facility shall provide fire protection by the elimination of fire hazards, by the installation of necessary fire fighting equipment and by the adoption of a written fire control plan. Fire drills shall be held at least quarterly for each work shift for new HIV supportive living facility personnel in each separate building. There shall be one fire drill per quarter during sleeping hours. There shall be a written report documenting the evaluation of each drill and the action recommended or taken for any deficiencies found. Records which

(Rule 1200-08-28-.09, continued)

document and evaluate these drills must be maintained for at least three (3) years. All fires which result in a response by the local fire department shall be reported to the department within seven (7) days. The report shall contain sufficient information to ascertain the nature and location of the fire, its probable cause and any injuries incurred by any person or persons as a result of the fire. Initial reports by the facility may omit the name(s) of resident(s) and parties involved, however, should the department find the identities of such persons to be necessary to an investigation, the facility shall provide such information.

- (3) Residents who cannot evacuate within thirteen (13) minutes may be retained in the facility so long as such residents are retained in designated areas in accordance with the Standard Building Code and the National Fire Protection Code (NFPA).
- (4) Each resident's room shall have a door that opens directly to the outside or a corridor which leads directly to an exit door and must always be capable of being unlocked by the resident.
- (5) Doors to residents' rooms shall not be louvered.
- (6) Corridors shall be lighted at all times, to a minimum of one foot candle.
- (7) General lighting and night lighting shall be provided for each resident. Night lighting shall be equipped with emergency power.
- (8) Corridors and exit doors shall be kept clear of equipment, furniture and other obstacles at all times. There shall be a clear passage at all times from the exit doors to a safe area.
- (9) Combustible finishes and furnishings shall not be used.
- (10) Open flame and portable space heaters shall not be permitted in the facility. Cooking appliances other than microwave ovens shall not be allowed in sleeping rooms.
- (11) All heaters shall be guarded and spaced to prevent ignition of combustible material and accidental burns. The guard shall not have a surface temperature greater than 120°F.
- (12) Fireplaces and/or fireplace inserts may be used only if provided with guards or screens which are secured in place. Fireplaces and chimneys shall be inspected and cleaned annually and verified documentation shall be maintained.
- (13) All electrical equipment shall be maintained in good repair and in safe operating condition.
- (14) Electrical cords shall not be run under rugs or carpets.
- (15) The electrical systems shall not be overloaded. Power strips must be equipped with circuit breakers. Extension cords shall not be used.
- (16) All facilities must have electrically-operated smoke detectors with battery back-up power operating at all times in, at least, sleeping rooms, day rooms, corridors, laundry room, and any other hazardous areas.
- (17) Fire extinguishers, complying with NFPA 10, shall be provided and mounted so they are accessible to all residents in the kitchen, laundries and at all exits. Extinguishers in the kitchen and laundries shall be a minimum of 2-A: 10-BC and an extinguisher with a rating of 20-A shall be adjacent to every hazardous area. The minimum travel distance shall not exceed fifty (50) feet between the extinguishers.
- (18) Smoking and smoking materials shall be permitted only in designated areas under supervision. Ashtrays must be provided wherever smoking is permitted. Smoking in bed is

(Rule 1200-08-28-.09, continued)

prohibited. The facility shall have written policies and procedures for smoking within the facility which shall designate a room or rooms to be used exclusively for residents who smoke. The designated smoking room or rooms shall not be the dining room or activity room.

- (19) No smoking signs shall be posted in areas where oxygen is used or stored.
- (20) Trash and other combustible waste shall not be allowed to accumulate within and around the home and shall be stored in appropriate containers with tight-fitting lids. Resident rooms shall be furnished with a UL approved trash container.
- (21) All safety equipment shall be maintained in good repair and in a safe operating condition.
- (22) Janitorial supplies shall not be stored in the kitchen, food storage area, dining area or resident accessible areas.
- (23) Flammable liquids shall be stored in approved containers and stored away from the living areas of the facility.
- (24) Floor and dryer vents shall be cleaned as frequently as needed to prevent accumulation of lint, soil and dirt.
- (25) Emergency telephone numbers must be posted near a telephone accessible to the residents.
- (26) The physical environment shall be maintained in a safe, clean and sanitary manner.
  - (a) Any condition on the facility site conducive to the harboring or breeding of insects, rodents or other vermin shall be prohibited. Chemical substances of a poisonous nature used to control or eliminate vermin shall be properly identified. Such substances shall not be stored with or near food or medications.
  - (b) The building shall not become overcrowded with a combination of the facility's residents and other occupants.
  - (c) Each resident bedroom shall contain a chair, bed, mattress, springs, linens, chest of drawers and wardrobe or closet space, either provided by the facility or by the resident if the resident prefers. All furniture provided by the resident must meet NFPA. All residents' clothing must be maintained in good repair and suitable for the use of the residents.
  - (d) The building and its heating, cooling, plumbing and electrical systems shall be maintained in good repair and in clean condition at all times.
  - (e) Temperatures in residents' rooms and common areas shall not be less than 65°F and no more than 85°F.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, and 68-11-209.  
**Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Repeal and new rule filed December 15, 2005; effective February 28, 2006.

#### **1200-08-28-.10 INFECTIOUS AND HAZARDOUS WASTE.**

- (1) Each HIV supportive living facility must develop, maintain and implement written policies and procedures for the definition and handling of its infectious and hazardous wastes. These policies and procedures must comply with the standards of this section and all other applicable state and federal regulations.

(Rule 1200-08-28-.10, continued)

- (2) The following waste shall be considered to be infectious waste:
  - (a) Waste contaminated by residents who are isolated due to communicable disease, as provided in the U.S. Centers for Disease Control "Guidelines for Isolation Precautions in Hospitals";
  - (b) Cultures and stocks of infectious agents including specimen cultures collected from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, culture dishes and devices used to transfer, inoculate, and mix cultures;
  - (c) Waste human blood and blood products such as serum, plasma, and other blood components;
  - (d) All discarded sharps (including but not limited to, hypodermic needles, syringes, pasteur pipettes, broken glass, scalpel blades) used in resident care or which have come into contact with infectious agents during use in medical, research, or industrial laboratories;
  - (e) Other waste determined to be infectious by the facility in its written policy.
- (3) Infectious and hazardous waste must be segregated from other waste at the point of generation (i.e., the point at which the material becomes a waste) within the facility.
- (4) Waste must be packaged in a manner that will protect waste handlers and the public from possible injury and disease that may result from exposure to the waste. Such packaging must provide for containment of the waste from the point of generation up to the point of proper treatment or disposal. Packaging must be selected and utilized for the type of waste the package will contain, how the waste will be treated and disposed, and how it will be handled and transported, prior to treatment and disposal.
  - (a) Contaminated sharps must be directly placed in leakproof, rigid, and puncture-resistant containers which must then be tightly sealed.
  - (b) Whether disposable or reusable, all containers, bags, and boxes used for containment and disposal of infectious waste must be conspicuously identified. Packages containing infectious waste which pose additional hazards (e.g., chemical, radiological) must also be conspicuously identified to clearly indicate those additional hazards.
  - (c) Reusable containers for infectious waste must be thoroughly sanitized each time they are emptied, unless the surfaces of the containers have been completely protected from contamination by disposable liners or other devices removed with the waste.
  - (d) Opaque packaging must be used for pathological waste.
- (5) After packaging, waste must be handled and transported by methods ensuring containment and preserving the integrity of the packaging, including the use of secondary containment where necessary.
  - (a) Waste must not be compacted or ground (i.e., in a mechanical grinder) prior to treatment, except that pathological waste may be ground prior to disposal; and,
  - (b) Plastic bags of infectious waste must be transported by hand.

(Rule 1200-08-28-.10, continued)

- (6) Waste must be stored in a manner which preserves the integrity of the packaging, inhibits rapid microbial growth and putrefaction, and minimizes the potential of exposure or access by unknowing persons. Waste must be stored in a manner and location which affords protection from animals, precipitation, wind, and direct sunlight, does not present a safety hazard, does not provide a breeding place or food source for insects or rodents and does not create a nuisance; and,
- (7) In the event of spills, ruptured packaging, or other incidents where there is a loss of containment of waste, the facility must ensure that proper actions are immediately taken to:
  - (a) Isolate the area from the public and all non-essential personnel;
  - (b) To the extent practicable, repackage all spilled waste and contaminated debris in accordance with the requirements of this section;
  - (c) Sanitize all contaminated equipment and surfaces appropriately. Written policies and procedure must specify how this will be done; and,
  - (d) Complete an incident report and maintain a copy on file.
- (8) Except as provided otherwise in this section, a facility must treat or dispose of infectious waste by one or more of the methods specified in this part.
  - (a) A facility may treat infectious waste in an on-site sterilization or disinfection device, or in an incinerator or a steam sterilizer, which has been designed, constructed, operated and maintained so that infectious waste treated in such a device is rendered non-infectious and is, if applicable, authorized for that purpose pursuant to current rules of the Department of Environment and Conservation. A valid permit or other written evidence of having complied with the Tennessee Air Pollution Control Regulations shall be available for review, if required. Each sterilizing or disinfecting cycle must contain appropriate indicators to assure conditions were met for proper sterilization or disinfection of materials included in the cycle, and records kept. Proper operation of such devices must be verified at least monthly, and records of these monthly checks shall be available for review. Waste that contains toxic chemicals that would be volatilized by steam must not be treated in steam sterilizers. Infectious waste that has been rendered to a carbonized or mineralized ash shall be deemed non-infectious, unless otherwise hazardous and subject to the hazardous waste management requirements of the current rules of the Department of Environment and Conservation. Such ash shall be disposable as a (non-hazardous) solid waste under current rules of the Department of Environment and Conservation.
  - (b) The facility may discharge liquid or semi-liquid infectious waste to the collection sewerage system of a wastewater treatment facility which is subject to a permit pursuant to T.C.A. § 69-3-101, et seq., provided that such discharge is in accordance with any applicable terms of that permit and/or any applicable municipal sewer use requirements.
  - (c) Any health care facility accepting waste from another state must promptly notify the Department of Environment and Conservation, county, and city public health agencies, and must strictly comply with all applicable local, state and federal regulations.
- (9) The facility may have waste transported off-site for storage, treatment, or disposal. Such arrangements must be detailed in a written contract, available for review. If such off-site location is in Tennessee, the facility must ensure that it has all necessary state and local approvals, and such approvals shall be available for review. If the off-site location is in another state, the facility must notify in writing public health agencies with jurisdiction that the

(Rule 1200-08-28-.10, continued)

location is being used for management of the facility's waste. Waste shipped off-site must be packaged in accordance with applicable federal and state requirements. Waste transported to a sanitary landfill in this state must meet the requirements of current rules of the Department of Environment and Conservation.

- (10) All garbage, trash and other non-infectious waste shall be stored and disposed of in a manner that shall not permit the transmission of disease, create a nuisance, provide a breeding place for insects and rodents, or constitute a safety hazard. All containers for waste shall be water tight, constructed of easily-cleanable material and shall be kept on elevated platforms.

**Authority:** T.C.A. §§ 4-5-202, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.

**Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000.

#### **1200-08-28-.11 RECORDS AND REPORTS.**

- (1) A yearly statistical report, the "Joint Annual Report" shall be submitted to the department. The forms are mailed to each HIV supportive living facility by the department each year. The forms must be completed and returned to the department as requested.
- (2) The HIV supportive living facility shall report each case of communicable disease to the local county health officer in the manner provided by existing regulations. Failure to report a communicable disease may result in disciplinary action, including revocation of the facility's license.
- (3) The HIV supportive living facility shall report all incidents of abuse, neglect, and misappropriation to the Department of Health in accordance with T.C.A. § 68-11-211.
- (4) The HIV supportive living facility shall report the following incidents to the Department of Health in accordance with T.C.A. § 68-11-211.
  - (a) Strike by staff at the facility;
  - (b) External disasters impacting the facility;
  - (c) Disruption of any service vital to the continued safe operation of the HIV supportive living facility or to the health and safety of its patients and personnel; and
  - (d) Fires at the HIV supportive living facility that disrupt the provision of patient care services or cause harm to the patients or staff, or that are reported by the facility to any entity, including but not limited to a fire department charged with preventing fires.
- (5) The HIV supportive living facility shall retain legible copies of the following records and reports for thirty-six (36) months following their issuance. They shall be maintained in a single file, and shall be made available for inspection during normal business hours to any person who requests to view them:
  - (a) Local fire safety inspections;
  - (b) Local building code inspections, if any;
  - (c) Fire marshal reports;
  - (d) Department licensure and fire safety inspections and surveys;
  - (e) Federal Health Care Financing Administration surveys and inspections, if any;

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- (f) Orders of the Commissioner or Board, if any;
- (g) Comptroller of the Treasury's audit reports and finding, if any; and,
- (h) Maintenance records of all safety equipment.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, and 68-11-216. **Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendments filed January 3, 2012; effective April 2, 2012.

#### **1200-08-28-.12 RESIDENT RIGHTS.**

- (1) The HIV supportive living facility shall establish and implement written policies and procedures setting forth the rights of residents for the protection and preservation of dignity and individuality. Each resident has at least the following rights:
  - (a) To privacy in treatment and personal care;
  - (b) To privacy, for visits by his/her spouse or significant other;
  - (c) To share a room with his/her spouse or significant other;
  - (d) To be different in order to promote social, religious, and psychological well being;
  - (e) To privately talk and/or meet with and see any person;
  - (f) To send and receive mail promptly and unopened;
  - (g) To be free from mental and physical abuse. Should this right be violated, the facility must notify the department within five (5) working days and the Tennessee Department of Human Services, Adult Protective Services shall be notified immediately as required by T.C.A. § 71-6-103;
  - (h) To be free from chemical and physical restraints;
  - (i) To meet and take part in activities of social, commercial, religious, and community groups. The administrator may refuse access to the facility to any person if that person's presence would be injurious to the health and safety of a resident or staff, or would threaten the security of the property of the resident, staff or facility;
  - (j) To retain and use personal clothing and possessions as space permits;
  - (k) To be free from being required by the facility to work or perform services;
  - (l) To be fully informed by a physician of his/her health and medical condition. The facility shall give the resident and family/significant other the opportunity to participate in planning the resident's care and medical treatment;
  - (m) To have appropriate assessment and management of pain;
  - (n) To be involved in the decision making of all aspects of their care;

(Rule 1200-08-28-.12, continued)

- (o) To refuse treatment. The resident must be informed of the consequences of that decision. The refusal and its reason must be reported to the physician and documented in the medical record;
  - (p) To refuse experimental treatment and drugs. The resident's or health care decision maker's written consent for participation in research must be obtained and retained in the medical record;
  - (q) To have their records kept confidential and private. Written consent by the resident must be obtained prior to release of information except to persons authorized by law. If the resident lacks capacity, written consent is required from the resident's health care decision maker. The HIV supportive living facility must have policies to govern access and duplication of the resident's record;
  - (r) To manage personal financial affairs. Any request by the resident for assistance must be in writing. A request for any additional person to have access to a resident's funds must also be in writing;
  - (s) To be told in writing before or at the time of admission about the services available in the facility, about any extra charges and charges for services not covered;
  - (t) To be free from discrimination because of the exercise of the right to speak and voice complaints;
  - (u) To exercise his/her own independent judgment by executing any documents, including admission forms; and
  - (v) To voice grievances and complaints and to recommend changes in policies and services to the facility staff, or outside representatives of the resident's choice. The facility shall establish a grievance procedure and fully inform the resident and family/significant other of same.
- (2) The rights set forth in this section may be abridged, restricted, limited or amended only as follows:
- (a) When medically contraindicated;
  - (b) When necessary to protect and preserve the rights of the residents in the facility; or
  - (c) When contradicted by the explicit provisions of another rule of the board.
- (3) Any reduction in resident's rights must be explicit, reasonable, appropriate to the justification, the least restrictive response feasible, shall be explained to the resident, and must be documented in the individual resident's record by reciting the limitation's reason and scope.
- (4) Residents' pets and other animals utilized for pet therapy programs shall be allowed in the facility. The facility shall designate in its policies and procedures those areas where animals will be excluded. The areas designated shall be determined based upon an assessment of the facility performed by medically trained personnel.
- (5) Each resident has a right to self-determination, which encompasses the right to make choices regarding life-sustaining treatment (including resuscitative services). This right of self-determination may be effectuated by an advance directive.

(Rule 1200-08-28-.12, continued)

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.

**Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed June 18, 2002; September 1, 2002. Amendment filed December 15, 2005; effective February 28, 2006.

### **1200-08-28-.13 POLICIES AND PROCEDURES FOR HEALTH CARE DECISION-MAKING.**

- (1) Pursuant to this Rule, each HIV supportive living facility shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a resident who is incompetent or who lacks capacity, including but not limited to allowing the withholding of CPR measures from individual residents. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.
- (2) An adult or emancipated minor may execute an advance directive for health care. The advance directive may authorize an agent to make any health care decision the resident could have made while having capacity, or may limit the power of the agent, and may include individual instructions. The effect of an advance directive that makes no limitation on the agent's authority shall be to authorize the agent to make any health care decision the resident could have made while having capacity.
- (3) The advance directive shall be in writing, signed by the resident, and shall either be notarized or witnessed by two (2) witnesses. Both witnesses shall be competent adults, and neither of them may be the agent. At least one (1) of the witnesses shall be a person who is not related to the resident by blood, marriage, or adoption and would not be entitled to any portion of the estate of the resident upon the death of the resident. The advance directive shall contain a clause that attests that the witnesses comply with the requirements of this paragraph.
- (4) Unless otherwise specified in an advance directive, the authority of an agent becomes effective only upon a determination that the resident lacks capacity, and ceases to be effective upon a determination that the resident has recovered capacity.
- (5) A facility may use any advanced directive form that meets the requirements of the Tennessee Health Care Decisions Act or has been developed and issued by the Board for Licensing Health Care Facilities.
- (6) A determination that a resident lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.
- (7) An agent shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the resident's best interest. In determining the resident's best interest, the agent shall consider the resident's personal values to the extent known.
- (8) An advance directive may include the individual's nomination of a court-appointed guardian.
- (9) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution if that advance directive is in compliance with the laws of Tennessee or the state of the resident's residence.
- (10) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.

(Rule 1200-08-28-.13, continued)

- (11) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with the terms of Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall be given effect and interpreted in accord with those respective acts. Any advance directive that does not evidence an intent to be given effect under those acts but that complies with these regulations may be treated as an advance directive under these regulations.
- (12) A resident having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.
- (13) A resident having capacity may revoke all or part of an advance directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.
- (14) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.
- (15) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.
- (16) Surrogates.
  - (a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.
  - (b) A surrogate may make a health care decision for a resident who is an adult or emancipated minor if and only if:
    1. The resident has been determined by the designated physician to lack capacity, and
    2. No agent or guardian has been appointed, or
    3. The agent or guardian is not reasonably available.
  - (c) In the case of a resident who lacks capacity, the resident's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the resident is receiving health care.
  - (d) The resident's surrogate shall be an adult who has exhibited special care and concern for the resident, who is familiar with the resident's personal values, who is reasonably available, and who is willing to serve.
  - (e) Consideration may be, but need not be, given in order of descending preference for service as a surrogate to:
    1. The resident's spouse, unless legally separated;
    2. The resident's adult child;
    3. The resident's parent;
    4. The resident's adult sibling;

(Rule 1200-08-28-.13, continued)

5. Any other adult relative of the resident; or
  6. Any other adult who satisfies the requirements of 1200-08-28-.13(16)(d).
- (f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the resident shall be eligible to serve as the resident's surrogate.
- (g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:
1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the resident or in accordance with the resident's best interests;
  2. The proposed surrogate's regular contact with the resident prior to and during the incapacitating illness;
  3. The proposed surrogate's demonstrated care and concern;
  4. The proposed surrogate's availability to visit the resident during his or her illness; and
  5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.
- (h) If the resident lacks capacity and none of the individuals eligible to act as a surrogate under 1200-08-28-.13(16)(c) through 1200-08-28-.13(16)(g) is reasonably available, the designated physician may make health care decisions for the resident after the designated physician either:
1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
  2. Obtains concurrence from a second physician who is not directly involved in the resident's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.
- (i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.
- (j) A surrogate shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the resident's best interest. In determining the resident's best interest, the surrogate shall consider the resident's personal values to the extent known to the surrogate.
- (k) A surrogate who has not been designated by the resident may make all health care decisions for the resident that the resident could make on the resident's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a resident upon a decision of the surrogate only when the designated physician and a second

(Rule 1200-08-28-.13, continued)

independent physician certify in the resident's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the resident is highly unlikely to regain capacity to make medical decisions.

- (l) Except as provided in 1200-08-28-.13(16)(m):
    - 1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care institution nor an employee of an operator of a health care institution may be designated as a surrogate; and
    - 2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the resident's treating health care provider.
  - (m) An employee of the treating health care provider or an employee of an operator of a health care institution may be designated as a surrogate if:
    - 1. The employee so designated is a relative of the resident by blood, marriage, or adoption; and
    - 2. The other requirements of this section are satisfied.
  - (n) A health care provider may require an individual claiming the right to act as surrogate for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (17) Guardian.
- (a) A guardian shall comply with the resident's individual instructions and may not revoke the resident's advance directive absent a court order to the contrary.
  - (b) Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.
  - (c) A health care provider may require an individual claiming the right to act as guardian for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (18) A designated physician who makes or is informed of a determination that a resident lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the resident's current clinical record and communicate the determination to the resident, if possible, and to any person then authorized to make health care decisions for the resident.
- (19) Except as provided in 1200-08-28-.13(20) through 1200-08-28-.13(22), a health care provider or institution providing care to a resident shall:
- (a) Comply with an individual instruction of the resident and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the resident; and
  - (b) Comply with a health care decision for the resident made by a person then authorized to make health care decisions for the resident to the same extent as if the decision had been made by the resident while having capacity.

(Rule 1200-08-28-.13, continued)

- (20) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.
- (21) A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is:
  - (a) Contrary to a policy of the institution which is based on reasons of conscience, and
  - (b) The policy was timely communicated to the resident or to a person then authorized to make health care decisions for the resident.
- (22) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.
- (23) A health care provider or institution that declines to comply with an individual instruction or health care decision pursuant to 1200-08-28-.13(20) through 1200-08-28-.13(22) shall:
  - (a) Promptly so inform the resident, if possible, and any person then authorized to make health care decisions for the resident;
  - (b) Provide continuing care to the resident until a transfer can be effected or until the determination has been made that transfer cannot be effected;
  - (c) Unless the resident or person then authorized to make health care decisions for the resident refuses assistance, immediately make all reasonable efforts to assist in the transfer of the resident to another health care provider or institution that is willing to comply with the instruction or decision; and
  - (d) If a transfer cannot be effected, the health care provider or institution shall not be compelled to comply.
- (24) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a resident has the same rights as the resident to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.
- (25) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
  - (a) Complying with a health care decision of a person apparently having authority to make a health care decision for a resident, including a decision to withhold or withdraw health care;
  - (b) Declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or
  - (c) Complying with an advance directive and assuming that the directive was valid when made and had not been revoked or terminated.
- (26) An individual acting as an agent or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
- (27) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.

(Rule 1200-08-28-.13, continued)

- (28) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.
- (29) The withholding or withdrawal of medical care from a resident in accordance with the provisions of the Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.
- (30) Physician Orders for Scope of Treatment (POST)
- (a) Physician Orders for Scope of Treatment (POST) may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only:
1. With the informed consent of the patient;
  2. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or
  3. If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available, if the physician determines that the provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.
- (b) A POST may be issued by a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship, but only if:
1. No physician, who has a bona fide physician-patient relationship with the patient, is present and available for discussion with the patient (or if the patient is a minor or is otherwise incapable of making an informed decision, with the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act);
  2. Such authority to issue is contained in the physician assistant's, nurse practitioner's or clinical nurse specialist's protocols;
  3. Either:
    - (i) The patient is a resident of a nursing home licensed under title 68 or an ICF/MR facility licensed under title 33 and is in the process of being discharged from the nursing home or transferred to another facility at the time the POST is being issued; or
    - (ii) The patient is a hospital patient and is in the process of being discharged from the hospital or transferred to another facility at the time the POST is being issued; and
  4. Either:
    - (i) With the informed consent of the patient;

(Rule 1200-08-28-.13, continued)

- (ii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or
  - (iii) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available and such authority to issue is contained in the physician assistant, nurse practitioner or clinical nurse specialist's protocols and the physician assistant or nurse determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.
- (c) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke any contrary order in the POST. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke any contrary order in the POST. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician or physician assistant or nurse practitioner or clinical nurse specialist determines cardiopulmonary resuscitation is not medically appropriate.
- (d) A POST issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this rule and applicable regulations, qualified emergency medical services personnel; and licensed health care practitioners in any facility, program, or organization operated or licensed by the Board for Licensing Health Care Facilities, the Department of Mental Health and Substance Abuse Services, or the Department of Intellectual and Developmental Disabilities, or operated, licensed, or owned by another state agency, shall follow a POST that is available to such persons in a form approved by the Board for Licensing Health Care Facilities.
- (e) Nothing in these rules shall authorize the withholding of other medical interventions, such as medications, positioning, wound care, oxygen, suction, treatment of airway obstruction or other therapies deemed necessary to provide comfort care or alleviate pain.
- (f) If a person has a do-not-resuscitate order in effect at the time of such person's discharge from a health care facility, the facility shall complete a POST prior to discharge. If a person with a POST is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the POST to qualified emergency medical service personnel and to the receiving facility prior to the transfer. The transferring facility shall provide a copy of the POST that accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the POST a part of the patient's record.
- (g) These rules shall not prevent, prohibit, or limit a physician from using a written order, other than a POST, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices. This action shall have no application to any do not resuscitate order that is not a POST, as defined in these rules.

(Rule 1200-08-28-.13, continued)

- (h) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to then-current law, shall remain valid and shall be given effect as provided in these rules.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, and 68-11-1801 through 68-11-1815. **Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 28, 2003; effective July 12, 2003. Repeal and new rule filed December 15, 2005; effective February 28, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendments filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015.

#### 1200-08-28-.14 DISASTER PREPAREDNESS.

- (1) Emergency Electrical Power.
  - (a) If an HIV supportive living facility chooses to have one or more on-site electrical generators, they shall be capable of providing emergency electrical power to at least all life sustaining equipment and life sustaining resources such as: ventilators; blood banks, biological refrigerators, safety switches for boilers, safety lighting for corridors and stairwells and other essential equipment.
  - (b) Connections shall be through a switch which shall automatically transfer the circuits to the emergency power source in case of power failure. It is recognized that some equipment may not sustain automatic transfer and provisions will have to be made to manually change these items from a non-emergency powered outlet to an emergency powered outlet or other power source. All emergency power transfer switches shall be labeled as such. Switches affecting heat, ventilation, and all systems shall be labeled.
  - (c) The emergency power system shall have a minimum of twenty four (24) hours of either propane, gasoline or diesel fuel. The quantity shall be based on its expected or known connected load consumption during power interruptions. In addition, the HIV supportive living facility shall have a written contract with an area fuel distributor which guarantees first priority service for re-fills during power interruptions.
  - (d) The emergency power system (generator) shall be inspected weekly and exercised and under actual load and operating temperature conditions for at least thirty (30) minutes, once each month, and shall include automatic and manual transfer of equipment. The generator shall be exercised by trained facility staff who are familiar with the systems' operation. Instructions for the operation of the systems and the manual transfer of emergency power shall be maintained with the facility's disaster preparedness plan and shall be separately identified in the plan. Records shall be maintained for all weekly inspections and monthly tests and be kept on file for a minimum of three (3) years.
- (2) Physical Facility and Community Emergency Plans.
  - (a) Physical Facility (Internal Situations).
    - 1. Every HIV supportive living facility shall have a current internal emergency plan, or plans, that provides for fires, bomb threats, severe weather, utility service failures, plus any local high risk situations such as floods, earthquakes, toxic fumes and chemical spills. The plan should consider the probability of the types of disasters which might occur, both natural and "man-made".
    - 2. The plan(s) must include provisions for the relocation of persons within the building and/or either partial or full building evacuation. Plans that provide for the

(Rule 1200-08-28-.14, continued)

- relocation of residents to other health care facilities must have written agreements for emergency transfers. The agreements may be mutual, i.e. providing for transfers either way.
3. Copies of the plan(s), either complete or outlines, including specific emergency telephone numbers related to that type of disaster, shall be available to all staff. A copy shall be readily available at all times in the telephone operator's position or at the security center. Provisions that have security implications may be omitted from the outline versions.
  4. The plan must provide for additional staffing, medical supplies, blood and other resources which would probably be needed.
  5. Each of the following disaster preparedness plan drills shall be conducted annually. Drills are for the purpose of educating staff, resource determination, testing personnel safety provisions and communications with other facilities and community agencies. Records of staff orientation, education programs and drills must be maintained for at least three (3) years.
    - (i) Fire Safety Procedures Plan shall include:
      - (I) Minor fires
      - (II) Major fires
      - (III) Fighting the fire
      - (IV) Evacuation procedures
      - (V) Staff functions by department and job assignment
      - (VI) Fire drill schedules (fire drills shall be held at least quarterly on each work shift)
    - (ii) External disaster procedures plan (for tornado, flood, earthquakes) shall include:
      - (I) Staff duties by department and job assignment
      - (II) Evacuation procedures
    - (iii) Bomb Threat Procedures Plan:
      - (I) Staff duties by department and job assignment
      - (II) Search team, searching the premises
  6. The HIV supportive living facility shall develop and periodically Review with all employees a pre-arranged plan for the orderly evacuation of all residents in case of a fire, internal disaster or other emergency. The plan of evacuation shall be posted throughout the facility. Fire drills shall be held at least quarterly for each work shift for HIV supportive living facility personnel in each separate resident occupied HIV supportive living facility building. There shall be a written report documenting the evaluation of each drill and the action recommended or taken for any deficiencies found. Records which document and evaluate these drills must be maintained for at least three (3) years.

(Rule 1200-08-28-.14, continued)

(b) Emergency Planning with Local Government Authorities.

1. All HIV supportive living facilities shall establish and maintain communications with the county Emergency Management Agency. This includes the provision of the information and procedures that are needed for the local comprehensive emergency plan. The facility shall cooperate, to the extent possible, in area disaster drills and local emergency situations.
2. Each HIV supportive living facility must rehearse both the Physical Facility and Community Emergency plan as required in these regulations, even if the local Emergency Management Agency is unable to participate.
3. A file of documents demonstrating communications and cooperation with the local agency must be maintained.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.

**Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed December 15, 2005; effective February 28, 2006.

**1200-08-28-.15 APPENDIX I**

- (1) Physician Orders for Scope of Treatment (POST) Form

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(Rule 1200-08-28-.15, continued)

A COPY OF THIS FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED			
Tennessee Physician Orders for Scope of Treatment (POST, sometimes called "POLST")		Patient's Last Name	
This is a Physician Order Sheet based on the medical conditions and wishes of the person identified at right ("patient"). Any section not completed indicates full treatment for that section. When need occurs, <u>first</u> follow these orders, then contact physician.		First Name/Middle Initial	
		Date of Birth	
<b>Section A</b> <i>Check One Box Only</i>	<b>CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse <u>and</u> is not breathing.</b>		
	<input type="checkbox"/> <b>Resuscitate(CPR)</b> <input type="checkbox"/> <b>Do Not Attempt Resuscitation (DNR / no CPR) (Allow Natural Death)</b> When not in cardiopulmonary arrest, follow orders in <b>B, C, and D.</b>		
<b>Section B</b> <i>Check One Box Only</i>	<b>MEDICAL INTERVENTIONS. Patient has pulse <u>and/or</u> is breathing.</b>		
	<input type="checkbox"/> <b>Comfort Measures Only.</b> Relieve pain and suffering through the use of any medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. <b>Do not transfer to hospital for life-sustaining treatment. Transfer only if comfort needs cannot be met in current location. Treatment Plan: Maximize comfort through symptom management.</b>		
	<input type="checkbox"/> <b>Limited Additional Interventions.</b> In addition to care described in Comfort Measures Only above, use medical treatment, antibiotics, IV fluids and cardiac monitoring as indicated. No intubation, advanced airway interventions, or mechanical ventilation. May consider less invasive airway support (e.g. CPAP, BiPAP). <b>Transfer</b> to hospital if indicated. Generally avoid the intensive care unit. <b>Treatment Plan: basic medical treatments.</b>		
	<input type="checkbox"/> <b>Full Treatment.</b> In addition to care described in Comfort Measures Only and Limited Additional Interventions above, use intubation, advanced airway interventions, and mechanical ventilation as indicated. <b>Transfer</b> to hospital and/or intensive care unit if indicated. <b>Treatment Plan: Full treatment including in the intensive care unit.</b>		
	<i>Other Instructions:</i> _____		
<b>Section C</b> <i>Check One</i>	<b>ARTIFICIALLY ADMINISTERED NUTRITION. Oral fluids &amp; nutrition must be offered if feasible.</b>		
	<input type="checkbox"/> No artificial nutrition by tube. <input type="checkbox"/> Defined trial period of artificial nutrition by tube. <input type="checkbox"/> Long-term artificial nutrition by tube.		
	<i>Other Instructions:</i> _____		
<b>Section D</b> <i>Must be Completed</i>	<b>Discussed with:</b> <input type="checkbox"/> Patient/Resident <input type="checkbox"/> Health care agent <input type="checkbox"/> Court-appointed guardian <input type="checkbox"/> Health care surrogate <input type="checkbox"/> Parent of minor <input type="checkbox"/> Other: _____ (Specify)	<b>The Basis for These Orders Is:</b> (Must be completed) <input type="checkbox"/> Patient's preferences <input type="checkbox"/> Patient's best interest (patient lacks capacity or preferences unknown) <input type="checkbox"/> Medical indications <input type="checkbox"/> (Other) _____	
Physician/NP/CNS/PA Name (Print)		Physician/NP/CNS/PA Signature	Date
		MD/NP/CNS/PA Phone Number:	
NP/CNS/PA (Signature at Discharge)			
<b>Signature of Patient, Parent of Minor, or Guardian/Health Care Representative</b>			
<b>Preferences have been expressed to a physician and/or health care professional. It can be reviewed and updated at any time if your preferences change. If you are unable to make your own health care decisions, the orders should reflect your preferences as best understood by your surrogate.</b>			
Name (print)		Signature	Relationship (write "self" if patient)

(Rule 1200-08-28-.15, continued)

Agent/Surrogate	Relationship	Phone Number	
Health Care Professional Preparing Form	Preparer Title	Phone Number	Date Prepared

**HIPAA PERMITS DISCLOSURE OF POST TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY**

**Directions for Health Care Professionals**

**Completing POST**

Must be completed by a health care professional based on patient preferences, patient best interest, and medical indications.

To be valid, POST must be signed by a physician or, at discharge or transfer from a hospital or long term care facility, by a nurse practitioner (NP), clinical nurse specialist (CNS), or physician assistant (PA). Verbal orders are acceptable with follow-up signature by physician in accordance with facility/community policy.

Persons with DNR in effect at time of discharge must have POST completed by health care facility prior to discharge and copy of POST provided to qualified medical emergency personnel.

Photocopies/faxes of signed POST forms are legal and valid.

**Using POST**

Any incomplete section of POST implies full treatment for that section.

No defibrillator (including AEDs) should be used on a person who has chosen "Do Not Attempt Resuscitation".

Oral fluids and nutrition must always be offered if medically feasible.

When comfort cannot be achieved in the current setting, the person, including someone with "Comfort Measures Only", should be transferred to a setting able to provide comfort (e.g., treatment of a hip fracture).

IV medication to enhance comfort may be appropriate for a person who has chosen "Comfort Measures Only".

Treatment of dehydration is a measure which prolongs life. A person who desires IV fluids should indicate "Limited Interventions" or "Full Treatment".

A person with capacity, or the Health Care Agent or Surrogate of a person without capacity, can request alternative treatment.

**Reviewing POST**

This POST should be reviewed if:

- (1) The patient is transferred from one care setting or care level to another, or
- (2) There is a substantial change in the patient's health status, or
- (3) The patient's treatment preferences change.

Draw line through sections A through D and write "VOID" in large letters if POST is replaced or becomes invalid.

**COPY OF FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED.**

(Rule 1200-08-28-.15, continued)

(2) Advance Directive for Health Care Form

**ADVANCE DIRECTIVE FOR HEALTH CARE\***  
(Tennessee)**Instructions:** Parts 1 and 2 may be used together or independently. Please mark out/void any unused part(s). Part 5, Block A or Block B must be completed for all uses.

I, \_\_\_\_\_, hereby give these advance instructions on how I want to be treated by my doctors and other health care providers when I can no longer make those treatment decisions myself.

**Part I Agent:** I want the following person to make health care decisions for me. This includes any health care decision I could have made for myself if able, except that my agent must follow my instructions below:

Name: \_\_\_\_\_ Relation: \_\_\_\_\_ Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Mobile Phone: \_\_\_\_\_ Other Phone: \_\_\_\_\_

**Alternate Agent:** If the person named above is unable or unwilling to make health care decisions for me, I appoint as alternate the following person to make health care decisions for me. This includes any health care decision I could have made for myself if able, except that my agent must follow my instructions below:

Name: \_\_\_\_\_ Relation: \_\_\_\_\_ Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Mobile Phone: \_\_\_\_\_ Other Phone: \_\_\_\_\_

My agent is also my personal representative for purposes of federal and state privacy laws, including HIPAA.

**When Effective** (mark one):  I give my agent permission to make health care decisions for me at any time, even if I have capacity to make decisions for myself.  I do not give such permission (this form applies only when I no longer have capacity).

**Part 2 Indicate Your Wishes for Quality of Life:** By marking “yes” below, I have indicated conditions I would be willing to live with if given adequate comfort care and pain management. By marking “no” below, I have indicated conditions I would not be willing to live with (that to me would create an **unacceptable** quality of life).

<input type="checkbox"/>	<input type="checkbox"/>	<b>Permanent Unconscious Condition:</b> I become totally unaware of people or surroundings with little chance of ever waking up from the coma.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Permanent Confusion:</b> I become unable to remember, understand, or make decisions. I do not recognize loved ones or cannot have a clear conversation with them.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Dependent in all Activities of Daily Living:</b> I am no longer able to talk or communicate clearly or move by myself. I depend on others for feeding, bathing, dressing, and walking. Rehabilitation or any other restorative treatment will not help.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>End-Stage Illnesses:</b> I have an illness that has reached its final stages in spite of full treatment. Examples: Widespread cancer that no longer responds to treatment; chronic and/or damaged heart and lungs, where oxygen is needed most of the time and activities are limited due to the feeling of suffocation.
Yes	No	

**Indicate Your Wishes for Treatment:** If my quality of life becomes unacceptable to me (as indicated by one or more of the conditions marked “no” above) and my condition is irreversible (that is, it will not improve), I direct that medically appropriate treatment be provided as follows. By marking “yes” below, I have indicated treatment I want. By marking “no” below, I have indicated treatment I **do not want**.

(Rule 1200-08-28-.15, continued)

<input type="checkbox"/>	<input type="checkbox"/>	<b>CPR (Cardiopulmonary Resuscitation):</b> To make the heart beat again and restore breathing after it has stopped. Usually this involves electric shock, chest compressions, and breathing assistance.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Life Support / Other Artificial Support:</b> Continuous use of breathing machine, IV fluids, medications, and other equipment that helps the lungs, heart, kidneys, and other organs to continue to work.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Treatment of New Conditions:</b> Use of surgery, blood transfusions, or antibiotics that will deal with a new condition but will not help the main illness.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Tube feeding/IV fluids:</b> Use of tubes to deliver food and water to a patient's stomach or use of IV fluids into a vein, which would include artificially delivered nutrition and hydration.
Yes	No	

**Part 3** Other instructions, such as hospice care, burial arrangements, etc.: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(Attach additional pages if necessary)

**Part 4 Organ donation:** Upon my death, I wish to make the following anatomical gift for purposes of transplantation, research, and/or education (mark one):

- Any organ/tissue     My entire body     Only the following organs/tissues: \_\_\_\_\_  
 \_\_\_\_\_  
 No organ/tissue donation

**SIGNATURE**

**Part 5** Your signature must **either** be witnessed by two competent adults ("Block A") **or** by a notary public ("Block B").

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 (Patient)

**Block A** Neither witness may be the person you appointed as your agent or alternate, and at least one of the witnesses must be someone who is not related to you or entitled to any part of your estate.

Witnesses:

1. I am a competent adult who is not named as the agent or alternate. I witnessed the patient's signature on this form.

\_\_\_\_\_  
 Signature of witness number 1

2. I am a competent adult who is not named as the agent or alternate. I am not related to the patient by blood, marriage, or adoption and I would not be entitled to any portion of the patient's estate upon his or her death under any existing will or codicil or by operation of law. I witnessed the patient's signature on this form.

\_\_\_\_\_  
 Signature of witness number 2

**Block B** You may choose to have your signature witnessed by a notary public instead of the witnesses described in Block A.

STATE OF TENNESSEE

(Rule 1200-08-28-.15, continued)

COUNTY OF \_\_\_\_\_

I am a Notary Public in and for the State and County named above. The person who signed this instrument is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who signed as the "patient." The patient personally appeared before me and signed above or acknowledged the signature above as his or her own. I declare under penalty of perjury that the patient appears to be of sound mind and under no duress, fraud, or undue influence.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

**WHAT TO DO WITH THIS ADVANCE DIRECTIVE:** (1) provide a copy to your physician(s); (2) keep a copy in your personal files where it is accessible to others; (3) tell your closest relatives and friends what is in the document; and (4) provide a copy to the person(s) you named as your health care agent.

\* This form replaces the old forms for durable power of attorney for health care, living will, appointment of agent, and advance care plan, and eliminates the need for any of those documents.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, 68-11-224, and 68-11-1805.  
**Administrative History:** Original rule filed February 16, 2007; effective May 2, 2007. Repeal and new rule filed August 28, 2012; effective November 26, 2012. Amendment filed March 27, 2015; effective June 25, 2015. Amendments filed February 8, 2017; effective May 9, 2017.