

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
TENNESSEE BUSINESS ENTERPRISES**

**CHAPTER 1240-06-06
REMOVAL OF MANAGER**

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1240-06-06-.01 VOLUNTARY WITHDRAWAL OF A MANAGER.

- (1) If the manager determines that it is in his/her best interest, for whatever reason, to withdraw from a permanently or temporarily assigned facility, (s)he may do so and be immediately placed on the "Ready-for-Employment List" if the withdrawal is not for the purpose of avoiding disciplinary action and thirty (30) days written notice is provided. In the case of such a withdrawal, there shall be no accrual of seniority.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.(c). **Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed May 25, 1983; effective June 24, 1983. Repeal and new rule filed April 27, 1998; effective August 28, 1998. Repeal and new rule filed April 8, 2005; effective June 22, 2005.

1240-06-06-.02 EMERGENCY REMOVAL OF A MANAGER.

- (1) The Agency shall remove a manager from a facility if a situation develops that prevents a manager from fulfilling his/her obligations or if there is reasonable evidence of a hazardous situation involving the manager which poses an immediate threat to the safety of the manager or others. Except for managers who have a valid drivers license issued by the Department of Safety pursuant to chapter 1340-1-2-.04(8), the Agency considers managers who drive in conjunction with their duties with TBE to be a hazardous situation which poses a threat to the safety of others. This removal may be immediate if the circumstances require. Prior to or within twenty-four (24) hours of the removal, the Agency shall contact the area representative(s) of the Committee and inform them of the action.
- (2) In those facilities that require security clearance by property management such as jails, prisons, and certain Federal installations, the TBE manager must meet all such security requirements in order to service a vending facility in such locations. In the event property management rescinds security clearance for a manager, the Agency shall be forced to remove the manager from that facility. The Agency shall gather all the facts and consult with property management. If the security clearance is not reinstated, the removal will be permanent.
- (3) In the event of the failure of the manager to fulfill the duties and discharge the responsibilities of operating the facility (for whatever reasons) or documented misconduct jeopardizing the existence of the facility and/or the image of the program, the Agency may declare that emergency circumstances exist; whereupon the manager may be immediately removed. In the case of such removal, the area representative(s) of the Committee shall be advised of the action prior to or within twenty-four (24) hours of the removal.

(Rule 1240-06-06-.02, continued)

- (4) In the event of a manager's removal under paragraphs (1) or (2) of this section, the Agency must, within ten (10) working days, do one of the following:
 - (a) Return the manager to the facility;
 - (b) Mandate re-training;
 - (c) Place the manager on the Ready-for-Employment List; or
 - (d) Initiate disciplinary action against the manager.
- (5) In lieu of removing a manager from a facility, the Agency may choose to relieve the manager of responsibility for a portion of the facility if, in the Agency's opinion, such action would enable the manager to fulfill his/her obligations in the remaining areas that he/she services. This provision would only be applicable if a vending facility has satellite vending at multiple locations and it is felt that by relieving the manager of responsibility for some or all of the satellite vending locations, he/she will be better able to manage the main facility. With the active participation of the Committee of Blind Vendors, the Agency shall develop and incorporate into the operations manual guidelines on how to permanently or temporarily distribute the vending satellites removed from the manager.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(b). **Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed May 25, 1983; effective June 24, 1983. Repeal and new rule filed April 27, 1998; effective August 28, 1998. Repeal and new rule filed April 8, 2005; effective June 22, 2005. Amendments filed May 25, 2017; effective August 23, 2017.

1240-06-06-.03 PROPERTIES NOT COVERED BY A STATUTORY PRIORITY.

- (1) When a manager is operating a facility on property which is not protected under federal or state law with respect to priority or preference extended to the Agency, the Agency may, upon the request of property management, be required to remove the manager from the facility, but the Agency is bound to proceed in accordance with the terms and conditions of the permit. If the removal is a result of violation(s) of the rules, the Agency shall take disciplinary action. If the removal is not as a result of inappropriate behavior, the Agency shall place the manager on transfer status or demotion status as the circumstances require.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(b). **Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed June 9, 1981; effective August 18, 1981. Amendment filed May 25, 1983; effective June 24, 1983. Amendment filed November 6, 1985; effective December 6, 1985. Amendment filed December 11, 1986; effective January 25, 1987. Amendment filed March 10, 1989, effective April 24, 1989. Repeal and new rule filed April 27, 1998; effective August 28, 1998. Repeal and new rule filed April 8, 2005; effective June 22, 2005.

1240-06-06-.04 DUE PROCESS FOR MANAGERS WHO ARE REMOVED.

- (1) If the manager is not returned to the facility within ten (10) working days of removal from the facility under chapters 1240-06-06-.02 or 1240-06-06-.03, an informal due process hearing by a hearing officer designated by the Commissioner of the Department of Human Services shall be held at the manager's request within the ten (10) day period following removal from the facility. The hearing officer shall not have been involved in the decision to remove the manager.
- (2) The purpose of the hearing, which shall be informal in nature, shall be to permit the manager to present reasons why the removal is not appropriate. The Agency shall present reasons to

(Rule 1240-06-06-.04, continued)

the hearing officer to establish probable cause to support the immediate removal of the manager. The Agency shall have the burden of proof in the hearing.

- (3) The hearing officer shall make a ruling immediately following the conclusion of the hearing, reduce the findings and the conclusions to writing, and supply copies of the ruling to the manager or the manager's representative and to the Agency. The hearing report shall become a part of the record in any disciplinary action which is initiated by the Agency involving the manager; provided, however, that the report's findings and conclusions shall not become evidence in such proceeding, which shall be de novo. If the manager is not returned to the facility, the Agency shall proceed in accordance with chapter 1240-06-06-.03 within the ten (10) day period and the manager may appeal for an evidentiary fair hearing pursuant to chapter 1240-6-11.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(c). **Administrative History:** Original rule filed April 8, 2005; effective June 22, 2005.

1240-06-06-.05 TEMPORARY DISPLACEMENT OF MANAGERS.

- (1) A manager may be temporarily displaced from his/her facility due to renovations, natural disasters, or other uncontrollable circumstances. Such managers will continue to accrue seniority and be eligible for benefits as provided in 1240-6-16. A displaced manager may request reasonable compensation for a temporary period of time from the Agency with the active participation of the Committee of Blind Vendors. Temporary compensation, if granted, shall not to exceed twelve (12) months.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(c). **Administrative History:** New rule filed May 25, 2017; effective August 23, 2017.