

**Department of State**  
**Division of Publications**  
 312 Rosa L. Parks, 8th Floor Snodgrass/TN Tower  
 Nashville, TN 37243  
 Phone: 615.741.2650  
 Email: publications.information@tn.gov

**For Department of State Use Only**

Sequence Number: 08-11-15  
 Notice ID(s): 2345  
 File Date: 08/14/15

# Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

<b>Agency/Board/Commission:</b>	Tennessee Department of Mental Health and Substance Abuse Services
<b>Division:</b>	Office of Licensure and Review
<b>Contact Person:</b>	Kurt Hippel
<b>Address:</b>	5 <sup>th</sup> Floor, Andrew Jackson Building, 500 Deaderick Street, Nashville, TN 37243
<b>Phone:</b>	615-532-6520
<b>Email:</b>	Kurt.Hippel@tn.gov

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:

<b>ADA Contact:</b>	Gwen Hamer
<b>Address:</b>	6 <sup>th</sup> Floor, Andrew Jackson Building, 500 Deaderick Street, Nashville, TN 37243
<b>Phone:</b>	615-532-6510
<b>Email:</b>	Gwen.Hamer@tn.gov

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

Address 1:	Andrew Jackson Building, Ground Floor Hearing Room		
Address 2:	500 Deaderick Street		
City:	Nashville		
Zip:	37243		
Hearing Date :	10/8/2015		
Hearing Time:	9:30 a.m.	<input checked="" type="checkbox"/> CST/CDT	

**Additional Hearing Information:**

Please allow enough time to go through security upon entry to the building. Identification is required.

**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title 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	Application of Rules

0940-05-38-.03	Scope of Personal Support Services Agencies
0940-05-38-.04	Application
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.

- (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, acute episode of illness or injury age, physical or other disability;
  - (b) Receives services in either a permanent or temporary residence; and
  - (c) Depends on personal support services to perform major life activities, but does not require nursing level services to be provided in connection with an acute episode of illness or injury.
- (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 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 only be 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 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 cream 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, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404 and 33-2-407.

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

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

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404 and 33-2-407.

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 T.C.A., Title 68, Chapter 11, Part 2 as a home care organization.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.04 Application.

- (1) To provide personal support services, an agency needs a license from either the Department of Mental Health and Substance Abuse Services or the Department of Intellectual and Developmental Disabilities.
- (2) An agency licensed by either Department may provide personal support services to individuals with physical or other disabilities.
- (3) An agency seeking an initial license as a personal support service agency must submit a written attestation at the time of application acknowledging the categorization of the majority of its client population base, as described in (a) and (b) below. The written attestation shall be on a form developed by the department to whom application for a license is made.
  - (a) An agency with 50% or more of its client base being aged and/or having a diagnosis of mental illness and/or substance abuse should obtain a license from the Department of Mental Health and Substance Abuse Services.
  - (b) An agency with 50% or more of its client base having a diagnosis of developmental disability or intellectual disability should obtain a license from the Department of Intellectual and Developmental Disabilities.
- (4) After January 1, 2016, any agency seeking renewal of a personal support services license need only make application with the department that licenses 50% or more of its client base, as described in sections (3)(a) and (b) above. The renewing agency shall submit with the renewal application a written attestation acknowledging the categorization of the majority of its client population base.
- (5) No license shall be issued until the appropriate fee or fees are submitted by the agency seeking an initial or renewal license, as set forth in Rule 0940-05-02-.05. All fees submitted are non-refundable.
- (6) The agency should submit to the licensing department a list of the counties in which they provide services and the address at which the agency maintains its employee and service recipient records.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.05 Governance Requirements.

- (1) The licensee shall comply with all federal, state, and local laws, ordinances, rules and

regulations.

- (2) The licensee shall ensure that the agency is administered and operated in accordance with written policies and procedures including, but not limited to, those specified in Rule 0940-05-38-.06.
- (3) The licensee shall exercise general direction over the agency and establish policies governing the operation of the agency and the welfare of service recipients.
- (4) The licensee shall designate an individual responsible for the operation of the agency.
- (5) The licensee shall 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, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

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

- (1) The licensee shall maintain written policies and procedures that include the following:
  - (a) A description of services provided by the licensee. The description shall 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 shall 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 shall comply with applicable confidentiality laws and regulations;
    2. The service recipient shall 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 shall not be used without the written and signed consent of the individual or the individual's legal guardian and/or conservator.
  - (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 shall 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 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 by department licensure staff to personal support services workers to discuss investigation of 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 shall minimally include the following elements:
  - 1. Medication assistance shall be provided only after written authorization has been obtained from the service recipient or the service recipient's authorized representative.
  - 2. Medication assistance training shall be provided to personal support services workers prior to providing assistance and training shall be documented in the personal support service worker's record.
  - 3. Personal support workers shall 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 shall be maintained and operated in a safe manner;
  - 2. All licensees or personal support services workers providing transportation shall possess an appropriate driver's license from the Tennessee Department of Safety and documentation of such license shall 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 shall be adequately covered by vehicular liability insurance for personal injury to occupants of the vehicle, and documentation of such insurance shall be maintained in the facility's records.
- (n) Policies to address use of devices such as a hoist lift or gait belt, after training, to assist the service recipient in getting out of or into bed, a chair, toilet or shower but not as part of a therapeutic regimen.
- (o) Policies to address categorization of the majority (over fifty-percent (50%)) of the agency's client population base.
- (p) Policy that the agency will cooperate with the department when investigating any case of alleged abuse, neglect, mistreatment, misappropriation or exploitation of a service recipient.
- (q) Policy that an alternate plan for staffing will be prepared in case of absence or the assigned personal support services worker.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.07 Personnel Requirements.

- (1) The licensee shall maintain a personnel file for each personal support services worker with the following information:
  - (a) A written, signed and dated 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) Evidence that the worker's status on the Tennessee registry of persons who have abused, neglected or misappropriated the property of vulnerable individuals ("Abuse Registry") maintained by the Department of Health, has been checked. Pursuant to T.C.A. §68-11-1004(b), no employee or volunteer who is listed on the Abuse Registry may be hired or otherwise permitted to provider services;
  - (e) Evidence of the worker's status on the state's sexual offender registry. After January 1, 2016, no individual or volunteer who is listed on the state's sexual offender registry may be hired or otherwise permitted to provide services;
  - (f) The worker's date of birth;
  - (g) Annual 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.
  - (i) The personal support service worker's work history containing a continuous description of activities over the past five (5) years.
  - (j) Personal references from at least three (3) individuals, one of whom shall have known the personal support service worker/applicant for at least five (5) years.
- (2) The licensee shall have written personnel policies. The personnel policies shall, at a minimum, address the following:
- (a) That all personal support services workers shall be eighteen (18) years of age or older.
  - (b) That all personal support services workers shall practice infection control procedures and standard precautions that will protect the service recipient from infectious diseases.
  - (c) That all personal support services workers shall submit to a criminal background check every two (2) years or 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) That evidence of the status of every personal support services worker on the Tennessee registry of persons who have abused, neglected or misappropriated the property of vulnerable individuals ("Abuse Registry") maintained by the Department of Health shall be checked annually and prior to direct contact with service recipients.
  - (e) That evidence of the status of every personal support services worker on the Tennessee Sexual Offender Registry shall be checked annually and prior to direct contact with



service recipients.

- (f) That the personal support services workers shall 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 area of self-care, household management and community living, and methodologies for service delivery.
- (g) That personal support services workers shall have access to consultation for any of the services provided under this chapter. Consultation may include providing the personal support service worker access to or consultation with a registered nurse, other agency staff or the primary family caregiver to assist the staff in providing personal support services.
- (h) That the personal support service worker shall neither borrow, receive nor take funds or other personal property from the service recipient.
- (3) The licensee shall have proof of liability insurance coverage for the agency, workers and others who provide personal support services.
- (4) The licensee shall maintain a current roster of all personal support workers at all times including workers kept on an on-call or back-up basis.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

0940-05-38-.08 Standardization, Training and Continuing Education Requirements.

- (1) The licensee shall ensure that each service recipient's record includes at least 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. If the licensee charges fees for personal support services, a written agreement dated and signed by the service recipient or the service recipient's legal representative (conservator, parent, guardian or legal custodian) or person paying for services prior to the provision of services. The written agreement shall 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) Written acknowledgement that the service recipient or service recipient's legal representative (conservator, parent, guardian or legal custodian) has been informed of the service recipient's rights and responsibilities and the agency's general rules affecting the service recipients;
  - (f) A written service plan based on a needs assessment which indicates type, frequency,

duration, and amount of personal support services provided to assist the service recipient in performing major life duties.

- (g) Consent for services by the service recipient or service recipient's legal representative (conservator, parent, guardian, legal custodian), surrogate decision maker under T.C.A. § 33-3-219 or attorney-in-fact under a durable power of attorney for health care, when applicable;
- (h) If applicable, address, phone number or e-mail address to reach the service recipient's legal representative (conservator, parent, guardian or legal custodian) or surrogate decision maker under T.C.A. § 33-3-219 or attorney-in-fact under a durable power of attorney 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. Each agency shall develop an evaluation form for the service recipient, or legal representative of the service recipient, to fill out and sign to acknowledge this requirement has occurred.
- (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 shall 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 shall 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; and
- (q) Copy of legal document granting another individual or corporation authority to act as the service recipient's legal representative/conservator/power of attorney/durable power of attorney for health care/mental health care.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

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

- (1) The following rights shall 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 shall 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 shall be presented in a manner that promoted understanding by the service recipient of his or her rights, and the individual shall 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 shall be presented to the service recipient at that time. If the service recipient is likely to continue indefinitely to be unable to understand the information, the licensee shall 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, or reprisal.
  - (d) Service recipients have the right to be protected by the licensee from neglect, mistreatment, from physical, verbal, and emotional abuse (including corporal punishment), and from all forms of misappropriation and/or exploitation.
  - (e) Service recipient have the right to be assisted by the licensee in the exercise of their civil rights.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, and 33-2-407.

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; §§ 33-2-301 and 302; and §§ 33-2-403, 404, 407, and 409.

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: 8-14-2015

Signature: [Handwritten Signature]

Name of Officer: Zachary S. Griffith

Title of Officer: General Counsel

Subscribed and sworn to before me on: August 14, 2015

Notary Public Signature: Rebecca Earls Calvert

My commission expires on: March 20, 2016

**Department of State Use Only**

Filed with the Department of State on: 08/14/15

[Handwritten Signature]

Tre Hargett  
Secretary of State

RECEIVED  
2015 AUG 14 AM 11:42  
SECRETARY OF STATE