

Department of State
Division of Publications
 312 Rosa L. Parks, 8th Floor Snodgrass Tower
 Nashville, TN 37243
 Phone: 615.741.2650
 Fax: 615.741.5133
 Email: sos.information@state.tn.us

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Sequence Number: 04-20-09
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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Department of Mental Health and Developmental Disabilities
Division:	Office of Licensure
Contact Person:	Karen Edwards
Address:	425 Fifth Avenue North 5 th Floor, Cordell Hull Building Nashville, TN 37243
Phone:	615-532-3648
Email:	Karen.Edwards@state.tn.us

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Gwen Hamer
Address:	425 Fifth Avenue North 5 th Floor, Cordell Hull Building Nashville, TN 37243
Phone:	615-532-6510
Email:	Gwen.Hamer@state.tn.us

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Third Floor Conference Room, Cordell Hull Building		
Address 2:	425 Fifth Avenue North		
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	06/16/2009		
Hearing Time:	1:30 p.m.	<input checked="" type="checkbox"/> CST	<input type="checkbox"/> EST

Additional Hearing Information:

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Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only ONE Rule Number/RuleTitle per row.)

Chapter Number	Chapter Title
0940-05-38	Minimum Program Requirements for Personal Support Services Agencies

Rule Number	Rule Title
0940-05-38-.01	Definitions
0940-05-38-.02	Applications of Rules
0940-05-38-.03	Scope of Personal Support Services Agencies
0940-05-38-.04	Application Fees
0940-05-38-.05	Governance Requirements
0940-05-38-.06	Policies and Procedures
0940-05-38-.07	Personnel Requirements
0940-05-38-.08	Standardized Training and Continuing Education Requirements
0940-05-38-.09	Service Recipient Record Requirements
0940-05-38-.10	Service Recipient Rights

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

0940-05-38-.01 Definitions.

As used in this part, unless the context otherwise requires:

- (1) "Personal Support Services" means one (1) or more of the following services provided to a service recipient, as defined in 0940-05-38-.01(2), in the individual's permanent or temporary residence:
 - (a) Self-care assistance with tasks such as eating, dressing, toileting, bathing, mobility, transfer assistance and other services and supports to maintain health and wellness;
 - (b) Household assistance with tasks such as housekeeping, laundry, meal planning, meal preparation, shopping, bill paying, and use of telecommunication devices;
 - (c) Personal assistance to service recipients to access community activities such as transportation, social, recreational or other personal activities; and/or
 - (d) Education services.
- (2) "Service Recipient" means an individual who:
 - (a) Has substantial limitations in two (2) or more major life activities because of a chronic condition;
 - (b) Receives services in either a permanent or temporary residence; and
 - (c) Depends on personal support services to perform major life activities.
- (3) "Personal Support Services Agency" or "Agency" means a sole proprietorship (someone who owns an unincorporated business by himself or herself), partnership, corporation, limited liability company or limited liability partnership providing personal support services. Agency includes all entities that employ or subcontract with individuals who provide personal support services to service recipients.
- (4) "Personal Support Services Worker" (or "worker") means a person licensed as a personal support services agency, or an employee or an individual subcontracted by a personal support services agency who is providing personal support services under an arrangement between a service recipient and a personal support services agency.
- (5) "Chronic Condition" means a mental and/or physical impairment that is expected to last indefinitely.
- (6) "Education Services" means consultation provided by a registered nurse to the service recipient or primary family caregiver concerning a chronic condition.
- (7) "Hold Out to the Public" means asserting expertise and availability through advertising, public notice, self-promotion, etc.
- (8) "Major Life Activities" means:
 - (a) Self-care;
 - (b) Receptive and expressive language;
 - (c) Learning;
 - (d) Mobility;

- (e) Self-direction;
 - (f) Capacity for independent living; or
 - (g) Economic self-sufficiency.
- (9) "Medication Assistance" means providing medication reminders and opening medication packaging, but does not mean giving the service recipient injections or any form of medication or medication administration that would be only appropriate and acceptable for persons who are authorized to do so by Title 63, Chapter 7. Medication assistance includes, but is not limited to, any of the following:
- (a) Loosening the cap on a pill bottle for oral medication;
 - (b) Opening a pill reminder box if the box is filled by the service recipient or authorized representative or licensed medical personnel practicing within the scope of their license;
 - (c) Placing medication within reach of the service recipient;
 - (d) Holding a service recipient's hand steady to help them with drinking liquid medication;
 - (e) Guiding the service recipient's hand when the individual is applying eye/ear/nose drops and wiping the excess liquid;
 - (f) Helping with a nasal cannula or mask for oxygen, plugging the machine in and turning it on;
 - (g) Applying non-prescription creams and lotions purchased over-the-counter to external parts of the body.
- (10) "Self-administration of Medication" means the ability of a service recipient to take prescribed or over-the-counter medications without assistance from another person.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

0940-05-38-.02 Application of Rules.

- (1) The licensee providing personal support services must comply with and provide services that comply with the following rules:
 - (a) Chapter 0940-05-02 Licensure Administration and Procedures with the exception of 0940-05-02-.05 Fees; and
 - (b) Chapter 0940-05-38 Minimum Program Requirements for Personal Support Services Agencies.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

0940-05-38-.03 Scope of Personal Support Services Agencies.

- (1) These rules apply to all agencies or personal support services workers who:
 - (a) Provide personal support services in the permanent or temporary residence of service recipients who meet the criteria specified in Rule 0940-05-38-.01(2).
- (2) The following are exempt from licensure under this chapter:
 - (a) A person who provides personal support services to only one (1) service recipient and who is not in a business arrangement to provide personal support services to any other service recipient. This exception shall not apply to an individual who holds themselves out to the public as being in the business of personal support services for compensation;

- (b) A person who provides personal support services only to members of the individual's own family;
- (c) A person who provides only housekeeping services to a service recipient and no other assistance with major life activities;
- (d) A person who provides only transportation services and no other assistance with major life activities;
- (e) A person who provides services in homeless shelters;
- (f) A person who provides only delivery services, such as dry-cleaning, food, medication delivery, or medical equipment; and
- (g) Home care organizations licensed under Tennessee Code Annotated, Title 68, Chapter 11, Part 2 as a home care organization which provides personal support services.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

0940-05-38-.04 Application Fees

- (1) The applicant must submit a fee or fees with the application to the Department's Office of Licensure. Each initial and renewal application for licensure must be submitted with the appropriate fee or fees. All fees submitted are non-refundable. The fee rate is based on the number of personal support services workers employed full-time or part-time by the agency applying for the license. The annual fee schedule is as follows:
 - (a) \$150 for one (1) to four (4) personal support services workers;
 - (b) \$500 for five (5) to ten (10) personal support services workers;
 - (c) \$800 for eleven (11) to nineteen (19) personal support services workers;
 - (d) \$1,000 for twenty (20) or more personal support services workers.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

0940-05-38-.05 Governance Requirements.

- (1) The licensee must comply with all federal, state, and local laws, ordinances, rules and regulations.
- (2) The licensee must ensure that the agency is administered and operated in accordance with written policies and procedures.
- (3) The licensee must exercise general direction over the agency and establish policies governing the operation of the agency and the welfare of service recipients.
- (4) The licensee must designate an individual responsible for the operation of the agency.
- (5) The licensee must ensure that the licensed agency serves only service recipients who will not cause the agency to violate its licensed status based on the distinct licensure category.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

0940-05-38-.06 Policies and Procedures.

- (1) The licensee must maintain written policies and procedures that include the following:
 - (a) A description of services provided by the licensee. The description must include

- enrollment and termination criteria;
- (b) An organizational chart which clearly shows or describes the lines of authority;
 - (c) A policy and procedure which outlines the plan of action to be followed when the personal support worker is absent including, but not limited to, notice to the service recipient, the action that must be taken, and the timeframes for action;
 - (d) A schedule of fees when applicable;
 - (e) A statement of service recipient rights and the grievance procedures to be followed when a suspected violation of rights has been reported;
 - (f) A policy which ensures the confidentiality of service recipients' information and which includes the following provisions:
 - 1. The licensee's personal support services workers must comply with applicable confidentiality laws and regulations;
 - 2. The service recipient must not be required to make public statements which acknowledge gratitude to the licensee or for the licensee's services; and
 - 3. Identifiable photographs of service recipients must not be used without the written and signed consent of the individual or the individual's guardian.
 - (g) The plans and procedures to be followed in the event of an emergency including, but not limited to, fire evacuation and natural disaster emergencies;
 - (h) Policy and procedures to be followed in the reporting and investigation of suspected or alleged abuse or neglect of a service recipient, or other critical incidents. The procedures must include provisions for corrective action, if any, to be taken as a result of such reporting and investigation, and reporting to the Department's Office of Licensure and reporting to any authority as required by law;
 - (i) Requirement that personal support services workers comply with procedures for detection and prevention of communicable diseases according to procedures of the Tennessee Department of Health;
 - (j) Receipt and disbursement of money on behalf of service recipients;
 - (k) Access to personal support services workers to discuss any service provided under this chapter;
 - (l) Procedures to be followed if a worker will be providing medication assistance if the licensee provides that service. Written policy must minimally include the following elements:
 - 1. Medication assistance must be provided only after written authorization has been obtained from the service recipient or the service recipient's authorized representative.
 - 2. Medication assistance training must be provided to personal support services workers prior to providing assistance and training must be documented in the personal support service worker's record.
 - 3. Personal support workers must have procedures for collecting information about medications taken by service recipients.
 - (m) Policies to ensure that licensees or personal support services workers providing transportation to service recipients meet the following requirements:

1. All vehicles must be maintained and operated in a safe manner;
2. All licensees or personal support services workers providing transportation must possess an appropriate driver's license and documentation of such license must be maintained in the licensee's records; and
3. All vehicles used for service recipient transportation and owned by the licensee or personal support services worker must be adequately covered by vehicular liability insurance for personal injury to occupants of the vehicle, and documentation of such insurance must be maintained in the facility's records.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

0940-05-38-.07 Personnel Requirements.

- (1) The licensee must maintain a personnel file for each personal support services worker with the following information:
 - (a) A job description including the employment requirements and job responsibilities for each staff position held;
 - (b) Verification that the worker meets the respective employment requirements for each position held;
 - (c) Evidence of a criminal background check, as required by T. C. A. § 33-2-1202;
 - (d) Status on the Tennessee Elderly or Vulnerable Abuse Registry maintained by the Department of Health;
 - (e) Status on the state's sexual offender registry;
 - (f) The worker's date of birth;
 - (g) Performance evaluation reports evaluating, at a minimum, the ability of personal support services workers to provide daily supports to service recipients; and
 - (h) A worker notice that outlines the general relationship between an agency and the personal support services worker that includes the following:
 1. The status of the personal support services agency as an employer or contractor of services;
 2. The responsibility of the personal support services agency for the payment of the personal support services worker's wages, taxes, social security, workers compensation and unemployment compensation payments, and overtime pay for hours worked in excess of forty (40) hours in a week; and
 3. Duties, responsibilities, obligations and legal liabilities of the agency and the service recipient including, but not limited to, insurance and personnel management.
- (2) The licensee must have written personnel policies. The personnel policies must include the following:
 - (a) All personal support services workers must be eighteen (18) years of age or older.
 - (b) All personal support services workers must practice infection control procedures and standard precautions that will protect the service recipient from infectious diseases.
 - (c) All personal support services workers must submit to a criminal background check within ten (10) days of employment or within ten (10) days of a change of responsibilities that

includes direct contact with or direct responsibility for service recipients, as required by T.C.A. § 33-2-1202.

- (d) The status of every personal support services worker on the Tennessee Elderly or Vulnerable Abuse Registry maintained by the Department of Health must be checked prior to direct contact with service recipients.
 - (e) The status of every personal support services worker on the Tennessee Sexual Offender Registry must be checked prior to direct contact with service recipients.
 - (f) Personal support services workers must demonstrate the following prior to providing personal support services:
 - 1. Language skills sufficient to read and understand instructions; prepare and maintain written reports and records;
 - 2. Language skills sufficient to communicate with the service recipient; and
 - 3. Documented training specific to meeting individual service recipient needs in the areas of self-care, household management and community living, and methodologies for service delivery.
 - (g) Personal support services workers must have access to consultation for any of the services provided under this chapter.
- (3) The licensee must have proof of liability insurance coverage for the agency and others who provide personal support services.
 - (4) The licensee must maintain a current roster of all personal support workers at all times including workers kept on an on-call or back-up list.

T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

0940-05-38-.08 Standardized Training and Continuing Education Requirements.

- (1) The licensee must ensure and document that:
 - (a) Individuals who provide personal support services demonstrate basic competency in the following skill/knowledge areas within the first 30 days of employment/contract:
 - 1. Observing, reporting and documenting changes in service recipient's daily living skills;
 - 2. Abuse, neglect, exploitation, detection, reporting and prevention;
 - 3. Service recipient rights;
 - 4. Universal health precautions, including infection control;
 - 5. How to assist service recipients with personal hygiene;
 - 6. Service recipient safety; and
 - 7. Procedures to be followed in the event of an emergency or disaster that at least includes emergency transportation, emergency medical care and staff coverage in such events;
 - (b) Individuals who provide medication assistance receive documented training in medication assistance performed by or under the general supervision of a registered nurse and consistent with T.C.A. § 63-7-102; and

- (c) Individuals who provide personal support services receive training on job related topics at least annually.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

0940-05-38-.09 Service Recipient Record Requirements.

- (1) The licensee must ensure that each service recipient's record includes the following information:
 - (a) Name, address, telephone number, gender, and date of birth;
 - (b) Date of service enrollment;
 - (c) Name, address, and telephone number of an emergency contact person;
 - (d) Written fee agreement, when applicable. If the licensee charges fees for personal support services, a written agreement dated and signed by the service recipient or the individual's legal representative (conservator, parent, guardian or legal custodian) or person paying for services prior to the provision of services. The agreement must include at least the following information:
 - 1. The fee or fees to be paid by the service recipient,
 - 2. The services covered by such fees, and
 - 3. Any additional charges for services not covered by the basic service fee.
 - (e) Documentation that the service recipient or someone acting on behalf of the service recipient has been informed of the service recipient's rights and responsibilities and the agency's general rules affecting service recipients;
 - (f) A written service plan based on a needs assessment which indicates type, frequency, duration, and amount of services to be provided;
 - (g) Consent for services by the service recipient or conservator, parent, guardian or legal custodian, or attorney-in-fact under a durable power of attorney (DPOA) for health care, when applicable;
 - (h) If applicable, address, phone number or e-mail address to reach the service recipient's conservator, parent, guardian or legal custodian, surrogate decision maker under T.C.A. § 33-3-219, or attorney-in-fact under a durable power of attorney (DPOA) for health care;
 - (i) Documentation of party responsible for payment of services;
 - (j) A record of services actually delivered with dates and times documented;
 - (k) Documentation of medical problems, illnesses and treatments, accidents, seizures, adverse incidents and follow-up, while the service recipient receives services;
 - (l) Documentation of all funds received and disbursed on behalf of the service recipient;
 - (m) An alternate plan for staffing in case of absence of the personal support services worker.
 - (n) Written authorization by the service recipient or the service recipient's authorized representative if the agency is providing medication assistance;
 - (o) Written documentation that the service recipient has evaluated the quality of personal support services provided at least semi-annually; and
 - (p) A written consumer notice outlining general service responsibilities as well as general notification of the agency's responsibilities as an employer or contractor provided to

service recipients before beginning service, which must include, at a minimum the duties, responsibilities, obligations and legal liabilities of the personal support services agency; the personal support services worker; and the service recipient. The description must clearly set forth the service recipient's responsibility, if any, for the following:

1. Day to day supervision of the personal support services worker;
2. Assigning duties to the personal support services worker;
3. Hiring, firing and discipline of the personal support services worker;
4. Provision of equipment or materials for use by the personal support services worker;
5. Performing a criminal background check on the personal support services worker;
6. Checking the personal support services worker's references; and
7. Ensuring credentials and appropriate licensure/certification of a personal support services worker.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

0940-05-38-.10 Service Recipient Rights.

- (1) The following rights must be afforded to all individuals receiving personal support services from the licensee:
 - (a) Service recipients have the right to be fully informed before the initiation of services about their rights and responsibilities and about any limitation on these rights imposed by the rules of the licensee. The licensee must ensure that the service recipient is given oral and/or written rights information that includes at least the following:
 1. A statement of the specific rights guaranteed the service recipient by these rules and applicable state laws;
 2. A description of the licensee's grievance procedures;
 3. A listing of available advocacy services; and
 4. A copy of all agency rules and regulations pertinent to the service recipient. The information must be presented in a manner that promotes understanding by the service recipient of his or her rights, and the individual must be given an opportunity to ask questions about the information. If the service recipient is unable to understand the information at the time of admission to service but later becomes able to do so, the information must be presented to the service recipient at that time. If a service recipient is likely to continue indefinitely to be unable to understand the information, the licensee must promptly attempt to provide the required information to a guardian or other appropriate person or an agency responsible for protecting the service recipients' rights.
 - (b) Service recipients have the right to voice grievances to the licensee and to outside representatives of their choice with freedom from restraint, interference, coercion, discrimination, or reprisal;
 - (c) Service recipients have the right to be treated with consideration, respect and full recognition of their dignity and individuality;
 - (d) Service recipients have the right to be protected by the licensee from neglect, from physical, verbal, and emotional abuse (including corporal punishment), and from all forms

of exploitation; and

- (e) Service recipients have the right to be assisted by the licensee in the exercise of their civil rights.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

Repeals

Chapter 0940-05-38 Minimum Program Requirements for Personal Support Services Agencies is repealed in its entirety.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.



Date: 4/28/09

Signature: [Handwritten Signature]

Name of Officer: Cynthia C. Tyler

Title of Officer: Director, Office of Legal Counsel

Subscribed and sworn to before me on: April 28, 2009

Notary Public Signature: [Handwritten Signature]

My commission expires on: July 25, 2009

Department of State Use Only

Filed with the Department of State on: April 30, 2009

[Handwritten Signature]

Tre Hargett
Secretary of State