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Sequence Number: 06-22-23  
Rule ID(s): 9889  
File Date: 6/13/2023  
Effective Date: 9/11/2023

## Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

**Agency/Board/Commission:** Department of Children's Services  
**Division:** Office of Child Safety  
**Contact Person:** Jim Layman  
**Address:** 315 Deaderick St., 10<sup>th</sup> Floor, Nashville, TN  
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**Revision Type (check all that apply):**

☐ Amendment  
☒ New  
☐ Repeal  
☐ Content based on previous emergency rule filed on \_\_\_\_\_  
☐ Content is identical to the emergency rule

**Rule(s)** (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 Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below.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
0250-07-02	Drug Screening for Individuals Receiving Services from the Department of Children's Services
Rule Number	Rule Title
0250-07-02-.01	Definitions
0250-07-02-.02	Reasonable Suspicion and Requests for Drug Screens
0250-07-02-.03	Administering and Conducting Drug Screens
0250-07-02-.04	Types of Drug Screens Used by the Department of Children's Services

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>.

## NEW RULE CHAPTER AND NUMBER

Chapter 0250-07-02, Drug Screening for Individuals Receiving Services from the Department of Children's Services, is added as a new Rule Chapter within the Rules of the Tennessee Department of Children's Services such that the new Rule Chapter Shall Read:

### RULES OF THE TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES

#### CHAPTER 0250-07-02

#### Drug Screening for Individuals Receiving Services from the Department of Children's Services

##### Table of Contents

0250-07-02-.01 Definitions	0250-07-02-.03 Administering and Conducting Drug Screens
0250-07-02-.02 Reasonable Suspicion And Request for Drug Screens	0250-07-02-.04 Types of Drug Screens Used by the Department of Children's Services

#### Rule 0250-07-02-.01 Definitions

- (1) "Adulteration" means to invalidate a specimen by adding another substance (e.g. adding water or a chemical to the specimen; tampering).
- (2) "Chain of Custody" means the action of documenting the collection, management, and storage of a specimen from the moment the individual provides the specimen to the final destination of the specimen and the review and reporting of the final test result.
- (3) "Confirmatory Screening" means a second analytical procedure to identify the presence of alcohol or a specific drug or its metabolites in a specimen.
- (4) "DCS" or "Department" means the Tennessee Department of Children's Services.
- (5) "Direct Observation" means the visualization by the person administering a urine drug screen of the urine stream leaving the body of the individual and entering the screen cup.
- (6) "Drug Metabolite" means the byproduct of the human body breaking down or metabolizing a drug into a different substance.
- (7) "Drug Screening" means the use of various biologic sources to identify the presence of one (1) or more drugs of use.
- (8) "Drug Testing" means a technical analysis of a biological specimen to determine the presence or absence of specified parent drugs or their metabolites.
- (9) "Indirect Observation" means presence of the person administering a drug screen in the immediate area, balancing the need for privacy against prudent measures for prevention of adulteration or substitution of samples.
- (10) "Individual" means a person receiving or participating in non-custodial, in-home, and/or custodial services with DCS.
- (11) "Reasonable Suspicion" means a belief based on specific, objective, articulable facts and the reasonable inferences that may be drawn from those facts, or knowledge sufficient under the circumstances to cause an ordinary prudent and cautious person to believe the existence of a fact or condition.

- (12) "Specimen" means a biological sample used for drug testing purposes, including, but not limited to, urine, hair, blood, breath, meconium, sweat, and/or oral fluid/saliva.
- (13) "Substance Use Assessment" means a preliminary systematic screening to evaluate the likelihood that an individual is abusing or misusing substances or has a substance use disorder. Screening is used to identify whether formal assessment by a licensed behavioral health clinician is necessary. Screening is intended to identify individuals at risk for or actually experiencing harm associated with the use of alcohol and/or drugs. Any DCS employee with appropriate training can administer a drug screen.

Authority: T.C.A. §§ 37-1-406; 37-5-105; and 37-5-106.

**Rule 0250-07-02-.02 Reasonable Suspicion and Request for Drug Screens**

- (1) DCS employees may request a drug screen from an individual when reasonable suspicion of alcohol abuse, illegal drug use, or abuse of legal drugs exists. Examples of reasonable suspicion include, but are not limited to:
  - (a) A DCS employee witnesses observable behavior such as direct observation of drug use or alcohol abuse, possession of a drug or underage possession of alcohol, or the physical symptoms of being under the influence of a drug or alcohol;
  - (b) The individual exhibits a pattern of abnormal conduct or erratic behavior;
  - (c) The individual is a suspect or has been convicted in a criminal investigation involving drug possession, drug use, drug distribution/trafficking, or alcohol abuse or has been recently arrested for a drug-related charge or charge involving the abuse of alcohol;
  - (d) A DCS employee learns information indicating the individual may have tampered with a drug or alcohol screen on an open or recent case;
  - (e) The individual has drug paraphernalia in his or her possession or in the home;
  - (f) A DCS employee has reason to believe that the individual is enabling drug use or alcohol abuse;
  - (g) The individual's social media contains evidence suggestive of alcohol abuse or drug use (e.g., pictures of individuals appearing intoxicated); or
  - (h) A DCS employee receives information, from a reliable and credible source or that is independently corroborated, that the individual is using drugs or abusing alcohol or that any of the above-listed factors exist.
- (2) DCS employees may request a drug screen from a household member of an individual when reasonable suspicion of alcohol abuse, illegal drug use, or abuse of legal drugs exists, and the household member is known or suspected to be a caregiver or has unsupervised access to the child.
- (3) DCS employees may request a drug screen from an individual to comply with a court order.
- (4) DCS employees generally do not request a drug screen when:
  - (a) The individual is already being randomly drug screened within the context of probation or substance use treatment, and both of the following are present:
    - 1. DCS has access to records of the individual's drug screens; and
    - 2. There is no reasonable suspicion the individual has recently relapsed or tampered with the screen.
  - (b) The individual is receiving inpatient care (e.g., hospital, substance use treatment provider), and both of the following are present:
    - 1. Drug screens are provided as part of the individual's care; and



2. DCS has access to records of the individual's drug screens.
- (c) If the DCS Child Protective Services case revealed no evidence of substance use, and the case is preparing to close as "No Services Needed" or "Unsubstantiated."
- (d) Nothing in this paragraph (4) prevents a DCS employee from conducting a drug screen on an individual if reasonable suspicion exists.

Authority: T.C.A. §§ 37-1-406; 37-5-105; and 37-5-106.

Rule 0250-07-02-.03 Administering and Conducting Drug Screens

- (1) When reasonable suspicion to request a drug screen of an individual or a court order requiring DCS to drug screen an individual exists, a DCS employee will attempt to administer a drug screen as soon as possible or as required by the court order.
- (2) When administering any drug screen, a DCS employee shall:
  - (a) Obtain consent for the drug screen from the individual on a form developed by DCS;
  - (b) Attempt to verify the identity of the individual being tested by requesting to see state-issued photo identification or other recognized identification, if testing an individual with whom the DCS employee is not familiar;
  - (c) Ask the individual about their drug use, including history, frequency, types of substances, and methods of use. This allows the individual the opportunity to self-disclose what the drug test results are likely to reveal. DCS employees shall further ask the individual about medical conditions, prescriptions, and use of over-the counter drugs;
  - (d) Follow all manufacturer instructions for the individual test being used;
  - (e) Follow universal precautions when handling all specimens, including wearing disposable gloves;
  - (f) Avoid administering a drug test to an individual in front of a child or youth whenever possible and practicable; and
  - (g) Complete a form developed by DCS memorializing the results of the drug test.
- (3) When a DCS employee administers a urine drug screen (UDS), the employee shall additionally:
  - (a) Provide the individual with a non-reusable, sealed container for specimen collection;
  - (b) Examine the specimen for signs of adulteration, as evidenced through evaluation of factors including, but not limited to, one or more of the following:
    1. Temperature;
    2. Color or appearance;
    3. Nitrites;
    4. Oxidants;
    5. Specific Gravity;
    6. pH level; and/or
    7. Creatinine.
  - (c) Ensure that when directly or indirectly observing specimen collection for a urine drug screen, the



following conditions exist:

1. The individual consents to the specimen collection; or
  2. A court order requires it.
- (d) Follow a chain of custody collection method and submit a specimen for confirmatory screening when one of the following occur:
1. A drug screen will likely result in a court action;
  2. The individual submitting the specimen disputes the results in writing on a form developed by DCS;
  3. A court order requires such confirmatory screening; or
  4. A DCS supervisor has reasonable suspicion to believe the drug screening process was adulterated or otherwise inaccurate. A DCS supervisor may choose not to seek confirmatory screening if the individual with a positive drug screen has provided a clear, detailed statement of their substance use, and the statement is consistent with the results of the UDS.
  5. Nothing in this paragraph (d) shall be construed to require confirmatory screening in every instance of a positive drug screen.
- (e) Take the following additional precautions when screening in a home environment:
1. Avoid administering a drug screen to an individual in front of a child/youth whenever possible and practicable; and
  2. With appropriate consent, assess the environment where the drug screen is to be administered to ensure no medications, adulterants, or other contaminants are present.
- (f) Take the following additional precautions when screening at a DCS office or public location (e.g., a court or police precinct):
1. Avoid administering a drug screen to an individual in front of a child/youth whenever possible and practicable; and
  2. Display efforts to provide as much privacy as possible, for instance, by using a single restroom environment or a large restroom stall.
- (4) DCS employees shall do the following to help avoid the tampering of drug screens:
- (a) With appropriate consent and prior to administering the screen, evaluate the immediate vicinity where the drug screen will occur. Look for chemicals or other supplies that could be used to adulterate the screen.
  - (b) If indirectly observing the drug screen, instruct the individual not to flush the commode or run water until the DCS employee has received the specimen.
- (5) After the result has been interpreted and a DCS form has been completed, the specimen and screening supplies may be discarded, barring any need to follow chain of custody collection methods.
- (6) If an individual does not provide a specimen for a urine drug screen, the individual may be offered an opportunity to provide a saliva specimen through use of an oral swab drug screening kit. These kits shall follow chain of custody collection methods and shall be submitted to a laboratory for confirmatory screening.
- (7) If an individual refuses a drug screen, the DCS employee shall document the refusal on a form developed by the Department.

Authority: T.C.A. §§ 37-1-406; 37-5-105; and 37-5-106.

Rule 0250-07-02-.04 Types of Drug Screens Used by the Department of Children's Services

- (1) Four (4) types of drug screens commonly, but not exclusively, used by DCS are:
  - (a) Urine analysis;
  - (b) Hair follicle analysis;
  - (c) Saliva analysis; and
  - (d) Nail bed analysis.
- (2) Generally, drug screening with urine or saliva specimens is the most readily available and cost-effective method. Under some circumstances, including, but not limited to, suspicion of an individual tampering with drug screens or being evasive with efforts to drug screen, an alternative method of drug screening may be appropriate. Alternative methods of drug screening include, but are not limited to, the following screens:
  - (a) Hair follicle analysis;
  - (b) Fingernail bed analysis;
  - (c) Extended urine panel analysis; or
  - (d) Medical review of a drug screen.

Authority: T.C.A. §§ 37-1-406; 37-5-105; and 37-5-106

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Children's Services (board/commission/other authority) on May 16, 2023, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: October 25, 2022

Rulemaking Hearing(s) Conducted on: (add more dates). January 9, 2023

Date: 5-15-2023

Signature: Margie Quin

Name of Officer: Margie Quin

Title of Officer: Commissioner, Department of Children's Services

Agency/Board/Commission: Department of Children's Services

Rule Chapter Number(s): 0250-07-02

All rulemaking hearing 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.

Jonathan Skrametti  
Jonathan Skrametti  
Attorney General and Reporter

6-8-23

Date

#### Department of State Use Only

Filed with the Department of State on: 6/13/2023

Effective on: 9/11/2023

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Jun 13 2023, 1:44 pm

Secretary of State  
Division of Publications

Tre Hargett  
Tre Hargett  
Secretary of State



**Public Hearing Comments**

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

The Department received no public comments on these rules.

**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.

These proposed rules concern drug screening procedures for individuals receiving services from the Department of Children's Services and will have no impact on small business.

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

These proposed rules will have no projected financial impact on local governments.



### **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 new rules provide standardized procedures for drug screening of individuals receiving services from the Department of Children's Services. The new rules include:

- Commonly used definitions relating to drug screening procedures
- Processes for administering drug screens to individuals
- Steps to determine reasonable suspicion to conduct a drug screen
- Types of drug screens used by the Department

- (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;

Tenn. Code Ann. §§ 37-5-105 and 37-5-106 authorize this rule promulgation. Tenn. Code Ann. §§ 37-5-105 specifically authorizes the Department to promulgate rules relating to drug testing. Tenn. Code Ann. § 37-1-406 requires the Department to conduct investigations of child abuse and neglect and to conduct an assessment of a child's household, which may include drug testing.

- (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;

Individuals receiving services from the Department are primarily impacted by these rules. Courts overseeing cases involving the Department and Department service recipients are impacted as well. Standardizing procedures relating to drug screening benefits these entities. Neither of these entities have voiced support or opposition to the rule.

- (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;

This rule is anticipated to have no impact on state and local government revenues and expenditures.

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

Pierce Beckham, Director of System Integration and Innovation  
Sammi Maifair, Deputy General Counsel  
Jim Layman, Legislative Director

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

Pierce Beckham, Deputy Chief Operating Officer  
Sammi Maifair, Deputy General Counsel  
Jim Layman, Legislative Director

- (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

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

No additional information.