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Emergency Rule Filing Form

Emergency rules are effective from date of filing, unless otherwise stated in the rule, for a period of up to 180 days.

Agency/Board/Commission:	Department of Health
Division:	Communicable and Environmental Disease Services
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Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

Statement of Necessity:

On March 12, 2020, Governor Bill Lee issued Executive Order No. 14 "An Order Suspending Provisions of Certain Statutes and Rules in Order to Facilitate the Treatment and Containment of COVID-19" regarding the pandemic outbreak of the Coronavirus Disease 2019 (COVID-19). Exec. Order No. 14. (2020). On March 13, 2020, the Tennessee Supreme Court issued an order, No. ADM2020-00428, suspending all in-person proceedings in all state and local courts with certain exceptions through March 31, 2020. One such exception is for "Proceedings directly related to the COVID-19 public health emergency."

Under the circumstances of the current emergency, it is possible that the Commissioner of Health will be required to seek orders of quarantine and/or isolation in order to contain the spread of COVID-19. The current rules of the Department of Health require petitions for such orders to be filed and heard in the "General Sessions Court." The emergency rules provide for such petitions to be made to a "trial court of record," so that the chief justice may designate judges to hear petitions for quarantine/isolation during the current outbreak. Therefore, these emergency rules are necessary to allow the Court to exercise its emergency powers and to further the objectives of Executive Order No. 14. A provision is also being added to the current rules allowing witnesses to appear telephonically before a trial court of record because illness and/or isolation may prevent individuals from appearing in person. Finally, provisions are being added to the current rules clarifying that the Commissioner or local health officer may seek orders of quarantine and/or isolation against an individual or a group of individuals in order to prevent the spread of COVID-19.

These rules fall squarely within the provisions of Tenn. Code Ann. § 4-5-208(a)(1) because the COVID-19 pandemic is an immediate danger to the public health, safety or welfare, and the nature of the danger is such that the use of any other form of rulemaking would not adequately protect the public.

Rule(s) Revised (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1200-14-04	Disease Control Health Threat Procedures
Rule Number	**Rule Title**

1200-14-04-.02	Definitions
1200-14-04-.04	Health Directive
1200-14-04-.05	Temporary Hold in Emergency Situations
1200-14-04-.06	Petition to the Court for a Public Health Measure
1200-14-04-.07	Commitment to the Custody of the Commissioner

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to https://sos.tn.gov/products/division-publications/rulemaking-guidelines.

1200-14-04
Disease Control Health Threat Procedures

Emergency Rule – Amendments

Rule 1200-14-04-.02 Definitions is amended by deleting paragraphs (2), (15), (16), and (18) in their entirety and by substituting instead the following language, and is further amended by adding new paragraph (15) and renumbering the remaining paragraphs accordingly, so that as amended, the new paragraphs shall read:

(2) Carrier: a person or group of people who harbors, or who the Commissioner, a health officer, or a designee reasonably believes to harbor, a specific pathogenic organism and who is potentially capable of spreading the organism to others, whether or not there are presently discernible signs and symptoms of the disease.

(15) Person: an individual or a group of individuals.

(16) Petitioner: the Commissioner or health officer who commences an action in a trial court of record pursuant to these Rules.

(17) Public health measure: a measure or measures, consistent with the purpose of these Rules, imposed by a trial court of record against a carrier or owner or operator of premises in order to prevent the spread of a disease that poses a health threat to others.

(19) Respondent: a person or persons against whom an action in a trial court of record is commenced pursuant to these Rules.

Authority: T.C.A. §§ 4-3-1803, 68-1-103, 68-1-104, 68-1-201, 68-5-104, and 2020 Executive Order No. 14.

Rule 1200-14-04-.04 Health Directive is amended by deleting paragraphs (1) and (4) in their entirety and by substituting instead the following language, so that as amended, the new paragraphs shall read:

(1) If the Commissioner or health officer reasonably believes, based upon clinical or epidemiological evidence of the kind relied upon by competent medical experts, that a health threat to others exists, then he/she shall have the authority to issue a health directive pursuant to the conditions set forth in these Rules, in order to protect the public health. A health directive shall be a written statement or, in compelling circumstances, an oral statement followed within three (3) days by a written statement. A health directive shall be specific and shall be issued to a person or a class of persons. The purpose of a health directive is to direct a carrier or owner or operator of premises to cooperate with health authorities' efforts to prevent or control transmission of a disease that poses a health threat to others.

(4) Inability, unwillingness, or failure of a carrier or owner or operator of premises to comply with a health directive shall be grounds for proceeding with a petition in a trial court of record for a temporary hold in emergency situations and/or a public health measure.

Authority: T.C.A. §§ 4-3-1803, 68-1-103, 68-1-104, 68-1-201, 68-5-104, Exec. Order No. 14. (2020).

Rule 1200-14-04-.05 Temporary Hold in Emergency Situations is amended by deleting paragraphs (1) and (2) in their entirety, and by substituting instead the following language, so that as amended, the new paragraphs shall read:

(1) In the case of an emergency, the Commissioner or health officer may petition a trial court of record of the county where the person lives or is to be found, or where the premises is located, to either: (1) order a peace officer to make a civil arrest and take the person to an appropriate health care facility for examination, isolation and/or appropriate treatment; or (2) prevent or restrict access to premises. The Commissioner or health officer shall set forth in an affidavit the specific facts upon which the order is

sought, indicating why reasonable cause exists (upon the basis of sound clinical or epidemiological evidence of the type relied upon by competent medical experts) to believe that there is a substantial likelihood that the carrier or premises poses an imminent health threat to others, and the types of relief sought. If the carrier is already institutionalized, the court may be petitioned to order the facility to continue to hold the carrier.

(2) A person shall not be held, or premises quarantined, under temporary emergency hold for more than five working (5) days (excluding Saturdays, Sundays and legal State holidays) without a hearing being held before the trial court of record, unless the person so held, or owner or operator of premises quarantined, consents to delay the hearing. At this hearing the Commissioner or health officer may petition for a public health measure pursuant to § 1200-14-04-.06 and/or may request that the temporary emergency hold be continued, due to an imminent health threat to others, for a period not to exceed an additional ten (10) working days. Within these time limits, the hearing on the temporary emergency hold will be held in accordance with the procedures set forth in § 1200-14-04-.06(3).

Authority: T.C.A. §§ 4-3-1803, 68-1-103, 68-1-104, 68-1-201, 68-5-104, and Exec. Order No. 14. (2020).

Rule 1200-14-04-.06 Petition to the Court for a Public Health Measure is amended by deleting paragraphs (1), subparagraph (3)(c), and paragraph (4) in their entirety and by substituting instead the following language, and is further amended by adding new subparagraph (3)(d) and re-lettering the remaining subparagraph accordingly, so that as amended, the new paragraphs and subparagraphs shall read:

(1) To protect the public against a disease that poses a health threat to others, the Commissioner or health officer shall have the authority to file a petition for relief in the form of a public health measure with a trial court of record in the county where the carrier lives or is to be found, or where the premises is located, setting forth in an affidavit the specific facts upon which the order is sought and what type of relief is sought. The Department shall have the burden of proving that reasonable cause exists, based on sound clinical or epidemiological evidence, to believe that there is a substantial likelihood that the carrier or premises poses a health threat to others by clear and convincing evidence.

(3) (c) the person's right to have a personally-selected physician perform an examination and the right to review the results of any examination or test being used to support the petition;

(d) the person may appear telephonically or through other electronic means, dependent on health condition and ability to travel; and

(4) A person may appeal an adverse trial court of record decision or file a petition for a writ of habeas corpus in a court of competent jurisdiction or the Department may appeal the court of record decision; however, the person's status as determined by the trial court of record shall remain unchanged and any remedy or relief ordered by the court shall remain in force while the appeal or writ of habeas corpus is pending.

Authority: T.C.A. §§ 4-3-1803, 68-1-103, 68-1-104, 68-1-201, 68-5-104, and Exec. Order No. 14. (2020).

Rule 1200-14-04-.07 Commitment to the Custody of the Commissioner is amended by deleting the rule in its entirety, but not its title, and by substituting instead the following language, so that as amended, the new rule shall read:

(1) Review prior to a petition for commitment. Before petitioning a trial court of record to commit a person to the custody of the Commissioner pursuant to Section 1200-14-.04-.06(2)(g-h), the health officer seeking the petition shall notify the Chief Medical Officer or his/her physician designee from the Health Services Administration and shall present the underlying facts upon which the commitment is sought. This notification shall occur prior to petitioning the court, except in compelling extreme and unusual circumstances, in which event the notification shall occur as soon as possible thereafter. The Chief Medical Officer or designated physician from the Health Services Administration shall review the underlying facts, obtain consultations as necessary, and shall promptly (i.e., within twenty-four (24) hours) make a determination regarding the need to submit a petition for commitment.

(2) Review after an order of commitment. When a trial court of record orders a person to be committed to the custody of the Commissioner for placement in an approved health care facility or other supervised living situation, the Chief Medical Officer or his/her physician designee shall review the treatment plan and

written progress reports with the appropriate health officer and shall make a determination regarding the need for continued commitment or supervised living. At least every ninety-two (92) days (or more frequently if ordered by the court), the Chief Medical Officer or his/her physician designee shall send a written notification to the person or to the person's or legal guardian or representative and to the appropriate health officer regarding the determination as to whether continued commitment or supervised living is needed.

(3) Duration of Commitment. A person shall not be committed to the custody of the Commissioner for placement in an institutional facility or other supervised living situation for a period longer than six (6) months unless a petition for continued commitment is filed with a trial court of record having jurisdiction of the matter, in which case the commitment shall continue until a hearing on the petition has been held and the court has issued an order. The Commissioner or health officer may petition the court for an order of continued commitment for as many times as necessary for the protection of the public health, and the court may order continued commitment if reasonable cause exists, based on sound clinical or epidemiological evidence, to believe that there is a substantial likelihood that the carrier poses a health threat to others, by clear and convincing evidence, if released.

Authority: T.C.A. §§ 4-3-1803, 68-1-103, 68-1-104, 68-1-201, 68-5-104, and Exec. Order No. 14. (2020).

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 3/16/2020

Signature: Jane Young

Name of Officer: Jane Young

Title of Officer: General Counsel, Department of Health

MARK INGRAM NOTARY PUBLIC STATE OF TENNESSEE DAVIDSON COUNTY

Subscribed and sworn to before me on: 3/16/2020

Notary Public Signature:

My commission expires on: 3/7/2023

Agency/Board/Commission: Department of Health

Rule Chapter Number(s): 1200-14-04 Disease Control Health Threat Procedures

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

3/16/2020
Date

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PUBLICATIONS

Filed with the Department of State on: 3/17/2020

Effective for: 180 *days

Effective through: 9/13/2020

** Emergency rule(s) may be effective for up to 180 days from the date of filing.*

Tre Hargett

Tre Hargett
Secretary of State

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

These rules are projected to have no impact on local governments.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

(1) **The extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.** These amendments do not overlap, duplicate, or conflict with other rules.

(2) **Clarity, conciseness, and lack of ambiguity in the rule or rules.** The amendments are clear, concise, and are not ambiguous.

(3) **The establishment of flexible compliance and/or reporting requirements for small businesses**. These amendments do not contain compliance or reporting requirements.

(4) **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.** These amendments do not contain compliance or reporting requirements.

(5) **The consolidation or simplification of compliance or reporting requirements for small businesses.** These amendments do not contain compliance or reporting requirements.

(6) **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.** These rules do not contain performance standards.

(7) **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.** These rules do not create any such barriers as these rules are required to further the objectives of 2020 Executive Order No. 14, which was signed by the Governor on March 12, 2020.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules are being amended to change all existing references within the rule from "the General Sessions Court" to "a trial court of record." Additionally, the rules are being amended to add a provision to the current rules allowing witnesses to appear telephonically before a trial court of record because illness and/or isolation may prevent individuals from appearing in person. Lastly, the rules are being amended to add provisions to the current rules clarifying that the Commissioner or local health officer may seek orders of quarantine and/or isolation against an individual or a group of individuals in order to prevent the spread of COVID-19.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. §§ 4-3-1803, 68-1-103, 68-1-104, 68-1-201, 68-5-104, and Exec. Order No. 14. (2020).

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These amendments are required to accomplish the objectives of 2020 Executive Order No. 14 "An Order Suspending Provisions of Certain Statutes and Rules in Order to Facilitate the Treatment and Containment of COVID-19," which was signed by the Governor on March 12, 2020.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

None.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

These rule amendments will not affect state and local government revenues or expenditures insofar as the rules are only changing existing references within the rule from "the General Sessions Court" to "a trial court of record."

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Jane Young, General Counsel, Department of Health.

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Jane Young, General Counsel, Department of Health.

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel, Department of Health, 710 James Robertson Parkway, 5th Floor, Nashville, TN, (615) 532-7663, Jane.Young@tn.gov.

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
HEALTH SERVICES ADMINISTRATION
COMMUNICABLE AND ENVIRONMENTAL DISEASE SERVICES

CHAPTER 1200-14-04
DISEASE CONTROL HEALTH THREAT PROCEDURES

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1200-14-04-.01 INTRODUCTION.

This chapter outlines procedures to be followed by the Commissioner, health officers, and their designees, in carrying out disease control enforcement activities involving persons or premises that pose a health threat to others.

Authority: *T.C.A. §§ 4-3-1803(1), (3), (4), and (10), 4-5-202, 68-1-103, 68-1-104, 68-1-201, and 68-5-104.* ***Administrative History:*** *Original rule filed January 11, 1994; effective March 27, 1994. Repeal and new rule filed March 30, 2004; effective July 29, 2004.*

1200-14-04-.02 DEFINITIONS.

(1) Approved health care facility: a hospital or other health care facility approved by the Commissioner as having appropriate and necessary facilities, staff, and services for the diagnosis and treatment of people with a communicable disease.

~~(2) Carrier: a person who harbors, or who the Commissioner, a health officer, or a designee reasonably believes to harbor, a specific pathogenic organism and who is potentially capable of spreading the organism to others, whether or not there are presently discernible signs and symptoms of the disease.~~

(2) Carrier: a person or group of people who harbors, or who the Commissioner, a health officer, or a designee reasonably believes to harbor, a specific pathogenic organism and who is potentially capable of spreading the organism to others, whether or not there are presently discernible signs and symptoms of the disease.

(3) Chief Medical Officer: the State Health Officer who is appointed by the Commissioner of Health (as provided by T.C.A. § 68-1-102(c) to advise the Commissioner on all matters of state health policy or a physician who is the State Health Officer's designee.

(4) Clear and convincing evidence: evidence which is positive and explicit, and which directly establishes the point to which it is adduced. It means greater than a preponderance of the evidence standard but less than a beyond a reasonable doubt standard.

(5) Commissioner: the Commissioner of Health, or his designee, as provided at T.C.A. § 68-1-102(b) and (c).

(6) Communicable Disease: a disease or condition resulting from infection by a pathogenic organism (infectious agent) that may cause serious illness, disability, or death and which may be transmitted from one person to another.

(Rule 1200-14-04-.02, continued)

(7) Competent medical experts: physicians who are trained and experienced in the diagnosis, treatment and control of infectious/communicable disease and rely on known clinical or epidemiological evidence. Generally, the standard for determining the existence of a significant risk to others is the reasonable medical judgment of the public health authorities.

(8) Department: the Tennessee Department of Health.

(9) Emergency: a person or premises is a health threat to others and there is a clear and imminent danger to the public health unless the person is immediately separated from other persons or access to the premises is prevented or restricted, because no less restrictive alternatives exist which would reasonably protect the public health.

(10) Health directive: a written statement (or, in compelling circumstances, an oral statement followed by a written statement), based on clinical or epidemiological evidence of the kind relied upon by competent medical experts, that is issued by the Commissioner or health officer, requiring a person to cooperate with health authorities' efforts to prevent or control transmission of a disease that poses a health threat to others.

(11) Health Officer: the Chief Medical Officer for the State of Tennessee; a licensed physician who is authorized by the Department to function as a county, district, or regional health officer in Tennessee, a licensed physician who serves as the health director or health officer of any metropolitan public health department in Tennessee; a licensed physician in the central office of the Department's Health Services Administration.

(12) Health threat to others: the direct threat of endangerment to others due to the presence of a cause or source of a disease on premises, or due to the inability, unwillingness, or failure of a carrier to act in such a manner as to not place others, without their consent, at significant risk of exposure to, based on the reasonable medical judgment and clinical or epidemiological understanding of public health authorities, a disease that may cause serious illness, disability, or death. A determination of whether or not premises or a person poses a health threat to others may include, but is not necessarily limited to, assessing the cause, source, and/or nature of a disease, the likelihood of infection, the modes of transmission, the risk of transmission, and the severity of harm that might result due to transmission of a disease. With respect to carriers, such a determination is not based solely on a person's past behavior but also involves an assessment of a person's current situation, including the effects of educational efforts and statements of intent. A person having a disease, such as active tuberculosis, even though rendered temporarily not capable of transmission because of receiving therapy, who discontinues treatment prior to reaching a curative result, may continue to be a health threat to others.

(13) Isolation: the separation for the period of communicability of infected persons, or persons reasonably suspected to be infected, from other persons, in such places and under such conditions as will prevent the direct or indirect conveyance of the infectious agent from infected persons to other persons who are susceptible or who may spread the agent to others.

(14) Least restrictive alternative: use of means sufficient to protect the public health but tailored to infringe upon any legally protected liberty interests, privacy interests, property interests, and/or association interests of a person or premises determined to be a health threat to others in the least restrictive manner.

(15) Person: an individual or a group of individuals.

(Rule 1200-14-04-.02, continued)

~~(15) Petitioner: the Commissioner or health officer who commences an action in General Sessions Court pursuant to these Rules.~~

(16) Petitioner: the Commissioner or health officer who commences an action in a trial court of record pursuant to these Rules.

~~(16) Public health measure: a measure or measures, consistent with the purpose of these Rules, imposed by a General Sessions Court against a carrier or owner or operator of premises in order to prevent the spread of a disease that poses a health threat to others.~~

(17) Public health measure: a measure or measures, consistent with the purpose of these Rules, imposed by a trial court of record against a carrier or owner or operator of premises in order to prevent the spread of a disease that poses a health threat to others.

(18)~~(17)~~ Quarantine: limitation of freedom of movement or isolation of a person, or preventing or restricting access to premises upon which the person, cause or source of a disease may be found, for a period of time as may be necessary to confirm or establish a diagnosis, to determine the cause or source of a disease, and/or to prevent the spread of a disease. These limitations may be accomplished by placing a person in a health care facility or a supervised living situation, by restricting a person to the person's home, or by establishing some other situation appropriate under the particular circumstances.

~~(18) Respondent: a person against whom an action in General Sessions Court is commenced pursuant to these Rules.~~

(19) Respondent: a person or persons against whom an action in a trial court of record is commenced pursuant to these Rules.

(20)~~(19)~~ Transmission: the transfer of an infectious agent from one person to another, including, but not limited to, airborne transmission, bloodborne transmission, foodborne transmission, sexual transmission, skin contact transmission, or waterborne transmission.

Authority: *T.C.A. §§ 4-3-1803(1), (3), (4), and (10), 4-5-202, 68-1-103, 68-1-104, 68-1-201, and 68-5-104.* ***Administrative History:*** *Original rule filed January 11, 1994; effective March 27, 1994. Repeal and new rule filed March 30, 2004; effective July 29, 2004.*

1200-14-04-.03 REPORTING A HEALTH THREAT TO OTHERS.

(1) Any person licensed by the State of Tennessee to practice a healing art who has reasonable cause to believe that a person is or may be a health threat to others [as defined in 1200-14-04-.02(12) of these Rules] because the person is unable, is unwilling, or is failing to act in such a manner as to not place others at significant risk of exposure to infection that causes serious illness, disability, or death shall report that information to the Commissioner or a health officer.

(2) In the event a carrier of a disease that poses a health threat to others uses interstate or international flight to avoid treatment and/or isolation and/or quarantine in Tennessee, such individual shall be deemed to have waived confidentiality as to his health status, and Tennessee health authorities can contact health authorities in the jurisdiction to which the individual fled regarding the health threat presented by the carrier.

Authority: *T.C.A. §§ 4-3-1803(1), (3), (4), and (10), 4-5-202, 68-1-103, 68-1-104, 68-1-201, and 68-5-104.* ***Administrative History:*** *Original rule filed January 11, 1994; effective March 27, 1994. Amendment filed December 16, 1999; effective February 29, 2000. Repeal and new rule filed March 30, 2004; effective July 29, 2004.*

(Rule 1200-14-04-.04, continued)

1200-14-04-.04 HEALTH DIRECTIVE.

~~(1) If the Commissioner or health officer reasonably believes, based upon clinical or epidemiological evidence of the kind relied upon by competent medical experts, that a health threat to others exists, then he/she shall have the authority to issue a health directive pursuant to the conditions set forth in these Rules, in order to protect the public health. A health directive shall be a written statement or, in compelling circumstances, an oral statement followed within three (3) days by a written statement. A health directive shall be individual and specific and shall not be issued to a class of persons. The purpose of a health directive is to direct a carrier or owner or operator of premises to cooperate with health authorities' efforts to prevent or control transmission of a disease that poses a health threat to others.~~

(1) If the Commissioner or health officer reasonably believes, based upon clinical or epidemiological evidence of the kind relied upon by competent medical experts, that a health threat to others exists, then he/she shall have the authority to issue a health directive pursuant to the conditions set forth in these Rules, in order to protect the public health. A health directive shall be a written statement or, in compelling circumstances, an oral statement followed within three (3) days by a written statement. A health directive shall be specific and shall be issued to a person or a class of persons. The purpose of a health directive is to direct a carrier or owner or operator of premises to cooperate with health authorities' efforts to prevent or control transmission of a disease that poses a health threat to others.

(2) A health directive may include, but is not necessarily limited to, participation in education and counseling, medical tests and examinations to verify carrier status, participation in treatment programs, isolation and/or or quarantine, or preventing or restricting access to premises upon which a person, cause or source of a disease may be found, for a period of time as may be necessary to confirm or establish a diagnosis, to determine the cause or source of a disease, and/or to prevent the spread of a disease. In no case may a person be isolated, held or detained, pursuant to these Rules, in a correctional facility.

(3) If a carrier or owner or operator of premises refuses to undergo tests or examinations ordered in a health directive, the Commissioner or health officer may be limited in his or her ability to obtain sufficient evidence to evaluate a potential health threat to others and he/she, lacking the necessary tests or examinations, may be compelled to conclude for the sake of the public health that a health threat to others is present. Then the carrier must undergo testing sufficient to prove the health threat to others does not exist.

~~(4) Inability, unwillingness, or failure of a carrier or owner or operator of premises to comply with a health directive shall be grounds for proceeding with a petition in the General Sessions Court for a temporary hold in emergency situations and/or a public health measure.~~

(4) Inability, unwillingness, or failure of a carrier or owner or operator of premises to comply with a health directive shall be grounds for proceeding with a petition in a trial court of record for a temporary hold in emergency situations and/or a public health measure.

(5) Medical information contained in a health directive or in any other statement from the Commissioner or health officer or designee to a carrier pursuant to these Rules is confidential, except to the extent necessary for the administration and enforcement of public health laws and rules, and is not subject to public disclosure without appropriate authorization in accordance with state and/or federal law.

(Rule 1200-14-04-.04, continued)

(6) Prior to issuing a health directive, the Commissioner or health officer should review the written medical and other records pertinent to the matter, along with any measures that have been taken, and make findings using clinical or epidemiological evidence of the kind relied upon by competent medical experts. These findings should be included in the health directive itself.

(7) When a health directive is issued to a carrier or owner or operator of premises, such person may request a review of the decision. Any request for review must be submitted to the Office of the Chief Medical Officer. Within five (5) business days of the receipt of the request, the Chief Medical Officer or his designee shall review the underlying facts with the health officer issuing the directive and shall notify the person in writing of the review decision. A person against whom a health directive has been issued may also request that the conditions of the directive be obtained in the form of a public health measure. The health directive should be considered as remaining in force during the review process. Health directives should contain sufficient information to enable a person to avail himself of discussion and review, and a copy of these Rules should be attached to the health directive.

(8) A health directive shall employ the least restrictive alternative, based on the reasonable medical judgment of competent medical experts relying on clinical or epidemiological evidence, that will adequately protect the public health and prevent the spread of a disease that poses a health threat to others.

(9) Nothing in this Rule shall preclude a person to whom a health directive is issued from consulting with and being assisted by legal counsel.

Authority: *T.C.A. §§ 4-3-1803(1), (3), (4), and (10), 4-5-202, 68-1-103, 68-1-104, 68-1-201, and 68-5-104.* ***Administrative History:*** *Original rule filed January 11, 1994; effective March 27, 1994. Repeal and new rule filed March 30, 2004; effective July 29, 2004.*

1200-14-04-.05 TEMPORARY HOLD IN EMERGENCY SITUATIONS.

~~(1) In the case of an emergency, the Commissioner or health officer may petition the General Sessions Court of the county where the person lives or is to be found, or where the premises is located, to either: (1) order a peace officer to make a civil arrest and take the person to an appropriate health care facility for examination, isolation and/or appropriate treatment; or (2) prevent or restrict access to premises. The Commissioner or health officer shall set forth in an affidavit the specific facts upon which the order is sought, indicating why reasonable cause exists (upon the basis of sound clinical or epidemiological evidence of the type relied upon by competent medical experts) to believe that there is a substantial likelihood that the carrier or premises poses an imminent health threat to others, and the types of relief sought. If the carrier is already institutionalized, the court may be petitioned to order the facility to continue to hold the carrier.~~

(1) In the case of an emergency, the Commissioner or health officer may petition a trial court of record of the county where the person lives or is to be found, or where the premises is located, to either: (1) order a peace officer to make a civil arrest and take the person to an appropriate health care facility for examination, isolation and/or appropriate treatment; or (2) prevent or restrict access to premises. The Commissioner or health officer shall set forth in an affidavit the specific facts upon which the order is sought, indicating why reasonable cause exists (upon the basis of sound clinical or epidemiological evidence of the type relied upon by competent medical experts) to believe that there is a substantial likelihood that the carrier or premises poses an imminent health threat to others, and the types of relief sought. If the carrier is already institutionalized, the court may be petitioned to order the facility to continue to hold the carrier.

(Rule 1200-14-04-.05, continued)

~~(2) A person shall not be held, or premises quarantined, under temporary emergency hold for more than five working (5) days (excluding Saturdays, Sundays and legal State holidays) without a hearing being held before the General Sessions Court, unless the person so held, or owner or operator of premises quarantined, consents to delay the hearing. At this hearing the Commissioner or health officer may petition for a public health measure pursuant to 1200-14-04-.06 and/or may request that the temporary emergency hold be continued, due to an imminent health threat to others, for a period not to exceed an additional ten (10) working days. Within these time limits, the hearing on the temporary emergency hold will be held in accordance with the procedures set forth in 1200-14-04-.06(3).~~

(2) A person shall not be held, or premises quarantined, under temporary emergency hold for more than five working (5) days (excluding Saturdays, Sundays and legal State holidays) without a hearing being held before the trial court of record, unless the person so held, or owner or operator of premises quarantined, consents to delay the hearing. At this hearing the Commissioner or health officer may petition for a public health measure pursuant to § 1200-14-04-.06 and/or may request that the temporary emergency hold be continued, due to an imminent health threat to others, for a period not to exceed an additional ten (10) working days. Within these time limits, the hearing on the temporary emergency hold will be held in accordance with the procedures set forth in § 1200-14-04-.06(3).

(3) Unless the person so held, or owner or operator of premises quarantined, consents, in no event shall a person be held, or a premises quarantined, under a temporary emergency hold for more than fifteen (15) working days without a petition for a public health measure being heard pursuant to 1200-14-04-.06.

Authority: *T.C.A. §§ 4-3-1803(1), (3), (4), and (10), 4-5-202, 68-1-103, 68-1-104, 68-1-201, and 68-5-104.* ***Administrative History:*** *Original rule filed January 11, 1994; effective March 27, 1994. Repeal and new rule filed March 30, 2004; effective July 29, 2004.*

1200-14-04-.06 PETITION TO THE COURT FOR A PUBLIC HEALTH MEASURE.

~~(1) To protect the public against a disease that poses a health threat to others, the Commissioner or health officer shall have the authority to file a petition for relief in the form of a public health measure with the General Sessions Court in the county where the carrier lives or is to be found, or where the premises is located, setting forth in an affidavit the specific facts upon which the order is sought and what type of relief is sought. The Department shall have the burden of proving that reasonable cause exists, based on sound clinical or epidemiological evidence, to believe that there is a substantial likelihood that the carrier or premises poses a health threat to others by clear and convincing evidence.~~

(1) To protect the public against a disease that poses a health threat to others, the Commissioner or health officer shall have the authority to file a petition for relief in the form of a public health measure with a trial court of record in the county where the carrier lives or is to be found, or where the premises is located, setting forth in an affidavit the specific facts upon which the order is sought and what type of relief is sought. The Department shall have the burden of proving that reasonable cause exists, based on sound clinical or epidemiological evidence, to believe that there is a substantial likelihood that the carrier or premises poses a health threat to others by clear and convincing evidence.

(2) The petition shall set forth the grounds and underlying facts that demonstrate the carrier or premises poses a health threat to others, the proposed public health measure is the least restrictive alternative, and the type of relief sought. Public health measures may include, but are not limited to, the following:

(a) participation in a designated education program or a designated counseling program;

(b) notification of the carrier of appearance of the carrier before designated health officials for verification of carrier status or infectiousness, testing, treatment, or other purposes consistent with monitoring or communicable disease control;

(c) medical tests and examinations necessary to verify carrier status or infectiousness or for diagnosis, treatment, or confirmation of compliance with therapy;

(d) medically-accepted treatment necessary to make the carrier noninfectious or completion of the full course of a medically-accepted treatment program of sufficient duration to render the carrier noninfectious and to be curative;

(e) ceasing and desisting the actions or conduct that constitutes a health threat to others;

(f) living part time or full time in a setting supervised by the Commissioner for a designated period of time and under designated conditions;

(g) commitment to the custody of the Commissioner for placement in an appropriate institutional facility or other supervised living situation for a designated period and under designated conditions until the carrier is made noninfectious or until released based on a determination by the Chief Medical Officer, or the Chief Medical Officer's physician designee, that the carrier is appropriate for release to continue treatment as a voluntary patient in an approved health care facility or other appropriate supervised setting, whichever occurs first, unless good cause is shown for continued commitment;

(h) commitment to the custody of the Commissioner for placement in an appropriate institutional facility or other supervised living situation for a designated period and under designated conditions until the carrier completes the full course of a medically-accepted curative treatment program or until released based on a determination by the Chief Medical Officer or his/her physician designee that the carrier is appropriate for release to continue the treatment program in a less restrictive setting, whichever comes first;

(i) preventing or restricting access to premises for such time as is necessary to prevent the spread of a disease that poses a health threat to others; and/or

(j) requiring tests or examinations on premises to determine the source or cause of a disease that may pose a health threat to others.

(3) The hearing on the petition for a public health measure shall not be set prior to five (5) days, excluding Saturdays, Sundays and legal State holidays, from the date the petition is served without the consent of the affected person. The notice of hearing shall contain the following information:

(a) the time, date, and place of the hearing;

(b) the person's right to appear at the hearing and to subpoena, present and cross-examine witnesses;

~~(c) the person's right to have a personally-selected physician perform an examination and the right to review the results of any examination or test being used to support the petition; and~~

(Rule 1200-14-04-.06, continued)

(c) the person's right to have a personally-selected physician perform an examination and the right to review the results of any examination or test being used to support the petition;

(d) the person may appear telephonically or through other electronic means, dependent on health condition and ability to travel; and

(e)~~(d)~~ the person's right to counsel, including the right, if indigent, to counsel appointed by the court.

~~(4) A person may appeal an adverse General Sessions Court decision or file a petition for a writ of habeas corpus in a court of competent jurisdiction or the Department may appeal the General Sessions Court decision; however, the person's status as determined by the General Sessions Court shall remain unchanged and any remedy or relief ordered by the court shall remain in force while the appeal or writ of habeas corpus is pending.~~

(4) A person may appeal an adverse trial court of record decision or file a petition for a writ of habeas corpus in a court of competent jurisdiction or the Department may appeal the court of record decision; however, the person's status as determined by the trial court of record shall remain unchanged and any remedy or relief ordered by the court shall remain in force while the appeal or writ of habeas corpus is pending.

Authority: *T.C.A. §§ 4-3-1803(1), (3), (4), and (10), 4-5-202, 68-1-103, 68-1-104, 68-1-201, and 68-5-104.* ***Administrative History:*** *Original rule filed January 11, 1994; effective March 27, 1994. Repeal and new rule filed March 30, 2004; effective July 29, 2004.*

1200-14-04-.07 COMMITMENT TO THE CUSTODY OF THE COMMISSIONER.

~~(1) Review prior to a petition for commitment. Before petitioning the General Sessions Court to commit a person to the custody of the Commissioner pursuant to Section 1200-14-04-.06(2)(g)-(h), the health officer seeking the petition shall notify the Chief Medical Officer or his/her physician designee from the Health Services Administration and shall present the underlying facts upon which the commitment is sought. This notification shall occur prior to petitioning the court, except in compelling extreme and unusual circumstances, in which event the notification shall occur as soon as possible thereafter. The Chief Medical Officer or designated physician from the Health Services Administration shall review the underlying facts, obtain consultations as necessary, and shall promptly (i.e., within twenty-four (24) hours) make a determination regarding the need to submit a petition for commitment.~~

(1) Review prior to a petition for commitment. Before petitioning a trial court of record to commit a person to the custody of the Commissioner pursuant to Section 1200-14-.04-.06(2)(g-h), the health officer seeking the petition shall notify the Chief Medical Officer or his/her physician designee from the Health Services Administration and shall present the underlying facts upon which the commitment is sought. This notification shall occur prior to petitioning the court, except in compelling extreme and unusual circumstances, in which event the notification shall occur as soon as possible thereafter. The Chief Medical Officer or designated physician from the Health Services Administration shall review the underlying facts, obtain consultations as necessary, and shall promptly (i.e., within twenty-four (24) hours) make a determination regarding the need to submit a petition for commitment.

~~(2) Review after an order of commitment. When the General Sessions Court orders a person to be committed to the custody of the Commissioner for placement in an approved health care facility or other supervised living situation, the Chief Medical Officer or his/her physician~~

(Rule 1200-14-04-.07, continued)

~~designee shall review the treatment plan and written progress reports with the appropriate health officer and shall make a determination regarding the need for continued commitment or supervised living. At least every ninety-two (92) days (or more frequently if ordered by the court), the Chief Medical Officer or his/her physician designee shall send a written notification to the person or to the person's legal guardian or representative and to the appropriate health officer regarding the determination as to whether continued commitment or supervised living is needed.~~

(2) Review after an order of commitment. When a trial court of record orders a person to be committed to the custody of the Commissioner for placement in an approved health care facility or other supervised living situation, the Chief Medical Officer or his/her physician designee shall review the treatment plan and written progress reports with the appropriate health officer and shall make a determination regarding the need for continued commitment or supervised living. At least every ninety-two (92) days (or more frequently if ordered by the court), the Chief Medical Officer or his/her physician designee shall send a written notification to the person or to the person's or legal guardian or representative and to the appropriate health officer regarding the determination as to whether continued commitment or supervised living is needed.

~~(3) Duration of Commitment. A person shall not be committed to the custody of the Commissioner for placement in an institutional facility or other supervised living situation for a period longer than six (6) months unless a petition for continued commitment is filed with the General Sessions Court having jurisdiction of the matter, in which case the commitment shall continue until a hearing on the petition has been held and the court has issued an order. The Commissioner or health officer may petition the court for an order of continued commitment for as many times as necessary for the protection of the public health, and the court may order continued commitment if reasonable cause exists, based on sound clinical or epidemiological evidence, to believe that there is a substantial likelihood that the carrier poses a health threat to others, by clear and convincing evidence, if released.~~

(3) Duration of Commitment. A person shall not be committed to the custody of the Commissioner for placement in an institutional facility or other supervised living situation for a period longer than six (6) months unless a petition for continued commitment is filed with a trial court of record having jurisdiction of the matter, in which case the commitment shall continue until a hearing on the petition has been held and the court has issued an order. The Commissioner or health officer may petition the court for an order of continued commitment for as many times as necessary for the protection of the public health, and the court may order continued commitment if reasonable cause exists, based on sound clinical or epidemiological evidence, to believe that there is a substantial likelihood that the carrier poses a health threat to others, by clear and convincing evidence, if released.

Authority: *T.C.A. §§ 4-3-1803(1), (3), (4), and (10), 4-5-202, 68-1-103, 68-1-104, 68-1-201, and 68-5-104.* ***Administrative History:*** *Original rule filed January 11, 1994; effective March 27, 1994. Repeal and new rule filed March 30, 2004; effective July 29, 2004.*

1200-14-04-.08 PATIENT BILL OF RIGHTS.

The following are the rights of any patient pursuant to this chapter:

(1) Neither mail nor other communication to or from a patient in any approved treatment facility may be intercepted, read, or censored. The approved treatment facility may adopt reasonable policies regarding the use of the telephone in the facility.

(Rule 1200-14-04-.08, continued)

(2) Patients in any approved facility shall be granted opportunities for visitation and communication with their families and friends consistent with an effective treatment program. Patients shall be permitted to consult with counsel at any time.

(3) Any patient confined pursuant to the provisions of these Rules may be given treatment only with the patient's consent, or if the patient is adjudicated incompetent, then the consent of the guardian must be obtained. Patients must understand that refusal to cooperate with treatment will compel continued actions on the part of the health officer to protect the public's health.

(4) Isolation of the patient from other patients in the confinement of an approved treatment facility setting shall be used only when medically necessary to prevent serious harm to others because the patient is infectious and there is an imminent danger that the patient will engage in high-risk behaviors. Isolation shall not be used when the condition no longer exists or there is no longer an imminent danger that the patient will engage in the behavior justifying isolation. Any use of isolation, together with the reasons therefor and the duration of its use, shall be made a part of the medical record of the patient.

(5) No patient placed in confinement pursuant to these Rules shall, solely by reason of such placement, be denied the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, and vote, to the extent that such activities can be undertaken without jeopardizing the public health and unless such patient has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(6) A patient shall be provided the maximum freedom possible. Limitations on a patient's freedom are permitted only when reasonably necessary to protect the health of others in the facility or the public health. The patient shall be allowed, within these constraints, to exercise, recreate, and go outdoors for a reasonable period of time on a daily basis.

(7) No mechanical restraint shall be applied in the care, training, or treatment of any person unless required by the person's medical or treatment needs. Only physicians may prescribe such restraint. Such restraint shall be removed whenever the condition justifying its use no longer exists. Any use of a mechanical restraint, together with the reasons therefor, and the duration of its use, shall be made a part of the medical or rehabilitation record of the person. Patients shall not be abused nor neglected nor administered corporal punishment. Mechanical restraints shall not be used in lieu of, or in place of, appropriate medical management for conditions such as drug or alcohol intoxication, habituation or addiction.

(8) Confidentiality.

(a) All applications, certificates, records, reports, and all legal documents, petitions, and records made or information received pursuant to treatment in a facility directly or indirectly identifying a patient or former patient shall be kept confidential and shall not be disclosed by any person except insofar as any of the following consent:

1. The individual identified who is fourteen (14) years of age or over;

2. The legal guardian on behalf of the adult individual identified;

3. The parent, guardian, or custodian of a minor;

4. The executor, administrator or personal representative on behalf of a deceased patient or resident or former patient or resident; or

(Rule 1200-14-04-.08, continued)

5. As a court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to public interest or to the detriment of either party to the proceedings, consistent with the provisions of T.C.A. §§ 10-7-504(a) or 68-10-113.

(b) Nothing in this paragraph shall prohibit disclosure of medical record information of a patient or resident to the Commissioner or to health officers.

(c) Nothing in this paragraph shall prohibit disclosure, upon proper inquiry and with the patient's consent, of information as to the current medical condition of a patient or resident to any members of the family of a patient or resident or to his relatives or friends.

(9) Health directives and public health measures should be written in non-technical, patient-appropriate language and should include the reasons for the health directive or public health measure (including a statement of actions the Department has taken prior to the directive or court order), tests and/or treatments expected, anticipated duration of the directive/public health measure, and rights of review or appeal as set out in these Rules.

Authority: *T.C.A. §§ 4-3-1803(1), (3), (4), and (10), 4-5-202, 68-1-103, 68-1-104, 68-1-201, and 68-5-104.* ***Administrative History:*** *Original rule filed January 11, 1994; effective March 27, 1994. Repeal and new rule filed March 30, 2004; effective July 29, 2004.*

07-25-20

Martin Daniel
Tennessee State House Representative
18th District

Chairman
Government Operations Committee

Member of Committees
Judiciary
Insurance
Calendar & Rules
Fiscal Review

Subcommittees
Constitutional Protections & Sentencing
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July 6, 2020

Commissioner Lisa Piercey
710 James Robertson Parkway
Nashville, TN 37243

Re: Request to Amend Emergency Rule

Dear Commissioner Piercey,

The Government Operations Committee of the House of Representatives, acting pursuant to Tennessee Code Annotated, Section 4-5-226(j), requests the Department of Health to amend the emergency rule filed with the Secretary of State on March 17, 2020, sequence number 03-10-20, to define "group" in Rule 1200-14-04-.02 (15) and delete all references not directly related to COVID-19.

I am forwarding a copy of this letter to Robert Greene, Director of Publications with the Secretary of State, to post the request to the administrative register on the Secretary of State's website.

Sincerely,

Martin Daniel,
Representative

cc: Patrick Powell, Legislative Liaison – Department of Health
Robert Greene, Director of Publications - Secretary of State
Vice-Chair Iris Rudder
Representative Kent Calfee
Representative Karen Camper
Representative John Crawford
Representative Bill Dunn
Representative Jeremy Faison
Representative Curtis Halford
Representative G.A. Hardaway
Representative Dan Howell
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