

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
COMMUNITY AND SOCIAL SERVICES**

**CHAPTER 1240-07-10
ADULT DAY SERVICES STANDARDS**

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1240-07-10-.01 PURPOSE OF LICENSURE.

- (1) Tennessee law requires an adult day services center to be licensed by the Department unless the center is licensed by another agency of state government and, after consultation with the other state agency, the Commissioner determines that the provisions of the other licensing body adequately regulate the center's program and that, therefore, being licensed by the Department is unnecessary
- (2) The primary purposes of licensure are the protection of adults who are participants in adult day services centers and the provision of day services designed to maintain or restore each adult's optimal capacity for self-care through medical or social services.
- (3) The following standards seek to maintain adequate health, safety and supervision of adults while in adult day services to the end that they may achieve these goals.

Authority: T.C.A. §§ 4-5-201, et seq.; and 71-2-401, et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000. Repeal and new rule filed February 23, 2018; effective May 24, 2018.

1240-07-10-.02 LEGAL BASIS FOR LICENSURE.

Tennessee law requires that adult day services centers as defined in T.C.A. §§ 71-2-401 et seq. be licensed. If any center subject to these requirements currently is licensed by another agency of state government, after consultation with that agency, the Commissioner may determine that the provisions of the other licensing body adequately regulate the center's program and the Commissioner may determine that licensing of the entity is unnecessary.

Authority: T.C.A. §§ 4-5-201, et seq.; and 71-2-401, et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000. Repeal and new rule filed February 23, 2018; effective May 24, 2018.

1240-07-10-.03 DEFINITIONS.

For purposes of this Chapter, the following definitions are applicable:

- (1) Abuse or Neglect.

(Rule 1240-07-10-.03, continued)

- (a) "Abuse or neglect" means the infliction of physical pain, injury, or mental anguish, or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult or a situation in which an adult is unable to provide or obtain the services that are necessary to maintain that person's health or welfare.
- (b) "Abuse or neglect" means transporting an adult and knowingly abandoning, leaving or failing to provide additional planned transportation for the adult if the adult's caretaker knows, or should know, that:
 - 1. The adult is unable to protect or care for himself or herself without assistance or supervision; and
 - 2. The caretaker's conduct causes any of the results listed in subdivision (1)(A) or creates a substantial risk of such results;
- (2) Activities of Daily Living (ADL). Those activities which indicate an individual's independence in eating, dressing, personal hygiene, bathing, toileting, and ambulating.
- (3) Administrative Hearing. A hearing that is held under the Uniform Administrative Procedures Act, Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated, rather than a court of law that is conducted by an administrative law judge from the Secretary of State's Office or by an administrative hearing officer of the Department of Human Services. The purpose of the hearing is to allow an adult day services center the opportunity to challenge legal enforcement actions taken by the Department.
- (4) Adult. An individual who is eighteen (18) years of age or older.
- (5) Adult Day Care Center or Adult Day Services Center. A facility which provides adult day care services.
- (6) Adult Day Care Services or Adult Day Services. Services provided to five (5) or more participants, for more than three (3) hours per day but less than twenty-four (24) hours per day, by a provider of such services who is not related to such participant, pursuant to an individualized plan of care designed to maintain or restore each participant's optimal capacity for self-care through medical or social services.
- (7) Annual License. An annual permit issued by the Department to an adult day services center, authorizing the licensee to provide adult day services in accordance with provisions of the license, the law, and the rules of the Department.
- (8) Appeal. A legal process that allows an adult day services center to challenge a licensing action against the center or a person to challenge an exclusion of a person from access to the center.
- (9) Applicant. The owner or owner's authorized representative who is required, pursuant to the provisions of these rules, to sign the application for a license.
- (10) Assisted-Care Living Facility. A building, establishment, complex or distinct part thereof as defined by T.C.A. § 68-11-201 and licensed by the board for licensing health care facilities pursuant to T.C.A. § 68-11-209 or as further defined by Chapter 1200-08-25.
- (11) Commissioner. The Commissioner of the Department of Human Services.
- (12) Denial of License. The decision of the Department not to issue or renew a license.

(Rule 1240-07-10-.03, continued)

- (13) Department (DHS). The Tennessee Department of Human Services and its authorized representatives.
- (14) Direct care staff. Those individuals, employees, substitutes, or volunteers, whose primary job responsibilities are the direct care of the participants.
- (15) Director. The on-site manager for the center who has overall responsibility for the daily oversight of all staff and the provision of adult day services.
- (16) Exploitation. The improper use by a caretaker of funds that have been paid by a governmental agency to an adult or to the caretaker for the use or care of the adult.
- (17) Facility or Place. The physical location or locations that singly, or together, provide adult day services that constitute the operation of an adult day services center that must be licensed to operate legally.
- (18) Falsification of Information. Includes, but is not limited to, falsified or forged records or documents relating to the care of participants by the adult day services center, including concealment of services or participants from monitoring by the Department.
- (19) Fee. A processing fee for license applications assessed by the Department and submitted by the center with the application.
- (20) Field Trip. Any off-site activity which occurs away from the general premises of the adult day services center's licensed facility and beyond reasonable walking distance.
- (21) Governing Board. The group of persons having final authority and responsibility for conduct of the adult day services center which are operated by a municipality, county or non-profit corporation.
- (22) High School Diploma. As used in the context of caregivers' qualifications, refers to a document recognizing graduation from an accredited institution, public or private, based on the issuing state's required number of academic credits and includes passing a GED test or equivalent as defined by Tennessee law or its equivalent.

As used in this Chapter, a certificate or statement of attendance or similar document or correspondence or video courses do not qualify as being the equivalent of a high school diploma.
- (23) Home for the aged. A home as defined in T.C.A. § 68-11-201 and as licensed by the board for licensing health care facilities pursuant to T.C.A. § 68-11-209 and Chapter 1200-08-11.
- (24) Hospital. Any institution, place, building or agency as defined in T.C.A. § 68-11-201 and as licensed by the board for licensing health care facilities pursuant to T.C.A. § 68-11-209 and Chapter 1200-08-01.
- (25) Hospice. Any institution, place or agency as defined in T.C.A. § 68-11-201 and as licensed by the board for licensing health care facilities pursuant to T.C.A. § 68-11-209 and Chapter 1200-08-08.
- (26) Individualized Plan. The plan of care for the participant which is also referred to as a service, support, or care plan.
- (27) Law. Statutory or regulatory provisions affecting the operation of an adult day services center including, but not limited to, the licensing law as contained in Title 71, Chapter 2, Part 4 of the Tennessee Code Annotated and these rules.

(Rule 1240-07-10-.03, continued)

- (28) License. A permit issued by the Department to an adult day services center authorizing the center to provide adult day services for a specified period of time in accordance with the provisions of the license, the law, and the regulations of the Department of Human Services. The term "new license" shall include any renewal of a license.
- (29) Licensed Capacity. The designated maximum number of participants permitted in the care and supervision of a licensed adult day services center as determined by the Department based upon available indoor space and staff:participant ratios. Licensed capacity shall be designated on the license.
- (30) Licensee. The owner, as defined by these rules, to whom a license to operate an adult day services center is issued.
- (31) Nursing home. An institution, place, building or agency as defined in T.C.A. § 68-11-201 and as licensed by the board for licensing health care facilities pursuant to T.C.A. § 68-11-209 and Chapter 1200-08-06.
- (32) Participant. The adult receiving services in the adult day services center.
- (33) Operator/owner. The individual(s), corporation, partnership, cooperative, or other private or public entity of any kind, or any combination thereof, who or which, either as entity, as an individual or through their authorized representatives, assumes, or is legally required to assume, ultimate legal and administrative responsibility for the management and control of an adult day services center. The operator/owner shall be the licensee for the adult day services center.
- (34) Premises. A house or a building, along with its grounds, including outdoor areas, parking lots and driveways.
- (35) Probation. A legal enforcement action, imposed for thirty (30) to sixty (60) days, taken after a center has been cited for a violation and failed to correct the violation after notice of an opportunity to correct.
- (36) Responsible party. The guardian, conservator, other legal representative, or other person who makes the placement of the participant with the adult day services center, to whom center staff will look for decisions regarding the participant's care and to whom information regarding the participant's care and status is reported by the center's staff.
- (37) Restricted License. A license which, either at the time of issuance, or during the license's existence, is reduced in its operational authority by the Department so that the adult day services center's ability to provide certain adult day services related services is limited because the Department has determined that one or more areas of the center's operations are not in compliance with adult day services laws or regulations or the center's operations are, or have posed, a risk to the health, safety or welfare of participants in the center's care or the center's operations pose the potential of such risk.
- (38) Revocation. The permanent removal of an existing license.
- (39) Senior Citizens Center. A not-for-profit or municipal agency, which serves persons fifty-five (55) years of age and older. The range of activities varies from center to center, however, most senior center agencies provide recreational and social activities, hot lunch meals, a protected environment where elderly persons can congregate, community services, employment opportunities, opportunities for volunteer services, and information, referral and consultation services. If properly licensed as an adult day services center, the senior citizens center may operate an adult day services program.

(Rule 1240-07-10-.03, continued)

- (40) Significant Contact. Means, in the context of these rules, that owners or operators are likely to have access to participants without other staff present.
- (41) Staff. Full and part-time caregivers, employees, or unpaid volunteers of the center.
- (42) Substitute. Paid or unpaid persons who are replacements for regular staff.
- (43) Suspension/Summary Suspension. The temporary removal of a license for violation of licensing laws or regulations immediately affecting the health, safety, or welfare of participants in an adult day services center.
- (44) Temporary License. A permit issued by the Department to a new adult day services center allowing and authorizing the temporary licensee to begin adult day services operations while the center demonstrates full compliance with all other applicable regulations.
 - (a) The temporary license is valid, unless suspended, for six (6) months or until the application for an annual license is finally determined, and is issued upon application or reapplication by the applicant only if the staff and facility do not present any apparent hazards to the participants that may be in care and only if the facility has received fire safety, environmental, and any necessary food establishment approval and if the applicant and the personnel who will care for the participants are capable in all substantial respects to care for the participants and that the applicant has the ability and intent to comply with the licensing laws and regulations.
 - (b) If, at the end of the six (6) months period, evidence is provided by the applicant that such adult day services center is suitable and properly managed and that the center is in compliance with the rules governing the applicable adult day services center, the Department will issue an annual license to the adult day services center unless the Department determines that a restricted license should be issued.
 - (c) The Department may extend the period of the temporary license for an additional six (6) months if the Department determines that the applicant has made substantial progress in meeting the requirements of the law and regulations for an initial annual licensee.

Authority: T.C.A. §§ 4-5-201, et seq.; 71-2-401, et seq.; and 71-3-506(b). **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000. Repeal and new rule filed February 23, 2018; effective May 24, 2018.

1240-07-10-.04 REQUIREMENTS FOR LICENSURE AS AN ADULT SERVICES CENTER.

- (1) Annual License.
 - (a) All adult day services centers are required by Tennessee law to be licensed by the Department.
 - (b) Issuance of a license is not an endorsement of a specific method of providing care or of a center's operational philosophy.
- (2) Issuance of a license or any determination as to the status of an existing license is based upon the following criteria, in addition to other licensing regulations of the Department and licensing laws:
 - (a) The safety, welfare, and best interests of the participants in the care of the center;

(Rule 1240-07-10-.04, continued)

- (b) The capability, training, and character of the persons providing or supervising the care of the participant;
 - (c) Evidence that the expected performance of the caregivers, supervisors or management of the adult day services center seeking initial licensure or renewal of licensure will be such as to protect the participant in care from injury, harm or the threat of injury or harm; or, during licensure, that the actual performance of any of the duties of caregivers, supervisors or management of a licensed adult day services center demonstrates or has demonstrated a level of judgment that a reasonable person would exercise or would have exercised, under existing or under reasonably foreseeable circumstances, that would prevent or would have prevented injury, harm or the threat of injury or harm, to any participant in care;
 - (d) The quality of the methods of care and instruction provided for the participant;
 - (e) The suitability of the facilities provided for the care of the participant; and
 - (f) The adequacy of the methods of administration and the management of the adult day services center, the center's personnel policies, and the financing of the center.
- (3) The licensee must maintain compliance with the licensing criteria listed in paragraph (2) above, the adult day services licensing laws and these regulations throughout the licensing period.
 - (4) Upon receipt of an application for a license, and throughout the temporary licensing period and during the licensing period, immediate access during operating hours to all areas of the adult day services facility shall be granted to all Department representatives and other inspection authorities (i.e., fire safety, sanitation, health, Adult Protective Services, etc.).
 - (5) Posting of license.

The license shall be posted in a conspicuous place where it can be readily seen by persons entering the Center.

- (6) Scope of Licensed Operation.
 - (a) Licensed capacity shall be designated on the license.
 - (b) All programs shall operate within any restrictions stated on the license.
- (7) Multiple Adult Day Services Centers Operated by a Licensee at the Same Location.
 - (a) An operator/owner who wishes to operate two (2) or more adult day services centers on the same property must meet the following requirements:
 1. The owner/operator must submit a separate application for each adult day services center.
 2. Each center must independently meet the requirements for a license, including:
 - (i) Fire and environmental inspections; and
 - (ii) Staffing ratios and group sizes.
 3. Each center must function as a stand-alone adult day services center, with separate staff.

(Rule 1240-07-10-.04, continued)

4. The director of an adult day services center must be present at least one half ($\frac{1}{2}$) of the time that the center is open for operation. If the director serves multiple sites, he/she must be present at each adult day services center at least ($\frac{1}{2}$) of the time each center is open for operation.
 5. A center shall receive approval from the Department before sharing any facilities with any adult not enrolled in the center.
- (b) A participant may only receive adult day services at the center at which he/she is enrolled, and may not be transferred, moved or shuffled to another adult day services center operated at the same location.
 - (c) An adult day services center shall not operate, at the same or contiguous physical location, as an unlicensed/exempt adult day services center unless approved by the Department.
 - (d) An adult day services center shall not provide care to participants enrolled in the adult day services center at any location that has not been approved by the Department as adult day services space under the adult day services center's license, with the exception of field trips.
 - (e) The provision of unlicensed/exempt adult day services at the center or on a contiguous or non-contiguous physical location by the center or the center's employees or agents, shall be deemed to be the provision of adult day services under the center's control.
 - (f) Actions to transfer participants to physical locations that are not approved by the Department as adult day services space under the adult day services center's license in an attempt to avoid any requirements for a license shall be deemed a violation of the adult day services licensing laws and regulations, and will subject the licensee to immediate legal action.
- (8) If, during any temporary or annual licensing period, the Department determines that one or more areas of operations of the adult day services center should be modified or discontinued, it may issue a restricted license limiting the adult day services center's authority to operate.
 - (9) Denials, Revocations, and Suspensions of Licenses.
 - (a) All or any part of the license may be revoked at any time upon sixty (60) days' notice to the licensee; or if the health, safety, or welfare of the participant in care imperatively requires, the license, and any operating authority granted by the license, may be suspended immediately.
 - (b) The Department may accept the licensee's written agreement to voluntarily suspend or surrender the center's license. The written agreement of the licensee to voluntarily surrender or suspend the license shall become effective immediately upon signature of the licensee or other center staff person with apparent authority, and shall act as a waiver of any revocation or suspension hearings regarding the license.
 - (c) The Department shall consider whether to take action to revoke, restrict, or deny the center's license within (30) days of the date of the voluntary suspension or surrender.
 - (d) Appeals of a denial, revocation, suspension, or restriction of a license are governed by Chapters 1240-04-05 and 1240-05-13, T.C.A. § 71-2-408, and the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et. seq.

(Rule 1240-07-10-.04, continued)

(10) Falsification of Information.

Falsification of any information as defined in 1240-07-10-.02(18) that is related to the operation of the adult day services center shall be grounds for suspension, denial, or revocation of a license.

Authority: T.C.A. §§ 4-5-201, et seq.; 29-3-112; and 71-2-401, et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000. Repeal and new rule filed February 23, 2018; effective May 24, 2018.

1240-07-10-.05 PROCEDURES FOR OBTAINING A LICENSE.

- (1) When an individual or group is giving consideration to opening an adult day services center, the individual or group shall contact the local licensing office of the Department of Human Services.
- (2) Pre-Application Training.
 - (a) Prospective applicants for a new license shall attend at least one informational intake meeting provided by the Department that covers an overview of adult day services operation issues for consideration in determining whether to apply for a license. This training shall include components on interviewing and evaluating caregivers for service in the agency.
 - (b) In the case of a program that is governed by a board of directors or trustees, this meeting shall be attended by the center's director. If the prospective applicant is not responsible for the day-to-day management of the program, this meeting shall be attended by both the prospective applicant and the director responsible for the day to day management of the adult day services center.
 - (c) At the discretion of the Department, pre-application training may be waived for applicants/licensees that have already completed the training through an earlier licensing process. Any waiver of this requirement must be documented and confirmed in writing.
- (3) In addition to the meeting required in subparagraph (2)(a) above, all new directors shall attend, within six (6) months prior to issuance of the license, an orientation session provided by the Department which is at least four (4) hours in length and which covers, at a minimum, the laws and rules governing adult day services. In the case of a program that is governed by a board of directors or trustees, this training shall be attended by a licensee or onsite director who is responsible for the day-to-day management of the program.
- (4) Issuance of a temporary license to new adult day services centers shall require:
 - (a) An Application.
 1. A completed application form signed by the owner or the owner's authorized representative and all application documentation as required by the Department.
 2. In order to be considered complete, an application must be accompanied by the annual application fee.
 - (b) Payment of Applicable Licensing Fees.
 1. Licensing fees must be submitted by certified check, business check, government agency check, or money order.

(Rule 1240-07-10-.05, continued)

2. Current license application fees are maintained on the Department's website.
- (c) Any adult day services center operated under a grant from the Department by a public, nonprofit or local municipality and which pays an administrative fee as part of the monitoring requirements of such grant shall be exempt from the licensure fee.
- (d) Business Organization Documentation.
1. The business organization of every adult day services center shall be such that legal and administrative responsibility for the center is clearly defined.
 2. Documentation of the center's business organization shall be made in the form and manner directed by the Department. The application shall include copies of the business organization filings with the Tennessee Secretary of State Division of Business Services, as applicable.
- (e) Verifications.

Approval of a temporary license shall include verification that:

1. The administrative structure of the center, as required by 1240-07-10-.05, appropriately identifies and provides structures and procedures for the full-time management of the center;
2. The qualifications for management positions fully comply with the requirements in 1240-07-10-.12;
3. Three (3) satisfactory non-relative references for the applicant have been checked for validity and that the reference responses are favorable and have been documented (if applicable one of the references shall be from the previous employment);
4. The physical facilities have received, within the previous sixty (60) days, fire safety, environmental, and any necessary food establishment approval as required by the state, municipal, and or county government reflecting the capacity of the center;
5. The on-site director, all persons working with the participant enrolled in the adult day services center as required by T.C.A. § 71-2-403, owner/operators, and employees who make regular onsite visits to a center, have completed:
 - (i) A criminal, juvenile, and perpetrator disclosure form;
 - (ii) A fingerprint-based criminal and available juvenile records review;
 - (iii) A review of the state sex offender registry;
 - (iv) A review of the vulnerable persons' registry; and
 - (v) A review of abuse and neglect perpetrator records for the Departments of Children's Services and Human Services.

Such reviews demonstrate that the director and all other staff required by T.C.A. § 71-2-403 have no criminal, juvenile, registry or administrative records that would

(Rule 1240-07-10-.05, continued)

cause the person to be excluded from providing care to participants as prohibited by T.C.A. § 71-2-403 and these rules;

6. The applicant and the personnel who will care for the participant are capable in all substantial respects of caring for the participant;
 7. The applicant has the ability and intent to comply with the licensing law and regulations;
 8. After appropriate on-site inspection by the Department, the site is suitable for adult day services activities and does not endanger the welfare or safety of the participant;
 9. The applicant, owner, director, or an employee of the center has not previously been associated in an ownership or management capacity with any adult day services center that has been cited by the Department for violations of this part or the Department's regulations, including the center for which the application is pending, unless the Department determines that a reasonable basis exists to conclude that such individual is otherwise qualified to provide adult day services; and
 10. The criteria in 1240-07-10-.04 support the issuance of a restricted or unrestricted license.
 11. General liability insurance coverage shall be maintained on the operations of the facilities in a minimum amount of five hundred thousand dollars (\$500,000) per occurrence and five hundred thousand dollars (\$500,000) general aggregate coverage.
- (5) Denial or Restriction of the Temporary License.
- (a) If the Department determines that any of the requirements set forth in this Chapter have not been, or cannot be met, it may deny the application for a temporary license.
 - (b) If the Department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted license that permits operation of an adult day services center, but limits the center's authority in one (1) or more areas of operation.
 - (c) Appeals of the denial or restriction of a license are governed by 1240-07-10-.16, Licensing Violations/Due Process.
- (6) Terms of the Temporary Licensure Period.
- (a) The temporary license shall remain in effect, unless suspended, for a period of six (6) months, or until such time as the Department grants or denies the application for an initial annual license, whichever is later. The Department may extend the period of the temporary license for an additional six (6) months if the Department determines that the applicant has made substantial progress in meeting the requirements of the law and regulations for an initial annual license.
 - (b) During the six (6) month temporary licensure period the licensee must attain and maintain compliance with all applicable licensing regulations. Failure to attain and maintain such compliance during this period may result in the denial of the application for an Annual License or restriction of the Annual License.

(Rule 1240-07-10-.05, continued)

- (7) Evaluation Process for an Annual License during the Temporary Licensing Period.
- (a) The temporary license is issued to authorize the temporary licensee to begin adult day services operations while the adult day services center demonstrates full compliance with all applicable licensing laws and regulations before the issuance of an annual license.
 - (b) Department receipt of a complete application, including all necessary documentation, and the required fee for an adult day services center license begins the evaluation process which is completed with the issuance or denial of a license. This process includes:
 - 1. A minimum of two (2) visits to the adult day services center during the temporary licensing period, at least one (1) of which shall be unannounced;
 - 2. At least one (1) observation of the caregiver's interaction with participants during the temporary licensing period;
 - 3. Satisfactory review of center, staff, and participant records; and
 - 4. Satisfactory completion of an evaluation checklist, itemizing requirements and noting compliance or noncompliance, a copy of which is left with the applicant.
 - (c) During the temporary licensing period, the applicant shall provide verification, including any required supporting documentation as directed by the Department, of compliance with all applicable licensing regulations and the applicant shall otherwise meet, and continue to meet, all the requirements set forth in parts (b)1.-4. above.
- (8) The Annual License Determination.
- (a) The Department shall determine whether a license or restricted license shall be issued to the applicant or be denied. The temporary license shall remain in effect, unless suspended or revoked, pending the Department's determination.
 - (b) The Department shall issue a license if the Department determines that the applicant has fully complied with all laws and regulations governing the adult day services center for which the application was made.
 - (c) If the Department determines that any of the requirements set forth in this Chapter has not been, or cannot be, satisfactorily met, it may deny the license.
 - (d) If the Department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted annual license that permits operation of an adult day services center, but limits the center's authority in one (1) or more areas of operation.
 - (e) Upon issuance of an annual license, the licensee must maintain compliance with all applicable licensing regulations throughout the licensing period.
- (9) Renewal Evaluation Process.
- (a) Centers currently licensed by the Department must submit an application for renewal not less than thirty (30) calendar days prior to the expiration of the existing license. Failure to submit a completed application, including the required annual licensing fee prior to the expiration of the current license shall result in the expiration of the license upon the expiration date, and the adult day services center shall cease operations

(Rule 1240-07-10-.05, continued)

immediately. Centers may initiate a new application process if the center fails to meet the thirty (30) calendar day deadline.

- (b) The Department shall issue a new license upon demonstrations of compliance with all laws and regulations governing adult day services centers, and, if the applicant has demonstrated a reasonable probability, based on an evaluation of any violations cited or legal enforcement action taken against the center during the entire licensing period, that the applicant will maintain compliance with all licensing regulations during the annual license period.
 - (c) If the Department determines that any of the requirements set forth in this Chapter has not been, or cannot be, satisfactorily met, it may deny the annual license.
 - (d) If the Department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted license that permits operation of an adult day services center, but limits the center's authority in one (1) or more areas of operation.
- (10) In order to be considered complete, an application must be accompanied by the license application fee.
- (11) Transfer of License.
- (a) A license is not transferable from one location to another or from one licensee/operator to another.
 - (b) Any sale, lease or transfer of control of the adult day services center by any other arrangement to another person, entity, licensee or operator voids the existing license immediately and any pending appeal involving the denial or revocation of the license, and the center shall be required to close immediately unless the buyer, lessee or transferee has made application for, and has been granted a temporary license. In that case, the center may continue in operation under the direction of the new licensee. The new licensee in such circumstances may not be the seller, lessor or transferor or any person or entity acting on behalf of the transferor.
 - (c) If the Department determines that any person or entity has transferred nominal control of a center to any persons or entities who are determined by the Department to be acting on behalf of the purported seller, lessor or transferor in order to circumvent a history of violations of the licensing law or regulations or to otherwise attempt to circumvent the licensing law or regulations or any prior licensing actions instituted by the Department, the Department may deny the issuance of any license to the applicant. The denial of the license may be appealed as provided in T.C.A. §§ 71-2-408–409 and 1240-07-10-.04; 1240-07-10-.16.
 - (d) The license of any center shall not be voided nor shall any pending appeal be voided pursuant to this subparagraph (c) solely for the reason that the center is subject to judicial orders directing the transfer of control or management of an adult day services center or its license to any receiver, trustee, administrator or executor of an estate, or any similarly situated person or entity.
 - (e) If the current licensee dies, or becomes incapacitated, and provided that no licensing violations require the suspension, denial or revocation of the center's license, the Department may grant family members of the licensee, or administrators or executors of the licensee, a new temporary license to continue operation for a period of six (6) months. At the end of such period, the Department shall determine whether an annual

(Rule 1240-07-10-.05, continued)

or extended license should be granted to a new licensee as otherwise provided in this chapter.

- (f) Nothing in this paragraph (12) shall be construed to prevent the Department from taking any regulatory or judicial action as may be required pursuant to the licensing laws and regulations that may be necessary to protect the participant in the care of such center.

Authority: T.C.A. §§ 4-5-201, et seq.; and 71-2-401, et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000. Repeal and new rule filed February 23, 2018; effective May 24, 2018.

1240-07-10-.06 OWNERSHIP, ORGANIZATION AND ADMINISTRATION.

(1) Oversight.

- (a) Centers owned by a municipality, county, or non-profit corporation with ten (10) or more participants shall be operated by a governing board.

1. The governing board shall have at least four (4) members and shall meet at least annually with documented minutes of the meetings.
2. The members of the governing board may include individuals who are recipients of the services of the adult day services center, relatives of such recipients, or representatives of community organizations with particular interest in programs for the elderly; and
3. The members of the governing board may not include individuals who have any direct or indirect interest in any contract for supplying services to the adult day services center or have an immediate family member with any such interest.

- (b) For-profit centers shall be operated by the entity or individual applying for a license.

- (c) Oversight of an adult day services center shall include:

1. Providing services described in the standards established by the Department.
2. Establishing relationships with local service providers for the purposes of consultation and/or referral.
3. Ensuring that adequate financing for the center's operation is maintained. Governing board minutes shall show evidence of financial review and be available to the licensing staff upon request.
4. Establishing an evaluation system which considers the needs of participants, their caregivers, and effectively identifies and resolves problems.
5. Maintaining compliance with Section 504 of the Federal Rehabilitation Act of 1973 and with the Americans with Disabilities Act (ADA) as well as any other applicable federal law.

(2) Operating Procedures and Policies.

- (a) Each center shall establish written policies concerning admissions; discharges; fees; hours of operation; transportation, if applicable; personnel policies; plans for emergencies and disasters; and other policies as necessary.

(Rule 1240-07-10-.06, continued)

- (b) Each center shall provide a copy of the personnel policies to all employees.
- (3) Philosophy and Goals.
- (a) A center shall develop, in writing, a philosophy and set of goals.
 - (b) A center's philosophy and goals may focus on a target population delineated by age group, type of impairment, medical handicap or other criteria, but may not discriminate against any participants because of age or disability.
 - (c) A center shall develop a system for referring applicants that are deemed not appropriate for the program to other appropriate service providers such as the Area Agency on Aging and Disability, local 211 services, etc.
- (4) Multiple-Use Facilities.
- (a) A multiple-use facility such as, but not limited to, a hospital, nursing home, home for the aged, assisted-care living facility, senior-citizen center, church, or school in which an adult day services center is operated shall be governed by a written agreement regarding the center's operation.
 - (b) The written agreement shall include such items as time allotted for use of the space by the adult day services center; maintenance of such space; use of equipment, security, fiscal, personnel, and other shared services.

Authority: T.C.A. §§ 4-5-201, et seq.; and 71-2-401, et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000. Repeal and new rule filed February 23, 2018; effective May 24, 2018.

1240-07-10-.07 PROGRAM.

- (1) Individuals who present a significant threat to themselves or others, or whose intellectual, emotional, or behavioral needs prevent them from benefiting from the center's program, shall not be enrolled. The center shall refer these individuals to appropriate service providers and resources.
- (2) Each center shall provide supervision and personal care of the participants as needed.
- (3) The program shall be designed to maintain the dignity of, and demonstrate respect for, each participant, allow for individual choices, and allow for each participant to experience successes each day.
- (4) Participants shall take part in program development and activity planning to the extent possible.
- (5) A participant who appears to the center's staff to be mentally capable of making his or her own decisions may act on his or her own behalf without having another person as responsible party.
- (6) Adult day services programs located in, or affiliated with, a licensed nursing home, a licensed hospital, a licensed assisted care living facility, a licensed home for the aged, a licensed residential hospice, a senior citizens center, church, or a school may utilize the resources of the facility/agency to act as support to the adult day services program. However, adult day services are not intended to serve as a substitute for the services of skilled nursing care or a senior citizens center. The adult day services program, regardless of its location or affiliation, shall comply with the program content requirements as described in paragraph (7).

(Rule 1240-07-10-.07, continued)

- (7) Contents of the Adult Day Services Program.
 - (a) Participants shall be offered a variety of activities throughout the day.
 - (b) The adult day services program shall consist of individual and group activities and therapies offered through individualized plans for each participant which set forth measurable goals or behaviorally-stated objectives.
 - (c) Activities and therapies shall be designed to activate, motivate, and/or retrain participants to maximize their functional capacity.
 - (d) The following activities shall be offered daily: physical exercise, rest, social interaction, learning opportunities, mental stimulation, and, if needed, personal care. These social, educational and life-enrichment activities may include, but are not limited to, the following: arts, crafts, music, pet therapy, outings, current events, memory-enhancing activities, history, games, puzzles, cards, physical activity, reminiscence sessions, movies, guest speakers, and presentations, discussions about feelings, and appropriate recreational activities.
 - (e) Although leisure activities comprise an integral part of the adult day services program, activities which are limited to passive participation, including watching television, reading, etc. shall comprise no more than 20% of the center's planned activity schedule.
 - (f) Participants shall always be given free choice about whether or not to take part in a particular activity.
 - (g) Group size should be appropriate to the type of activity, functional capability, and individual needs of the participants.
 - (h) The program shall include assistance from community referrals and resources when appropriate and available.
 - (i) A planned activity schedule shall be posted at all times.
 - (j) Routines shall encourage consistency and structure.
- (8) Staff interaction with participants.
 - (a) Staff shall always address participants by the name preferred by the participant.
 - (b) Staff shall interact with participants in a manner that maintains the dignity and sense of autonomy of the participant; and
 - (c) Staff shall interact with each participant in a manner that displays knowledge of his/her individual needs, likes, dislikes and individualized plan.
- (9) Restraints.
 - (a) Restraints may be applied or administered to participants only on a signed order of a physician. The signed physician's order must be for a specified and limited period of time and must document the necessity of the restraint. There shall be no standing orders for restraints.

(Rule 1240-07-10-.07, continued)

- (b) Physical restraints shall be checked every thirty (30) minutes and released every two (2) hours so the participant may be exercised and offered toilet access.
 - (c) When a participant's safety or safety of others is in imminent jeopardy, the medial professional or onsite director shall use his/her judgment to use physical restraints if a physician's order cannot be immediately obtained. A written physician's order must be obtained as soon as possible, but no later than within seven (7) calendar days.
 - 1. In the event that this subsection is used the onsite director shall notify the Department.
 - (d) Locked restraints and chemical restraints are prohibited.
- (10) Any center offering a program for participants with Alzheimer's disease is subject to the requirements of T.C.A. §§ 68-11-1401, et seq.

Authority: T.C.A. §§ 4-5-201, et seq.; and 71-2-401, et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000. Repeal and new rule filed February 23, 2018; effective May 24, 2018.

1240-07-10-.08 PARTICIPANTS' RECORDS.

- (1) A record of each participant shall be maintained by the center for at least three (3) years.
- (2) Each record shall contain, at a minimum, the following information regarding the participant:
 - (a) Acknowledgment of receipt of participant bill of rights;
 - 1. The following list of rights shall be given to any prospective participant in the adult day service:
 - (i) The right to self-determination within the adult day services setting, including the opportunity to:
 - (I) Participate in developing or changing one's plan for services;
 - (II) Decide whether or not to participate in any given activity;
 - (III) Be involved to the extent possible in program planning and operation;
 - (IV) Refuse treatment and be informed of the consequences of such refusal; and
 - (V) End participation in the adult day services center at any time.
 - (ii) The right to be treated as an adult, with consideration, respect and dignity, including privacy in treatment and in care for personal needs;
 - (iii) The right to a thorough initial assessment, development of an individualized plan of care, and a determination of the required level of care;
 - (iv) The right to confidentiality and the guarantee that no personal or medial information will be released to persons not authorized under law to receive it without the participant or their legal representative's written consent;

(Rule 1240-07-10-.08, continued)

- (v) The right to voice grievances about care or treatment without discrimination or reprisal;
 - (vi) The right to be free from harm, including isolation, excessive medication, abuse, neglect and/or financial exploitation;
 - (vii) The right to be fully informed, at the time of acceptance into the program, of services and activities available and related charges; and
 - (viii) The right to communicate with others and be understood by them to the extent of the participant's capability.
- (b) Name, address, age, and other identifying information;
 - (c) Primary caregiver and/or responsible party;
 - (d) Emergency contact information for primary caregiver or a responsible party and medical provider for the participant;
 - (e) A copy of any power of attorney, any health care proxy, any advanced care directive, and any physician's orders for scope of treatment (POST) involving the participant;
 - (f) A copy of any existing and currently effective conservatorship and/or guardianship documents involving the participant;
 - (g) A pre-enrollment assessment, which shall include:
 - 1. Brief psycho-social history to include: likes/dislikes, diet, living situation, family and social contacts, daily routines/schedule, habits, interests, hobbies, and spiritual preferences;
 - 2. Basic health history to include: current medical diagnosis, current prescription and non-prescription medications (see 1240-07-10-.13), standing orders, physical disabilities or medical conditions requiring specific modes of care and/or adaptive devices (including allergies and special dietary requirements), and evidence of a TB screening if required based on current Department of Health guidelines;
 - 3. Current behavioral history to include: strengths, limitations in activities of daily living, behaviors impacting care and treatment;
 - 4. Physician order for non-emergency restraint, if applicable; and
 - 5. Additional information provided by the caregiver, family, responsible party or staff necessary for the provision of comprehensive individualized care and support.
 - (h) A transportation plan which shall provide:
 - 1. A list of individuals or entities authorized to transport the participant; and
 - 2. Necessary and appropriate documentation to transport individual participants.
- (3) The record for each participant shall also include the participant's individualized plan.
- (a) The participant and his/her family/responsible parties shall be encouraged and invited to be involved in the development of the individualized plan and all subsequent revisions.

(Rule 1240-07-10-.08, continued)

- (b) Participant records shall show evidence of regular communication with the participant and/or responsible party about the individualized plan including changes to the plan and other pertinent information.
- (c) Plans shall be reviewed and updated as indicated by the participant's change in status, but at least every three (3) months.
- (d) All plans, including all revisions, updates, changes, etc. shall be signed and dated by all involved parties. If any party refuses to participate in the planning process and/or sign the plan, the plan must include a statement of this along with a brief explanation of reason for refusal.
- (e) The plan shall contain the following information regarding the participant:
 - 1. Mental and Physical Conditions.
 - (i) The participant's cognitive, emotional, and physical conditions shall be recorded upon intake into the adult day services center.
 - (ii) This plan shall include how these conditions will be accommodated, maintained and/or enhanced by the services provided.
 - 2. Alzheimer's Specific Programs.
 - (i) Participants with Alzheimer's disease or other dementia shall be provided therapy/intervention or special service specific to treatment or assistance with this disease.
 - 3. Goals and services.
 - (i) The goal and services shall be clearly stated and shall specifically address the participant's individual needs and desired outcomes of the participant.
 - (ii) The needs in this individualized plan shall address the personal, social, emotional, physical, cognitive strengths and, where appropriate, the educational needs of the participant.
 - (iii) The goal and services shall demonstrate how the participant will benefit from participation in the program.
 - (iv) The plan shall demonstrate how the specific services are going to be implemented in order to meet the stated goal established for the participant.
 - 4. Progress.
 - (i) At the end of every three (3) month period (quarterly), a specific written progress report shall identify how the plan has been implemented and identify the specific outcomes.
 - (ii) If, upon review, it is determined that adequate progress towards the goal has not been achieved, the individualized plan shall be revised.
 - 5. Any accommodation provided to meet the individual needs of the participants.

(Rule 1240-07-10-.08, continued)

6. Changes in the participant's mood, behavior, diet, medications, or other personal circumstances that are observed by the staff shall be documented with signatures and dates in the participant's record.
- (4) Daily attendance records shall be maintained.
- (5) A written record of incidents, accidents, injuries, illnesses and emergencies involving the participant shall be maintained and shall be reported to the participant's responsible party no later than the end of the day on which it occurred.
- (6) An adult day services center located on the premises of, and operated by, a licensed nursing home, a licensed hospital, a licensed assisted-care living facility a licensed home for the aged, or a licensed residential hospice may satisfy the requirements for recordkeeping in these rules by use of existing recordkeeping processes which capture the same information and which maintain the records of the participants in the adult day services center as separate, identifiable records related to the adult day services participant's activities in the adult day services center as previously described in this section.
- (7) An adult day services center using the full time equivalency (FTE) methodology for meeting the staff:participant ratios shall maintain adequate records to document the time provided by staff used to fulfill the FTE requirement.
- (8) Records concerning participants shall be made available to emergency medical personnel whether treatment is rendered on site or participant is transported to a health care facility.
- (9) Release of Information.
 - (a) Except as provided in subparagraph (b) below, no information from the record of a participant shall be released or disclosed except as required by law or regulation, or with the permission of the participant or participant's responsible party.
 - (b) Information from any records of the center, including the records of individual participants, shall be provided upon request to the Department's Adult Day Services licensing staff or to law enforcement officials or Adult Protective Services staff of the Department in order to investigate allegations of abuse, neglect or exploitation of any participant.

Authority: T.C.A. §§ 4-5-201, et seq.; and 71-2-401, et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000. Repeal and new rule filed February 23, 2018; effective May 24, 2018.

1240-07-10-.09 CRIMINAL BACKGROUND AND STATE REGISTRY REVIEW PROCEDURES.

- (1) Criminal Background and Abuse Registry Disclosures and Reviews; Fingerprinting Requirements.
 - (a) The following persons are required to undergo a criminal background check and registry reviews before having access to any adult day services center:
 1. Any person who owns or operates an adult day services center and has significant contact with participants;
 2. Any person who applies to work in an adult day services center as an employee, director or manager; and

(Rule 1240-07-10-.09, continued)

3. Any person who will volunteer in an adult day services center for more than thirty-six (36) hours in a calendar year and who is counted in the staff:participant ratio.
- (b) Requirements for Disclosure of Criminal/Juvenile and Administrative History and Fingerprinting.
1. The individuals identified in subparagraph (1)(a) above shall be required to:
 - (i) Complete a criminal/juvenile/administrative findings history disclosure form;
 - (ii) Submit fingerprint samples for a criminal and juvenile records background check; and
 - (iii) Complete a criminal background check/state registry review consisting of:
 - (I) An investigation of a person's criminal background history by the Tennessee Bureau of Investigation and through the Federal Bureau of Investigation's national database;
 - (II) An Investigation of a person's juvenile records history that is available to the Tennessee Bureau of Investigation;
 - (III) A review of any available juvenile court records, if determined necessary by the Department;
 - (IV) A search of the vulnerable persons registry, maintained by the Tennessee Department of Health;
 - (V) A search of the sexual offender registry, maintained by the Tennessee Bureau of Investigation; and
 - (VI) A search of the Department of Children's Services registry of substantiated perpetrators of abuse or neglect of children.
- (2) Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Participants Prior to Completion of Criminal History Review.
- (a) An adult day services center shall be responsible for obtaining, and submitting the fingerprint sample of any person required by this rule in the form and manner directed by the Department. The person subject to the requirements of subparagraph (1)(b), and the entities with whom they will be, or are, associated, shall be required to provide any information necessary to process the criminal history review required by this paragraph prior to such person's assumption of any role described in subparagraph (1)(a).
 - (b) An adult day services center may not permit any person who is required to undergo a criminal background check and state registry review to assume any role described in subparagraph (1)(a) above for which the criminal background check/state registry review is required or to have access to participants before each of the required histories/records/registries have been checked to verify that the person does not have a criminal history or is not listed on a registry that would disqualify or otherwise exclude the person.
 - (c) Failure to Complete or Disclose Information on Criminal Disclosure Form.
 1. The failure to properly complete all sections of the Criminal/Administrative History Disclosure Form shall result in the individual being prohibited from assuming any

(Rule 1240-07-10-.09, continued)

- position or status for which a background review is required by T.C.A. § 71-3-507 and subparagraph (1)(a) of this rule.
2. The failure to disclose all criminal and administrative history information may result in the person being:
 - (i) Excluded by the Department from working, directing, managing, operating, volunteering, or acting as a licensee in any adult day services center licensed by the Department; and
 - (ii) Referred to the appropriate district attorney for criminal prosecution.
 - (d) Unless otherwise notified by the Department, the adult day services center shall be responsible for all costs associated with obtaining the fingerprint sample, and for the costs of the criminal background check by the Tennessee Bureau of Investigation. The adult day services center may require that the costs of the background check be a part of the application process by a prospective employee or volunteer, or it may pay the costs and recover the costs of the fingerprint-based background checks from the prospective employee following employment.
- (3) Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Participants.
- (a) No person shall be employed with, be a licensee or operator of, or have any access whatsoever to participants in an adult day services center if the criminal background check identifies an excludable criminal offense for which the person has:
 1. Been convicted of, pled guilty or no contest to, or to a lesser included offense;
 2. Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or
 3. Been named in a pending warrant, indictment, presentment, petition, pretrial or judicial diversion.
 - (b) An excludable criminal offense involves, generally:
 1. The physical, sexual or emotional abuse or neglect of an adult or child;
 2. A crime of violence against any human being;
 3. Any offense (including a lesser included offense) involving the manufacture, sale, distribution or possession of any drug; or
 4. Any offense that presents a threat to the health, safety or welfare of adults or children.
 - (c) No person may be employed as a driver or serve as a driver for an adult day services center if the person:
 1. Is currently charged with; or
 2. Has been convicted of, or pled guilty to, within the last five (5) years to one of the following criminal offenses:

(Rule 1240-07-10-.09, continued)

- (i) Vehicular homicide (T.C.A. § 39-13-213);
 - (ii) Accidents involving death or personal injury (T.C.A. § 55-10-101);
 - (iii) Accidents involving damage to a vehicle (T.C.A. § 55-10-102);
 - (iv) Driving under the influence of intoxicant, drug or drug producing stimulant (T.C.A. § 55-10-401); or
 - (v) Any felony involving the use of a motor vehicle while under the use of any intoxicant.
- (4) Criminal offenses for which exclusion from access to adult care is required includes, but is not limited to, the following (including any as amended):
- (a) Aggravated arson (T.C.A. § 39-14-302);
 - (b) Aggravated assault (T.C.A. § 39-13-102);
 - (c) Aggravated child abuse (T.C.A. § 39-15-402);
 - (d) Aggravated child neglect (T.C.A. § 39-15-402);
 - (e) Aggravated cruelty to animals (T.C.A. § 39-14-212);
 - (f) Aggravated kidnapping (T.C.A. § 39-13-304);
 - (g) Aggravated rape (T.C.A. § 39-13-502);
 - (h) Aggravated rape of a child (T.C.A. § 39-13-531);
 - (i) Aggravated robbery (T.C.A. § 39-13-402);
 - (j) Aggravated sexual battery (T.C.A. § 39-13-504);
 - (k) Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);
 - (l) Aggravated vehicular homicide (T.C.A. § 39-13-218);
 - (m) Arson (T.C.A. § 39-14-301);
 - (n) Assault (T.C.A. § 39-13-101);
 - (o) Carjacking (T.C.A. § 39-13-404);
 - (p) Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);
 - (q) Criminal attempt, under § 39-12-101, to commit any criminal offense that requires exclusion from child care;
 - (r) Criminal exposure to HIV (T.C.A. § 39-13-109);
 - (s) Criminal homicide (T.C.A. § 39-13-201);
 - (t) Criminally negligent homicide (T.C.A. § 39-13-212);

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- (u) Cruelty to animals (T.C.A. § 39-14-202);
- (v) Custodial interference (T.C.A. § 39-13-306);
- (w) Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);
- (x) Domestic assault (T.C.A. § 39-13-111);
- (y) Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);
- (z) Especially aggravated burglary (T.C.A. § 39-14-404);
- (aa) Especially aggravated kidnapping (T.C.A. § 39-13-305);
- (bb) Especially aggravated robbery (T.C.A. § 39-13-403);
- (cc) Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);
- (dd) Exploitation of a minor by electronic means (T.C.A. § 39-13-529);
- (ee) False imprisonment (T.C.A. § 39-13-302);
- (ff) First degree murder (T.C.A. § 39-13-202);
- (gg) Incest (T.C.A. § 39-13-302);
- (hh) Indecent exposure (T.C.A. § 39-13-511);
- (ii) Involuntary labor servitude (T.C.A. § 39-13-307);
- (jj) Kidnapping (T.C.A. § 39-13-105);
- (kk) Rape (T.C.A. § 39-13-503);
- (ll) Rape of a child (T.C.A. § 39-13-522);
- (mm) Reckless endangerment (T.C.A. § 39-13-103);
- (nn) Reckless homicide (T.C.A. § 39-13-215);
- (oo) Robbery (T.C.A. § 39-13-401);
- (pp) Second degree murder (T.C.A. § 39-13-210);
- (qq) Sexual battery (T.C.A. § 39-13-505);
- (rr) Sexual battery by an authority figure (T.C.A. § 39-13-527);
- (ss) Sexual exploitation of a minor (T.C.A. § 39-17-1003);
- (tt) Solicitation of a minor (T.C.A. § 39-13-528);
- (uu) Stalking (T.C.A. § 39-17-315);

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- (vv) Statutory rape (T.C.A. § 39-13-506);
 - (ww) Statutory rape by an authority figure (T.C.A. § 39-13-532);
 - (xx) Trafficking a person for sexual servitude (T.C.A. § 39-13-309);
 - (yy) Vehicular assault (T.C.A. § 39-13-106);
 - (zz) Vehicular assault while intoxicated (T.C.A. § 39-13-106);
 - (aaa) Vehicular homicide (T.C.A. § 39-13-213);
 - (bbb) Voluntary manslaughter (T.C.A. § 39-13-211);
 - (ccc) Weapons offenses (unlawful possession, carrying, use, etc.);
 - (ddd) Aggravated burglary (T.C.A. § 39-14-403);
 - (eee) Burglary (T.C.A. § 39-14-402);
 - (fff) Criminal simulation (T.C.A. § 39-14-115);
 - (ggg) Extortion (T.C.A. § 39-14-112);
 - (hhh) Forgery (T.C.A. § 39-14-114);
 - (iii) Fraudulent use of a credit card (T.C.A. §§ 39-14-118, 39-14-105);
 - (jjj) Identity theft (T.C.A. § 39-14-150);
 - (kkk) Shoplifting (T.C.A. § 39-14-146);
 - (lll) Theft of property (T.C.A. § 39-14-103);
 - (mmm) Theft of services (T.C.A. § 39-14-104); or
 - (nnn) Worthless checks (T.C.A. § 39-14-121).
- (5) Exclusion from access to an adult day services center based on a listing on a state registry.
- (a) No person shall be employed with, be a licensee or operator of, or have any access whatsoever to participants in an adult day services center if the results of the state registry review or in the equivalent administrative registries or court records in any jurisdiction in which the person has resided in the past five (5) years identify the person as being:
 1. Listed on the vulnerable persons registry, maintained by the Tennessee Department of Health;
 2. Listed on the sexual offender registry, maintained by the Tennessee Bureau of Investigation; or
 3. Substantiated in the records of the Department of Children's Services for abuse or neglect of a child.

(Rule 1240-07-10-.09, continued)

- (6) Supplemental Background Checks Subsequent to Licensing, Employment or Residence in an Adult Day Services Center.
 - (a) Pursuant to T.C.A. § 71-3-507(g)-(k), the Department may, at any time, require the review of the criminal, available juvenile records or administrative records of any individual with access, as determined by the Department, to participants in an adult day services center using the processes described in this chapter or in T.C.A. § 71-3-507, or by any other available means. All other provisions of this chapter and T.C.A. § 71-2-403 applicable to any pre-employment or post-employment, residential or access status of any individual shall apply to any background reviews conducted pursuant to this paragraph and the results of such review.
 - (b) For an individual who was not subject to the background or records screening requirements required by this chapter prior to assuming a role described in subparagraph (1)(a), or prior to having access to participants in any other capacity, such individual's existing status in such role shall be conditional upon the satisfactory outcome of any requested criminal/juvenile/administrative history disclosure, fingerprint record background check, and any vulnerable persons registry or the sex offender registry check, or any review of substantiated abuse or neglect perpetrator status with the Departments of Children's or Human Services that may be conducted pursuant to this subparagraph.
- (7) Appeal of exclusion from access to an adult day services center.
 - (a) A person that has been excluded from access to an adult day services center due to a criminal offense or state registry listing or in the equivalent administrative registries or court records in any jurisdiction in which the person has resided in the past five (5) years has the right to appeal the exclusion. The appeal is limited to the consideration of:
 1. Whether the person being excluded is in fact the person identified in the criminal history records or registry listing that was used to determine that the person must be excluded; or
 2. Whether the crime or listing which is the basis for the exclusion has been dismissed, resulted in an acquittal, nolle, or expunged, so that the person should not be excluded.
 - (b) The person must make a written request for an appeal within ten (10) days of the mailing date of the letter notifying him/her of the exclusion to the DHS Division of Appeals and Hearings. If timely appealed, the Department shall provide an administrative hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.
- (8) Requests for a waivers from exclusion from access to an adult day services center.
 - (a) A person that has been excluded from an adult day services center access due to a criminal offense or registry listing has the option of requesting a waiver from the exclusion. The request for a waiver is sent to the Director of Adult and Child Care Licensing. A waiver will be granted only if the person can show that extenuating circumstances exist that clearly justify granting a waiver.
 - (b) The request for a waiver shall state the basis for the request, including any extenuating or mitigating circumstances that would, in the individual's opinion, clearly warrant an exemption from the exclusion. Any documentary evidence may also be submitted with the request. Waivers shall be based upon extenuating circumstances that clearly warrant consideration of an exemption.

(Rule 1240-07-10-.09, continued)

- (c) Requests for waivers shall be reviewed by an advisory committee in accordance with the provisions of T.C.A. § 71-3-507. The committee shall make a recommendation to the Director of whether to grant or deny the waiver request. The Director shall make the final decision.
 - (d) Any person who is the subject of an exclusion who is dissatisfied with the decision of the Director of Licensing regarding a waiver must make a written request for an appeal within ten (10) days of the mailing date of the letter notifying him/her of the exclusion to the DHS Division of Appeals and Hearings. If timely appealed, the Department shall provide an administrative hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.
- (9) Any person who is excluded from providing care or services or having access to participants under any provisions of this chapter shall remain excluded pending the outcome of any appeals or exemption review or any determination that the basis for exclusion no longer exists.
- (10) Nothing in this chapter shall be construed to prevent the exclusion of any individual from providing care for, or from being licensed for the care of, participants pursuant to this chapter or from having access to a participant in an adult day services center if a criminal or juvenile proceeding, registry or administrative background requiring exclusion under T.C.A. 71-2-403 or any provision of law is discovered and verified in any other manner other than through a procedure established pursuant to this chapter. All procedures, rules, and appeal processes established pursuant to this chapter for the protection of participants and the due process rights of excluded individuals shall also be applicable to such individuals.
- (11) Exclusion of persons who currently have access to adult care.
- (a) A center shall immediately notify the Department if it receives information, either through first-hand knowledge or via a third party, that a person who is operating, working in, volunteering at, or has any access whatsoever to the adult day services center:
 - 1. Is currently charged with a criminal offense;
 - 2. Has a criminal conviction; or
 - 3. Is listed on the state vulnerable persons registry, sexual offender registry, or Department of Children's Services substantiated perpetrator registry.
 - (b) Such notification shall be made by telephoning the Department within twenty-four (24) hours of receiving such information. This shall include all information received by the center that was not included in the criminal background check/state registry review that was required to be conducted prior to the person assuming any role at the center.
 - (c) The exclusion of such persons from access to an adult day services center shall be pursuant to T.C.A. § 71-2-403 and paragraphs (3)-(5), above.
- (12) The failure of an adult day services center to immediately exclude individuals with a criminal background history or state registry review status that requires exclusion pursuant to T.C.A. § 71-2-403 and this rule, as directed by the Department, shall be the basis for the immediate suspension, denial or revocation of the adult day services center's license.

(Rule 1240-07-10-.09, continued)

Authority: T.C.A. §§ 4-5-201, et seq.; and 71-2-401, et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000. Repeal and new rule filed February 23, 2018; effective May 24, 2018.

1240-07-10-.10 PHYSICAL FACILITY.

- (1) New construction, major renovations and/or additions to existing facilities shall be constructed and maintained according to the standards of the Fire Prevention Division of the Tennessee Department of Commerce and Insurance and/or of the Division of General and Environmental Health of the Tennessee Department of Health.
- (2) Any new construction, major renovations, and/or additions to existing facilities that are located on the premises of a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged or a licensed residential hospice must have been inspected and approved for fire and environmental safety standards using the Life Safety Code by the Tennessee Department of Health's Division of Health Care Facilities prior to use as an adult day services center.
- (3) Fire Safety Requirements.
 - (a) Prior to issuance of a temporary license and each annual license thereafter, an adult day services center shall receive an approved fire safety inspection by an appropriate fire inspection official as directed by the State Fire Marshal's office of Tennessee Department of Commerce and Insurance.
 - (b) A separate fire safety inspection as specified in subparagraph (a) above is not required for centers that:
 1. Receive approval in compliance with the law as a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged or a licensed residential hospice by the Tennessee Department of Health's Division of Health Care Facilities.
 2. Are located on the premises of a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged or a licensed residential hospice and provide evidence that the "adult day services center" area of the facility has been inspected and approved for fire safety standards using the Life Safety Code by the Tennessee Department of Health's Division of Health Care Facilities.
- (4) Environmental Safety Requirements.
 - (a) Prior to issuance of a temporary license and each annual license thereafter, an adult day services center shall receive an approved environmental inspection by an appropriate health inspection official as directed by the Tennessee Department of Health.
 - (b) A separate environmental inspection as specified in subparagraph (a) above is not required for centers that:
 1. Receive approval in compliance with the law as a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged or licensed residential hospice by the Tennessee Department of Health's Division of Health Care Facilities.

(Rule 1240-07-10-.10, continued)

2. Are located on the premises of a licensed nursing home, a licensed hospital, a licensed assisted-living facility, a licensed home for the aged or a licensed residential hospice and provides evidence that the "adult day services center" area of the facility has been inspected and approved for environmental standards using the Life Safety Code by the Tennessee Department of Health's Division of Health Care Facilities.
 - (c) The director of the adult day services center shall immediately alert the Department of any deficiency identified by the Tennessee Department of Health during the course of an inspection.
 - (d) No license for an adult day services center located on the premises of, and operated by, a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or a licensed residential hospice may be issued without the written approval of the Tennessee Department of Health and the Department of Human Services that an adult day services program may be operated at the same time.
- (5) The director of the adult day services center is responsible for supplying documentation of compliance with the fire and environmental inspections required in paragraphs (3) and (4) above to the Department upon request.
- (6) The center shall have space on the ground level floor, or that is accessible by elevator or wheelchair ramps or other assistive devices, to accommodate a full range of program activities and services, which shall include, but are not limited to:
 - (a) Space for individual and group activities;
 - (b) Private office space to permit staff to work effectively;
 - (c) Storage space for program and operating supplies; and
 - (d) Space for special therapies, a rest area, and a designated area to isolate the ill, which includes comfortable resting furniture that would allow participants to recline or lie down. This may be in one room or in more than one room.
- (7) At least forty (40) square feet of indoor activity space per participant shall be provided, excluding floor space for bathrooms, storage areas, and rooms designated for staff use only.
- (8) Adult day services centers located on the premises of, on the grounds of, or adjacent to other operations such as licensed nursing homes, licensed hospitals, licensed assisted-care living facilities, licensed residential homes for the aged, or licensed residential hospices may utilize, on a staggered or shared basis, the same facilities such as dining rooms, recreation rooms, or physical therapy rooms, provided that:
 - (a) Overcrowding does not occur;
 - (b) The staff participant ratio set forth in 1240-07-10-.12 is maintained; and
 - (c) The space in these other facilities shall not count toward the space requirements necessary for the conduct of the adult day services center as specified in paragraph (6) above.
- (9) Programs that are located on the premises of a licensed nursing home, a licensed hospital, an assisted-care living facility, a licensed home for the aged or a licensed residential hospice or other programs in a multi-use facility shall have dedicated space that provides at least forty

(Rule 1240-07-10-.10, continued)

(40) square feet of indoor activity space per participant separate from other programs and activities in the building.

- (10) Involvement of adult day services center participants in other activities in the building with participants from other programs shall be on a planned basis, as a part of the adult day services program, and supervised by adult day services staff.
- (11) The center and any designated outdoor space shall be kept clean, safe and free from hazards and offensive odors.
- (12) Program Equipment.
 - (a) Sufficient and appropriate seating space for all participants shall be provided.
 - (b) Sufficient table or tray space for dining and activities shall be provided.
 - (c) All equipment shall be safe and well maintained.
 - (d) Space and equipment shall be arranged for ease of use, accessibility, and to minimize noise and distractions.

(13) Safety Equipment.

The following safety equipment shall be kept on site:

- (a) A first aid kit that contains at least the following: sterile and adhesive bandages, antiseptics, sterile compresses, scissors, an oral or topical thermometer and adhesive tape;
- (b) Blankets;
- (c) Wheelchair;
- (d) Blood pressure cuff or scale; and
- (e) Locked storage space for drugs.
 - 1. If medicine requiring refrigeration is kept in a refrigerator used for food storage, the medicine shall be put in a leak proof locked container and be properly labeled.
 - 2. Keys for these storage containers shall be inaccessible to participants.

(14) Toilet Facilities.

- (a) For the first fifteen (15) participants in the adult day services center, there shall be a minimum of two (2) toilets in the adult day services center, one (1) of which shall be wheelchair accessible. An additional toilet shall be available for each additional ten (10) participants.
 - (b) Fifty percent (50%) of the toilets in the adult day services center shall be wheelchair accessible.
- (15) The heating/cooling system shall operate adequately to assure the comfort and safety of the participants.

(Rule 1240-07-10-.10, continued)

- (16) The center shall have a working land line telephone.

Authority: T.C.A. §§ 4-5-201, et seq.; and 71-2-401, et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000. Repeal and new rule filed February 23, 2018; effective May 24, 2018.

1240-07-10-.11 FOOD SERVICE.

- (1) All adult day services centers shall comply with the applicable food service standards of the Tennessee Department of Health, including obtaining the necessary permit and submitting to all required inspections. The director of the adult day services center is responsible for maintaining and supplying documentation of compliance.
- (2) One (1) snack shall be provided for participants who are in care for at least four (4) hours in any given day. If the four (4) hour period covers a normal meal hour, a meal shall be served in lieu of a snack, or two (2) snacks if the center is advised that the participant has been, or will be, fed this meal at his/her home.
- (3) Participants shall be encouraged, but never forced, to eat.
- (4) Food preparation shall be conducted in a safe and sanitary manner as required by the state health inspector.
- (5) Nutritional needs shall be met in accordance with the Dietary Guidelines for Americans published by the U.S. Department of Health and Human Services and the Department of Agriculture and in accordance with each caregiver's instructions and physician's orders, if applicable.
- (6) Food shall be cut, chopped or ground to meet individual participant's needs/desires.
- (7) Participants requiring help in eating shall be assisted in such a manner that maintains their dignity.
- (8) Adaptive self-help devices shall be provided where required in such a manner as to contribute to the participant's independence in eating.
- (9) The center shall post a current menu in a prominent place so that it may be seen by the participants and their responsible parties in order to allow for participant choice.

Authority: T.C.A. §§ 4-5-201, et seq.; and 71-2-401, et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000. Repeal and new rule filed February 23, 2018; effective May 24, 2018.

1240-07-10-.12 STAFFING AND SUPERVISION.

- (1) General Staff Requirements.
 - (a) At least one staff member who can read, write, and speak English shall always be available on site.
 - (b) A minimum of seventy-five percent (75%) of persons included in the staff:participant ratio shall have a high school diploma or GED.
 - (c) Age requirements.

(Rule 1240-07-10-.12, continued)

1. Except as provided in part 2. below, all employees and volunteers shall be at least eighteen (18) years of age.
2. Students enrolled in high school who are at least fourteen (14) years of age:
 - (i) May provide office or administrative services to the center;
 - (ii) May provide companionship services for the participants but may not be left alone without the presence of at least one qualified staff member, eighteen (18) years of age or older;
 - (iii) May not supervise staff or volunteers; and
 - (iv) Shall not be counted in the staff:participant ratio.
- (d) A volunteer shall not be used to meet the staff:participant ratio unless his/her education and training meets the minimum qualifications required of direct care staff and he/she meets the background check requirements contained in these rules. A name, address, telephone number(s), and dates of service shall be recorded for each volunteer in the personnel records of the center.
- (e) There shall be present at all times at least one (1) direct care staff person who is trained and certified in cardiopulmonary resuscitation (CPR) and trained in first aid, the Heimlich maneuver, and the center's fire, safety, and emergency plans.
- (f) In the absence of the director, an assistant director or other staff member shall act in the place of the director, and all staff shall be notified of this designation.
- (g) Each center shall maintain an organizational chart for the facility and any updates will be provided to the Department.
- (2) Director Qualifications.
 - (a) The director of the adult day services center shall have one or more of the following qualifications:
 1. A minimum of a bachelor's degree in social services, health, and/or related fields and one (1) year of experience working in social services, health, and/or related fields; or
 2. A minimum of a bachelor's or master's degree (not related to social services, health, or related fields) with two (2) years work experience in social services, health and/or related fields; or
 3. Sixty (60) semester hours (formal college training) in social services, health, and/or related fields and two (2) years of work experience in social services, health and/or related fields; or
 4. A minimum of a master's degree in health, social services, and/or related fields; or
 5. A high school diploma or its equivalent, and five (5) years of full time work experience (in a managerial capacity) in social services, health and/or related fields.

(Rule 1240-07-10-.12, continued)

- (b) An adult day services center located on the premises of, and operated by, a sponsoring facility consisting of either a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or licensed residential hospice, shall comply with all adult day services licensing requirements.
- (3) Training.
- (a) Staff shall complete orientation and eight (8) hours of annual training relevant to the performance of their duties recognized by the Department.
 - 1. At least 50% of all training hours completed must be a “live” presentation in a classroom, one-on-one or group Technical Assistance (TA) session, or similar “in person” setting.
 - 2. The additional 50% of total training hours to meet licensing rules can come from online, CD-ROM, video, self-study, including correspondence, in-house or director/staff led training (maximum of 4 hours annually), or any combination thereof.
 - (b) Within thirty (30) days of beginning his/her duties, each paid or unpaid staff person shall complete department-recognized training on universal precautions, fire safety and emergency plans.
 - (c) Within thirty (30) days of beginning his/her duties, each staff person shall complete department-recognized training on the signs and symptoms of abuse, neglect or exploitation of an adult as specified by T.C.A. §§ 71-6-102 et seq., as well as the duty to report to the Department any abuse, neglect or exploitation of an adult as required by T.C.A. § 71-6-103.
- (4) Staff Records.
- (a) An employment record shall be maintained on site for each current employee and volunteer included in the staff of the adult day services center.
 - (b) Hard copy or electronic files are acceptable to meet the record requirements of this paragraph.
 - (c) An employment record shall be maintained by the center for at least three years after cessation of employment or volunteer service.
 - (d) An employment record for each employee and volunteer used to meet ratios shall include the following:
 - 1. Name, telephone number, and all addresses associated with the individual, both residential and employment-related, within the twelve (12) month period prior to the hiring as an employee or acceptance as a volunteer;
 - 2. Signed and completed criminal history disclosure form;
 - 3. Verification of criminal and juvenile background check;
 - 4. Verification of the vulnerable persons and sex offender registries results and review of the protective service records of the Departments of Children’s and Human Services;
 - 5. Evidence of educational background;

(Rule 1240-07-10-.12, continued)

6. Employment history and documented verification of three (3) references;
 7. Job description;
 8. Annual performance evaluation;
 9. Verification of required training hours;
 10. Evidence of the absence of tuberculosis if a staff person or volunteer was required to be screened for tuberculosis based on the current Department of Health Guidelines; and
 11. A person to be notified in case of an emergency involving the employee or volunteer.
- (5) Staffing Patterns.
- (a) Staff of the center shall be adequate in number and skill to ensure the safety and proper supervision of the participants, meet the individual support needs of the participants, and to carry out the objectives of the center.
 - (b) The direct care staff to participant ratio shall consist of at least one (1) direct care staff person for every eight (8) participants. The required number of direct care staff shall be maintained onsite.
 1. Staff may assist participants with tasks as needed apart from the group, and participants may engage in activities beyond the sight of staff.
 2. Staff shall know the whereabouts of participants and provide a level of supervision consistent with the needs of the participant.
 - (c) Volunteers may be considered in determining direct care staff:participant ratios; provided that the volunteer's education and training meet the minimum qualifications required of direct care staff. Volunteers who do not meet these minimal requirements may not be counted in the required ratio and shall always be directly supervised by at least one (1) responsible paid direct care staff member, but may assist staff and other qualified volunteers subject to the criminal background requirements set forth in this rule and T.C.A. § 71-2-403.
 - (d) Use of Full-Time Equivalency Positions.
 1. An adult day services center located on the premises of, and operated by, a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or a licensed residential hospice may use full-time equivalency (FTE) ratios; provided, the total time of all staff used in the FTE methodology meets the staff:participant ratio required in subparagraph (b). Further, any adult day services center affiliated with a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or a licensed residential hospice using full-time equivalency ratios shall provide a written plan which is available to the Department demonstrating that the safety and emergency needs of the participants will be assured at all times if the FTE method is used.
 2. A "full-time equivalency ("FTE") methodology" involves the use of one or more available staff on a part-time basis to meet required staff:participant ratios at the

(Rule 1240-07-10-.12, continued)

adult day services center so that the total number of hours devoted to providing care and supervision of the participants by the various staff equals the staff time necessary to meet the staff:participant ratios which would be provided if one, or more, staff were utilized on a full-time basis to provide appropriate care and supervision to the participants.

- (6) Responsibility of Center for Supervision of Participants.
- (a) The director of the center shall maintain a system of supervision that ensures the participant's autonomy and freedom of choice:
 - 1. Is appropriate to each participant's individual needs;
 - 2. Ensures each participant's health and safety; and
 - 3. Allows center personnel to know the whereabouts of each participant and to allow for immediate physical access.
 - (b) The system shall include a mandatory visual inspection of all areas of the building and grounds immediately prior to closing the center for the day in order to ensure that no participant has remained in any part of the center's facilities.
 - (c) Devices such as mirrors, video equipment used for live stream viewing, electronic sound monitors, etc. may be used as appropriate to meet the supervision requirements.
 - (d) Staff shall be aware of each participant's personal care needs while respecting the privacy of the participant.
 - (e) Required Staff:Participant Ratios.
 - 1. The center shall have a plan that enables staff, in an emergency situation, to access additional staff who can respond quickly in order to maintain the required staff:participant ratio.
 - 2. The minimum required staff:participant ratio must be met during special activities such as outings in order to provide adequate supervision for the participants during these activities.

Authority: T.C.A. §§ 4-5-201, et seq.; and 71-2-401, et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000. Repeal and new rule filed February 23, 2018; effective May 24, 2018.

1240-07-10-.13 MEDICATION.

- (1) The center shall have a written policy which allows a participant to self-medicate or which allows staff to supervise or provide assistance to the participant for this purpose in accordance with any requirements set by the participant's health care practitioner.
- (2) Appropriate assistance or supervision by staff includes reading labels, opening bottles, reminding participants to take medication, checking the self-administered dose against the dosage shown on the prescription, observing the participant while taking medication, reassuring participants that he/she is taking the correct dosage, and reporting any noticeable changes in the condition of a participant to a physician and/or to the responsible party.

(Rule 1240-07-10-.13, continued)

- (3) Under no circumstances shall an employee or volunteer provide any oral or topical medication, whether prescription or non-prescription, to a participant unless under the direction of the participant's physician or by written authorization of the responsible party.
- (4) A list of current prescription and non-prescription medicines including herbals, vitamins and other supplements being taken by each participant shall be maintained by the center and updated as changes occur.
- (5) All medications shall be stored in a container, labeled with the participant's name, the name of the medication, dosage strength, frequency, method of administration, prescribing physician, and special instructions.
- (6) For participants requiring assistance, the center shall maintain daily records of medications taken by the participant, including the date, the dosage, the time the medication was taken and the signature of any staff assisting.
- (7) The center shall document and report immediately to appropriate parties all medication errors.
- (8) Discontinued and outdated drugs and containers with worn, illegible or missing labels shall immediately be returned to the responsible party or disposed of properly.
- (9) An adult day services center located on the premises of and operated by a licensed nursing home, a licensed hospital, a licensed assisted-care living facility, a licensed home for the aged, or a licensed residential hospice shall be deemed to meet the requirements of this rule if, for its adult day services participants, it utilizes the same system for medication recordkeeping as it used for its other patients/clients/residents; provided, however, the records kept for the participants of the adult day services center shall be placed in individual files separate from the files of the other patients/clients/ residents of the facility and shall include the information required by this section.
- (10) Medication records shall be made available to emergency medical personnel whether treatment is rendered on site or participant is transported to a health care facility.

Authority: T.C.A. §§ 4-5-201, et seq.; and 71-2-401, et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000. Repeal and new rule filed February 23, 2018; effective May 24, 2018.

1240-07-10-.14 TRANSPORTATION.

- (1) Center Responsibility.
 - (a) The adult day services center shall be fully responsible for the care and supervision of any participant for whom it provides transportation whether by center staff or by contract with a third party provider or otherwise.
 - (b) The adult day services center shall develop a written transportation plan to include routine and emergency procedures to provide for the safety of participants. Accidents, medical emergencies, and escort issues shall be addressed.
- (2) Requirements for Tracking Participants during Transportation.
 - (a) The driver of the vehicle, or another designated staff person riding on the vehicle, shall use a log to record the following information for each trip made by each vehicle:
 1. First and last names of each participant;

(Rule 1240-07-10-.14, continued)

2. Run time;
 3. Pick-up place and time; and
 4. Delivery place and time.
- (b) The log shall be updated as each participant enters or exits the vehicle.
- (c) When the last participant exits the vehicle, the driver, or other designated staff person, shall physically inspect all seats and interior spaces by walking through the vehicle to ensure that all the participants being transported have exited the vehicle. The time and place of the physical inspection shall be recorded on the log and turned into the center at the end of each day.
- (d) The driver/center shall maintain a plan for contacting the responsible parties or emergency contacts for participants who are absent at scheduled pick-up locations.
- (3) Vehicle Occupancy.
- (a) The driver will only be away from the vehicle long enough to assist each participant to his/her destination after which the driver will promptly return to the vehicle.
- (b) The driver shall not leave the vehicle for personal reasons, or any reason not directly related to the transport or safety of the participants.
- (4) Any vehicle used either by the adult day services center, or under the sponsorship or control of the center, which is used for transportation of participants shall be covered by vehicle liability insurance.
- (5) Vehicles used to transport participants shall be maintained in safe working condition and shall comply with all applicable state laws.
- (6) Participants shall not be on a vehicle for more than one and one-half hours without the opportunity for a rest stop.
- (7) All vehicles used to transport participants shall have an operational fire extinguisher and first aid kit and a bloodborne pathogens kit on the vehicle.
- (8) Transportation Staff Qualifications.

Drivers of any vehicle used to transport participants shall have a proper license and endorsement required for the transportation of the number of passengers transported and the vehicle size and weight as required in Tennessee Code Annotated, Title 55, Chapter 50.

- (a) All staff (volunteer and employees) responsible for transporting participants shall receive adequate training regarding these laws, as well as any center-specific procedures, which are not in conflict with these laws, prior to first performing transportation duties.
- (b) All staff responsible for transportation shall receive such training no less than every six (6) months thereafter.
- (c) Completion of such training shall be documented in the staffs'/volunteers' records.

(Rule 1240-07-10-.14, continued)

Authority: T.C.A. §§ 4-5-201, et seq.; and 71-2-401, et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000. Repeal and new rule filed February 23, 2018; effective May 24, 2018.

1240-07-10-.15 HEALTH AND SAFETY.

- (1) Each employee and volunteer at a center who has any knowledge of or suspects abuse, neglect, or exploitation of a participant shall immediately report such information directly to Adult Protective Services. The failure to report may be a basis for the summary suspension, revocation or denial of the center's license to operate, or any other appropriate legal enforcement action. The failure to report may also constitute a crime.
- (2) The adult day services center shall have written emergency procedures and have a posted plan for evacuation of participants, staff, volunteers, and visitors in case of fire or other emergencies such as storms, flooding, and chemical emergencies.
 - (a) The center shall practice these emergency procedures as required by law and shall maintain documentation of these drills for three (3) years.
 - (b) Fire drills shall be practiced and documented at least quarterly; however, evacuations of the participants are not required during each drill.
 - (c) The center shall develop a written protocol for when a participant fails to exit timely or respond appropriately to the drill. The protocol shall include notification to family/responsible party.
- (3) Telephone numbers for the following shall be posted:
 - (a) Ambulance service;
 - (b) Police department;
 - (c) Fire department;
 - (d) Poison control center; and
 - (e) The Department of Human Services, Adult Protective Services Central Intake Hotline.
- (4) Smoking.
 - (a) Pursuant to state law, smoking shall not be permitted anywhere inside the center.
 - (b) As required by state law, No-Smoking signs shall be posted conspicuously within the facility and at each entrance to the facility.
 - (c) A designated outside smoking area may be provided for participants or employees who smoke provided smoke does not infiltrate protected areas.
- (5) Access to the Center.
 - (a) Upon proper identification, the Department shall have the right to enter and inspect any licensed center, or any facility that is suspected of requiring a license, with or without advance notice for the purpose of conducting its licensing responsibilities.
 - (b) If access to the facility is denied, the Department may seek an immediate ex parte order from the chancery or circuit court of the county where the facility is located upon a

(Rule 1240-07-10-.15, continued)

showing of probable cause that the facility is a licensed center, or is suspected of requiring a license, and that the Department has been refused entrance to conduct an inspection. The court may direct any law enforcement officer to aid the Department in executing such order and inspection. Refusal to obey such order may be punishable as civil or criminal contempt of court.

- (6) The center shall notify the Department of all serious incidents the same day of the incident by contacting the Child and Adult Care Complaint Hotline at 1-800-462-8261. The failure to report may be a basis for the summary suspension, revocation or denial of the center's license to operate.
- (a) Serious incidents, include, but are not limited, to the following:
1. Any injury that requires medical treatment beyond on-site first aid;
 2. Reports made to Adult Protective Services or law enforcement or anytime it is necessary to call 911;
 3. Any incident that may result in staff exclusion from adult care per 1240-07-10-.09;
 4. Transportation accidents and traffic citations (such as a driver cited for speeding) that occur when a participant is on the vehicle; and
 5. Any participant fatality at the center.

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-301, et seq.; 4-5-320; and 71-2-401, et seq. **Administrative History:** Original rule filed December 14, 1999; effective February 27, 2000. Repeal and new rule filed February 23, 2018; effective May 24, 2018.

1240-07-10-.16 LICENSING VIOLATIONS/DUE PROCESS.

- (1) Licensing Procedures: Administrative and Judicial Actions Involving the License.
- The procedures for licensing, administrative and judicial actions, probation, civil penalties, suspension, denial and revocation and procedures for appeal are contained in this Chapter, T.C.A. §§ 71-2-401 et seq., and the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq.
- (2) Notice of Violation of Standards and Corrective Action.
- (a) If the Department finds the adult day services center to be in violation of a state law or regulation, the Department shall give notice to the adult day services center of the law or regulation which has allegedly been violated as well as the factual basis underlying the alleged violation.
 - (b) Upon receipt of such a notice, the adult day services center shall submit a Plan of Corrective Action within ten (10) business days in the form and manner directed by the Department, detailing the methods and timeframes for obtaining and maintaining compliance with all laws and regulations.
 - (c) If the Department determines, as a result of its inspections or investigations or those of other local, state or federal agencies or officials, or through any other means, that a plan is necessary to insure the safety of the participants in the care of the facility the Department may require the facility to implement a safety plan.
- (3) Probation and Appeal.

(Rule 1240-07-10-.16, continued)

- (a) If the Department finds that an adult day services center has violated a state law or regulation, the Department may, in its discretion, place the center on probation for thirty (30) to sixty (60) days.
- (b) Prior to placing the center on probation, the Department shall provide written notice of the probation which includes the information required by subsection (2)(a) above, and which additionally details the steps for appealing the probation as set forth in subparagraph (c) below.
- (c) The center may request an informal review of the probation action either verbally or in writing to the Department's licensing staff that imposed the probation within two (2) business days of receipt of the notice. The center may submit any written or oral statements as argument to the departmental staff person within five (5) business days of the imposition of the probation. The Departmental staff person shall render a decision in writing upholding, modifying, or uplifting the probationary status within ten (10) business days of the imposition of the probation.

If the Departmental staff person does not lift the probation, the center may also appeal such action in writing to the Commissioner within five (5) business days of the receipt of the Departmental staff person's decision. If timely appealed, the Department shall conduct an administrative hearing in accordance with the Uniform Administrative Procedures Act within fifteen (15) business days of receipt of the appeal and will render a decision within seven (7) business days following the conclusion of the hearing.

- (d) If a center is placed on probation by the Department, the center shall post a copy of this notice in a conspicuous place, in the form and manner directed by the Department. The center shall notify in writing each participant or his/her responsible party regarding the center's status and the basis for the probation.
 - (e) The decision to place a center on probation shall be discretionary with the Department and shall not be a prerequisite to any other licensing action to summarily suspend, to revoke, or to deny a license.
 - (f) Failure to correct a violation which caused the imposition of probation by the Department may lead to suspension, denial or revocation of the center's license.
- (4) License Denial/Revocation and Appeal.
- (a) The Department may deny an application for a temporary license, initial annual license or for renewal of an existing license for failure to comply with governing laws or regulations. The Department shall provide written notice of the denial which shall include the factual and legal basis for the denial.
 - (b) The Department may revoke a license during its term based upon a determination that the center has failed to correct a noted violation of a governing law or regulation pursuant to paragraph (1) above. The Department shall immediately notify the licensee in writing of the Department's intent to revoke the license within sixty (60) days and of the legal and factual basis for the revocation.
 - (c) Appeal Procedure.
 1. A denial of a license application can be appealed by submitting a written request for a hearing to the Commissioner of the Department within ten (10) days of the mailing date of the notice. If the appeal is requested timely, a hearing shall be scheduled by the Department within sixty (60) days of receipt of the request. The

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hearing on the appeal shall be conducted pursuant to the provisions of the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq. During the pendency of the appeal, any existing license shall continue in effect, unless suspended/revoked, until the resolution of the administrative appeal.

2. Revocation of a license can be appealed by submitting a written request for a hearing to the Commissioner of the Department within ten (10) days of the mailing date of the notice. If the appeal is requested timely, a hearing shall be scheduled by the Department within sixty (60) days of receipt of the request. The hearing on the appeal shall be conducted pursuant to the provisions of the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq. During the pendency of the appeal, any existing license shall continue in effect, until the resolution of the administrative appeal.
- (d) The Department shall continue to have the right of inspection of the adult day services center during the pendency of the revocation proceedings and may add additional violations to be considered by the hearing official by amendment of its original notice which shall be filed with the hearing official and sent to the licensee by certified mail, return receipt requested.
- (5) Summary Suspension and Appeal.
- (a) A license may be summarily suspended by the Department pursuant to the provisions of T.C.A. § 4-5-320 if the Commissioner, or the Commissioner's designee, by issuing an order which finds that the public health, safety or welfare imperatively requires emergency action. The order shall be effective upon receipt by the licensee or the person having responsibility or reasonably believed to have responsibility over the operations of the adult day services center, and the center shall cease operations immediately or as otherwise directed by the order. The summary suspension order may be personally delivered immediately by a duly authorized representative of the Department.
 - (b) The order shall notify the licensee of the legal and factual basis for the summary suspension; shall state what action(s) must be taken by the licensee to immediately effect compliance with the licensing standards; the time, date and place of the hearing provided for in subparagraph (c) to contest the summary suspension order; and of the right to be represented by legal counsel at the licensee's expense.
 - (c) The order shall be reviewed within five (5) business days of the date of the suspension order, excluding Saturdays, Sundays and legal holidays, by a hearing officer appointed by the Commissioner. The hearing shall be conducted and the order entered as follows:
 1. The hearing shall be informal and shall not be conducted pursuant to the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq. The hearing shall be conducted by a hearing officer from the Department's Appeals and Hearings Division, and the sole issue before the hearing officer shall be whether the public safety, health or welfare imperatively require emergency action by the Department due to the failure of the center to comply with any law or regulation governing the center's operations.
 2. The Department shall be required to present evidence to the hearing officer in support of the summary suspension order. The licensee shall then have an opportunity for response.

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3. The hearing officer shall make a written determination of whether probable cause exists for continuance of the suspension order based upon the standard set forth in subparagraph (5)(a).
 4. The order containing the hearing officer's findings and ruling shall be issued within five (5) business days of the date of the hearing and shall be served upon the licensee and upon legal counsel for the licensee by certified mail, return receipt requested or by personal delivery.
- (d) A suspension order shall be lifted by the Department or written notice by the Department of intent to revoke or deny the license, shall be served upon the licensee, within thirty (30) days of entry of the suspension order.

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-301, et seq.; 4-5-320; and 71-2-401, et seq. **Administrative History:** Original rule filed February 23, 2018; effective May 24, 2018.