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Sequence Number: 12-11-16
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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.

Agency/Board/Commission:	Tennessee Department of Human Services
Division:	Tennessee Business Enterprises
Contact Person:	Paula Knisley
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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:	Jeffrey Blackshear
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Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Tennessee Tower Building, Conference Room A – 3rd Floor		
Address 2:	312 Rosa L. Parks Ave.		
City:	Nashville		
Zip:	37243		
Hearing Date :	Tuesday, February 7, 2017		
Hearing Time:	5:30 PM	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	One Commerce Square Building, Training Room 1 – 5th Floor		
Address 2:	40 South Main St.		
City:	Memphis		
Zip:	38103		
Hearing Date :	Tuesday, February 7, 2017		
Hearing Time:	5:30 PM	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	Tennessee State Office Building on the campus of Pellissippi State Community College, Conference Room A – 3rd Floor		
Address 2:	7175 Strawberry Plains Blvd.		
City:	Knoxville		
Zip:	37914		
Hearing Date :	Tuesday, February 7, 2017		
Hearing Time:	5:30 PM	<input type="checkbox"/> CST/CDT	<input checked="" type="checkbox"/> EST/EDT

Address 1:	Riverfront Building, Conference Room – 2nd Floor		
Address 2:	1301 Riverfront Pkwy		
City:	Chattanooga		

Zip:	37402		
Hearing Date :	Wednesday, February 8, 2017		
Hearing Time:	5:30 PM	___ CST/CDT	<u>X</u> EST/EDT

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. 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
1240-06-01	General Rules
Rule Number	Rule Title
1240-06-01-.02	Definitions

Chapter Number	Chapter Title
1240-06-03	Probationary Periods
Rule Number	Rule Title
1240-06-03-.02	Disciplinary Probation

Chapter Number	Chapter Title
1240-06-04	Classification and Certification
Rule Number	Rule Title
1240-06-04-.01	Facility Classifications
1240-06-04-.02	Managers' Certification Requirements

Chapter Number	Chapter Title
1240-06-05	Assignment of Managers
Rule Number	Rule Title
1240-06-05-.01	Promotions
1240-06-05-.02	Bid Announcements
1240-06-05-.03	Transfers
1240-06-05-.06	Ready-For-Employment-List
1240-06-05-.07	Temporary Managers
1240-06-05-.08	Marginal Facilities

Chapter Number	Chapter Title
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1240-06-07-.01	Entry Level Training
1240-06-07-.02	Certification Training
1240-06-07-.04	Upward Mobility
1240-06-07-.05	Statewide Managers' Meeting

Chapter Number	Chapter Title
1240-06-08	Vending Machine Income from Non-Federal Property

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1240-06-08-.02	Maintenance and Repair

Chapter Number	Chapter Title
1240-06-09	Setting Aside Funds

Rule Number	Rule Title
1240-06-09-.01	Set-Aside Assessments
1240-06-09-.02	Purpose for Which Set-Aside Assessments May Be Used.
1240-06-09-.03	Requirements for Financial Reporting

Chapter Number	Chapter Title
1240-06-10	Facility Operational Requirements

Rule Number	Rule Title
1240-06-10-.01	Days and Hours of Operation
1240-06-10-.04	Standards of Performance
1240-06-10-.11	Record Keeping and Reporting
1240-06-10-.12	Business Plan
1240-06-10-.13	Performance Bond

Chapter Number	Chapter Title
1240-06-12	Committee of Blind Vendors

Rule Number	Rule Title
1240-06-12-.03	Election of the Committee
1240-06-12-.04	Committee Meetings

Chapter Number	Chapter Title
1240-06-13	Priority for the Establishment of Vending Facilities

Rule Number	Rule Title
1240-06-13-.01	Priority for the Establishment of Vending Facilities on Public Properties in Tennessee

Chapter Number	Chapter Title
1240-06-16	Health Insurance and Retirement Program

Rule Number	Rule Title
1240-06-16-.01	Health Insurance Eligibility

Chapter 1240-06-01
General Rules

Amendments

Rule 1240-06-01-.02 Definitions is amended by deleting the definition for On-the-job training in its entirety, deleting the definition for Priority in its entirety and substituting instead a new definition for Priority, and adding new definitions for Cafeteria, Internship, TBE Director, Unassigned, and Upward Mobility, and renumbering the paragraphs accordingly, so that as amended, 1240-06-01-.02 shall read as follows:

1240-06-01-.02 Definitions.

- (1) Active Participation – an ongoing process of negotiations between the state licensing agency and the Committee to achieve joint planning and approval of program policies, standards and procedures affecting the overall operation of the vending facilities program, prior to their implementation by the Agency. The implementation of agreed-upon policies, standards and procedures affecting the overall operation of the vending facilities program, shall be subject to review by the Committee. It is understood that the Agency bears final authority and responsibility for the administration and operation of the vending facilities program, including the assurance of continuing, active participation with the Committee.
- (2) Agency – the Tennessee Department of Human Services.
- (3) Area Representative – a manager or managers who are elected to the Committee of Blind Vendors by his/her peers on a regional basis.
- (4) Blind Person – a person who, after examination by a physician skilled in the diseases of the eye, has been determined to have not more than 20/200 control visual acuity in the better eye with correcting lenses, or an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty (20) degrees.
- (5) Cafeteria – A food dispensing facility capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where the customer serves himself from displayed selections. A cafeteria may be fully automatic, or some limited waiter or waitress service may be available and provided within a cafeteria, and table or booth seating facilities are always provided.
- (6) Certification – issued by the Agency to licensed managers indicating the categories of facilities which the manager is eligible to operate.
- (7) Committee of Blind Vendors (Committee) – an officially constituted body within State government, functioning as an integral part of the State's vending facility program. The Committee shall be fully representative of all licensed managers elected biennially and established, constituted, and maintained in accordance with 34 C.F.R. § 395.14.
- (8) Demotion – reassignment of a licensed manager to a vending facility with projected sales of no more than eighty-five percent (85%) of the manager's present facility. The decision to demote a manager rests solely with the Agency and is based upon the manager's inability to effectively manage his/her present facility after making a good faith effort to do so.
- (9) Instrument of Facility Assignment (IOFA) – a document which shall be executed by the Agency and the manager, covering the duties and responsibilities of each party.
- (10) Internship – facility based training supervised by a qualified licensed manager as part of the entry-level training requirements.
- (11) License – a written certificate issued by the Agency to a qualified blind person to operate a vending facility.

- (12) Management Staff – TBE personnel who work under the immediate supervision of the Director of Services for the Blind and Visually Impaired in carrying out the statewide goals and objectives of TBE.
- (13) Manager – a qualified blind person licensed by the Agency to operate a vending facility on federal or other property.
- (14) Net Proceeds – net sales of a facility, less merchandise purchased and other allowable expenditures, plus any commissions, vending machine income, rebates, and/or commissions paid to the manager.
- (15) Operations Manual – developed jointly by the Agency and the Committee, it contains the policies and procedures for the day-to-day administration of TBE and specific requirements for the operation of vending facilities.
- (16) Permit – an agreement between the Agency and property management that prescribes the terms and conditions for operating a vending facility.
- (17) Post employment services – vocational rehabilitation services for which a client is eligible after being placed into employment and the Vocational Rehabilitation Counselor has closed the case.
- (18) Priority – the right of first refusal, exercised in the sole discretion of the Agency, on behalf of licensed blind vendors to operate any and all vending facilities on public properties in Tennessee.
- (19) Promotion – assignment of a licensed manager to a vending facility by competitive bid process.
- (20) Public Property – all property owned or leased by the State of Tennessee, or by any county, municipality, or any other entity created by act of the General Assembly to perform any function. Primary and secondary schools, and entities created under title 42, and their operation are specifically excluded from this definition. Institutions governed by the University of Tennessee System or the State University and Community College System and their operations are also specifically excluded from this definition except that the vending facilities presently in operation at such institutions on April 29, 1996, shall continue to operate at their present locations or, if necessary, at a location comparable in terms of potential patronage, with the priority established by T.C.A. § 71-4-501. Moreover, the existing priority shall extend to any new structures on any of the campuses governed by the University of Tennessee or the state university and community college system and the priority shall also extend to the establishment of at least one (1) vending facility on any new campus which is developed either by the University of Tennessee system or the state university and community college system.
- (21) Ready-for-Employment List – a list of all currently licensed managers who are not permanently assigned a facility. The ranking of these managers shall be based upon the accrual of seniority, or in the absence thereof, listed in the order in which they were certified by the Agency as eligible to receive a license.
- (22) Set-aside Funds – funds which accrue to the Agency from an assessment against the net proceeds of each vending facility and any income from vending machines on property which accrues to the Agency.
- (23) State Agency – the Agency designated by the Commissioner of the U.S. Rehabilitation Services Administration to issue licenses to blind persons for operation of vending facilities, and to implement the operation thereof.
- (24) TBE Consultant – an Agency staff person who is assigned to work directly with the manager to ensure the effective and efficient operation of the vending facility.
- (25) TBE Director – the Director of Services for the Blind and Visually Impaired may delegate responsibilities as specified in these rules to a TBE Director. The Committee of Blind Vendors shall actively participate in the selection process of a TBE Director.
- (26) TBE Specialist – functions as a TBE Consultant; however, this individual has additional responsibilities not necessarily related to specific facility operations.

- (27) TBE Supervisor – management staff who provide direct supervision to TBE Consultant/Specialists and who have additional statewide responsibilities.
- (28) Temporary Manager – one who manages a facility temporarily until such time as a permanent assignment can be made.
- (29) Tennessee Business Enterprises (TBE) – the name given to the vending facility program for the blind in Tennessee.
- (30) Transfer – lateral reassignment of a licensed manager to a vending facility where the annual gross sales are projected to be within a range of 15% of the annual gross sales of the manager's previous facility.
- (31) Unassigned – A vending facility that is managed by a third-party vendor who pays a commission to the Agency.
- (32) Upward Mobility – Annual training required of all managers as a condition for maintaining their certification.
- (33) Vending Facility – a location, structure, or space which may sell foods, beverages, confections, newspapers, periodicals, tobacco products, and other articles and services which are dispensed automatically by a machine or manually by sales personnel or attendants and which may be prepared on or off premises in accordance with applicable health laws. A vending facility may consist of automatic vending machines, cafeterias, snack bars, catering services, food concession vehicles, cart services, shelters, counters, and any appropriate equipment necessary for the sale of articles or services described above, and may encompass more than one building on a public property.
- (34) Vending Machine Income – net proceeds from vending located on federal and other property which is paid directly to licensed managers or disbursed to the Agency for use as required by federal and state law.

Authority: T.C.A. §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-1-105(12), 71-4-502, 71-4-604(c), and 71-4-702; 32 C.F.R. § 260.1 et seq.; 34 C.F.R. § 395.1 et seq., 34 C.F.R. 395.4; 34 C.F.R. § 395.1(c),(i)(s),(x) and (z), and 34 C.F.R. § 395.7.

Chapter 1240-06-03
Probationary Periods

Amendments

Rule 1240-06-03-.02 Disciplinary Probation is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, paragraph (2) shall read as follows:

- (2) Notice of disciplinary probation shall be sent to the manager in writing. Such notices may be hand delivered or posted in the US Mail. The probationary period shall be for a mandatory thirty (30) days. The notice of disciplinary probation must state the reason(s) for probation; steps to be taken, if any, to avoid termination; and the manager's right to appeal the Agency's action pursuant to Chapter 1240-06-11 of these rules.
 - (a) If hand delivered, the TBE Consultant/Specialist shall document that the notice has been received by the manager as evidenced by a signed acknowledgment of receipt. The thirty (30) day probationary period begins after the time period for an appeal pursuant to Chapter 1240-06-11 has run.
 - (b) If a manager is not available for the TBE Consultant/Specialist to hand deliver the disciplinary notice or doing so is not cost effective, TBE may choose to mail the notice by US Mail, postage paid. TBE personnel will execute a certificate of mailing indicating the actual date of mailing, to be maintained with a file copy of the disciplinary notice. The thirty (30) day probationary period begins after the time period for an appeal pursuant to Chapter 1240-06-11 has run.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7 (b) and (c).

Chapter 1240-06-04
Classification and Certification

Amendments

Rule 1240-06-04-.01 Facility Classifications is amended by adding a new subparagraph (j) under paragraph (1), so that as amended, paragraph (1), subparagraph (j) shall read as follows:

(j) Category 10 – Highway Vending

Authority: T.C.A. §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(c).

Rule 1240-06-04-.02 Managers' Certification Requirements is amended by deleting paragraphs (2) and (3) in their entireties and substituting instead the following language, so that as amended, paragraphs (2) and (3) shall read as follows:

- (2) Managers shall be required to complete specific Upward Mobility training requirements annually as outlined in the TBE Operations Manual in order to maintain certification(s). The Agency, with the active participation of the Committee, may designate other outside seminars, conferences, or training sessions as sufficient to meet the requirements of an Upward Mobility training session. Subject to the availability of funds, the Agency and Committee may elect to offer financial incentives for managers who attend such outside training opportunities whether they do so for Upward Mobility credit or not.
- (3) Certification shall be valid through the end of the calendar year following the year in which the certification(s) was obtained or renewed.

Rule 1240-06-04-.02 Managers' Certification Requirements is amended by deleting the words "paragraphs (2) and (3)" in paragraph (4) and substituting instead the words "paragraph (2)", so that as amended, paragraph (4) shall read as follows:

- (4) If a manager loses his/her certification(s) for failure to comply with the conditions set forth in paragraph (2) of this section, the manager is subject to loss of license and removal from the facility if, within the thirty (30) days from the loss of certification(s), the manager does not make application for the next entry-level training class for the purpose of regaining the certification(s) which have been lost. The Agency must approve the application if the manager is not delinquent with the filing of any reports required by the Agency, is not indebted to the State, and is not being currently subjected to any disciplinary action. If the manager is accepted, failure to pass the class denies the individual re-entry into the program and results in the loss of his/her facility.

Rule 1240-06-04-.02 Managers' Certification Requirements is amended by deleting paragraph (6) in its entirety and substituting instead the following language, so that as amended, paragraph (6) shall read as follows:

- (6) A manager's certification may be extended if evidence is provided to the Agency documenting medical incapacity and/or other unavoidable circumstances of an extenuating nature which preclude the manager from meeting the requirements of 1240-06-04-.02(2) above and which has been approved in advance by the Agency.

Authority: T.C.A. §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-1-105(12) and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(c).

Chapter 1240-06-05
Assignment of Managers

Amendments

Rule 1240-06-05-.01 Promotions is amended by deleting the word "mailed" in paragraph (1) and substituting instead the word "closed".

Rule 1240-06-05-.01 Promotions is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, paragraph (2) shall read as follows:

- (2) Six managers from those submitting bids shall be selected to compete for the promotion. The basis for this selection shall be seniority, provided the manager possesses the necessary certification(s). If two or more managers are tied for the sixth and final slot in terms of seniority, those managers who are tied will be permitted to interview. Additionally, any U.S. military veteran who was honorably discharged, who is licensed and otherwise qualified but does not possess the necessary seniority to qualify as one of the top six candidates, will automatically qualify for the interview.

Rule 1240-06-05-.01 Promotions is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, paragraph (3) shall read as follows:

- (3) After the candidates have been determined eligible to interview, each candidate will be interviewed by a panel consisting of one Agency representative, the area representative of the Committee, and one person jointly determined by the other two panel members. The third panel member may be an independent business person, a property management official or another person familiar with TBE. In cases where required by the permit, Property Management will be allowed to serve as the third panel member, and concurrence of the other two panel members is not required. If practical, interviews shall be conducted within fifteen (15) working days after the candidates have been determined.

Rule 1240-06-05-.01 Promotions is amended by deleting paragraph (4) in its entirety and substituting instead the following language:

- (4) The panel shall rate each candidate based upon his/her record of performance for the preceding twelve (12) months, responses received to questions, the manager's plans for the new operation, personal appearance, demeanor, and attitude. Each panel member shall rate each candidate according to the following:

Authority: T.C.A. §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-1-105(12), 71-4-204, and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(c).

Rule 1240-06-05-.02 Bid Announcements is amended by deleting the words "fourteen (14)" in paragraph (3) and substituting instead the words "fifteen (15) working."

Authority: T.C.A. §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-1-105(12), 71-4-603, and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(c).

Rule 1240-06-05-.03 Transfers is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, paragraph (3) shall read as follows:

- (3) Transfer eligibility is valid for a period of two (2) years, during which seniority continues to accrue and eligibility is maintained for all benefits. If a manager remains in his/her facility while on transfer status and the circumstances at the facility have not improved, the manager may reapply for transfer status at the end of the two-year period provided the manager has not declined a facility which falls within his/her range.

Rule 1240-06-05-.03 Transfers is amended by deleting paragraph (4) in its entirety and substituting instead the following language, so that as amended, paragraph (4) shall read as follows:

- (4) Transfer eligibility is lost if the manager bids on and receives the award of a facility which produces sales within or which exceeds the manager's transfer range, or the manager declines an award based on his/her transfer eligibility.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(c).

Rule 1240-06-05-.06 Ready-For-Employment List is amended by deleting paragraph (4) in its entirety and substituting instead the following language, so that as amended, paragraph (4) shall read as follows:

- (4) Managers who have not accrued seniority for a period of five (5) years will not be allowed to compete for vacant vending facilities through the promotion process and will have their names removed from the Ready-for-Employment List. In order to have their names placed back on the Ready-for-Employment List, they must complete entry-level training. Any manager who must attend entry level training under this provision must meet the same requirements as any new trainee.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(c).

Rule 1240-06-05-.07 Temporary Managers is amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, paragraph (1) shall read as follows:

- (1) The Agency may, if circumstances require, place a facility under temporary management. The person assigned to the facility on a temporary basis may or may not be a licensed manager. The Agency, with the active participation of the Committee of Blind Vendors, will develop guidelines to be incorporated into the operations manual on selecting temporary managers.

Rule 1240-06-05-.07 Temporary Managers is amended by adding a new paragraph (4), which shall read as follows:

- (4) A manager who accepts a temporary assignment pursuant to this section has no permanent rights to the facility in whole or in part.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(b) and (c).

Chapter 1240-06-05
Assignment of Managers

New Rules

1240-06-05-.08 Marginal Facilities.

- (1) It is the Agency's intent to offer for operation vending facilities that will provide to a licensed blind vendor an income, sufficient to support them and their family. If, for whatever reason, a vending facility will no longer support a licensed blind vendor, consideration must be given to closing the facility. The Agency, with the active participation of the Committee of Blind Vendors, shall develop guidelines to be incorporated into the operations manual on when such facilities shall be closed and how any remaining vending is to be distributed to licensed blind vendors or third party vendors.

Authority: T.C.A. §§ 4-5-201 et seq.; T.C.A. 49-11-601 49-11-601 et seq., 71-1-104; 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(b) and (c).

Chapter 1240-06-06
Removal of Manager

Amendments

Rule 1240-06-06-.02 Emergency Removal of a Manager is amended by deleting the second-occurring "and" in paragraph (2) and substituting instead the words "and/or", so that as amended, paragraph (2) shall read as follows:

- (2) In the event of the failure of the manager to fulfill the duties and discharge the responsibilities of operating the facility (for whatever reasons) or documented misconduct jeopardizing the existence of the facility and/or the image of the program, the Agency may declare that emergency circumstances exist; whereupon the manager may be immediately removed. In the case of such removal, the area representative(s) of the Committee shall be advised of the action prior to or within twenty-four (24) hours of the removal.

Rule 1240-06-06-.02 Emergency Removal of a Manager is amended by inserting a new paragraph (2) and renumbering the subsequent paragraphs accordingly, so that new paragraph (2) shall read as follows:

- (2) In those facilities that require security clearance by property management such as jails, prisons, and certain Federal installations, the TBE manager must meet all such security requirements in order to service a vending facility in such locations. In the event property management rescinds security clearance for a manager, the Agency shall be forced to remove the manager from that facility. The Agency shall gather all the facts and consult with property management. If the security clearance is not reinstated, the removal will be permanent.

Rule 1240-06-06-.02 Emergency Removal of a Manager is amended by adding a new paragraph (5), which shall read as follows:

- (5) In lieu of removing a manager from a facility, the Agency may choose to relieve the manager of responsibility for a portion of the facility if, in the Agency's opinion, such action would enable the manager to fulfill his/her obligations in the remaining areas that he/she services. This provision would only be applicable if a vending facility has satellite vending at multiple locations and it is felt that by relieving the manager of responsibility for some or all of the satellite vending locations, he/she will be better able to manage the main facility. With the active participation of the Committee of Blind Vendors, the Agency shall develop and incorporate into the operations manual guidelines on how to permanently or temporarily distribute the vending satellites removed from the manager.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(b).

Chapter 1240-06-06
Removal of Managers

New Rules

1240-06-06-.05 Temporary Displacement of Managers.

- (1) A manager may be temporarily displaced from his/her facility due to renovations, natural disasters, or other uncontrollable circumstances. Such managers will continue to accrue seniority and be eligible for benefits as provided in 1240-6-16. A displaced manager may request reasonable compensation for a temporary period of time from the Agency with the active participation of the Committee of Blind Vendors. Temporary compensation, if granted, shall not to exceed twelve (12) months.

Authority: T.C.A. §§ 4-5-201 et seq; 49-11-601 et seq., 71-1-104; 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7.

Chapter 1240-06-07
Training Program

Amendments

Rule 1240-06-07-.01 Entry Level Training is amended by inserting the following language in subparagraph (a) under paragraph (1) at the end of the first sentence:

- (a) If technology and resources permit, the Agency may elect to make portions of the entry-level training available online, which may reduce actual classroom time.

Rule 1240-06-07-.01 Entry Level Training subparagraph (2) is amended by replacing the words "on-the-job training" with "an internship," wherever such terms appear.

Rule 1240-06-07-.01 Entry Level Training is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, paragraph (3) shall read as follows:

- (3) When the license is issued, the manager shall be certified in accordance with the training modules completed, as outlined in the Operations Manual.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.11.

Rule 1240-06-07-.02 Certification of Training is amended by adding a new paragraph (3), which shall read as follows:

- (3) The prerequisite for Commissary Management certification is that the manager has accrued seniority as referenced in Section 6.3 of the Operations Manual.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.3(11).

Rule 1240-06-07-.04 Upward Mobility paragraph (1) is amended by deleting "1240-6-4.02(5)" and inserting instead "1240-06-04-.02(6)". Paragraphs (2) and (3) are deleted in their entireties and a new paragraph (2) is inserted, so that as amended, the new paragraph (2) shall read as follows:

- (2) The Agency and Committee will jointly develop and approve annual training that will meet the recertification training requirements, provided that such training is a minimum of twelve (12) hours.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), 71-1-106, and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.14(b)(5).

Rule 1240-06-07-.05 Statewide Managers' Meeting is amended by inserting a new sentence at the end of paragraph (1), so that as amended, paragraph (1) shall read as follows:

- (1) The Agency and the Committee shall jointly sponsor and develop a statewide meeting for all licensed managers which will be held once annually if funds are available for the meeting. The development of the agenda shall be a common effort by the Agency and the Committee. The time and place shall be determined by the Agency and the Committee. Such Statewide Managers' Meetings may be designated to meet the requirements of 1240-06-07.04(1) above.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), 71-1-106, and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.3(11).

Chapter 1240-06-08
Vending Machine Income on Non-Federal Property

Amendments

Chapter 1240-06-08 is amended by deleting the title "Vending Machine Income on Non-Federal Property" and substituting instead the title "Vending Facility Equipment", so that as amended, the title for Chapter 1240-06-08 shall read as follows:

Chapter 1240-06-08
Vending Facility Equipment

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), 71-4-504(b), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.3(a)(5).

Rule 1240-06-08-.02 Maintenance and Repair is amended by deleting paragraph (2) in its entirety and substituting instead the following two paragraphs (2) and (3), so that as amended, new paragraphs (2) and (3) shall read as follows:

- (2) When repair and maintenance services are required, the Agency will repair the Agency income-producing equipment, or cause it to be repaired, within forty-eight (48) hours of notification by the manager, provided that parts can be obtained and the equipment is out of warranty. In the event that the Agency fails to fulfill its obligation under this subsection, the manager shall have the right to withhold the payment of set-aside assessments which are, or become, due until the Agency equipment is repaired or replaced.
- (3) Repair and maintenance will be performed using set-aside monies and federal dollars if available. If budgetary constraints require it, the Agency with the active participation of the Committee, shall develop procedures to be incorporated into the operations manual that allow for a co-payment by the manager on each repair call.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), 71-4-504(b), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.3(a)(5).

Chapter 1240-06-09
Setting Aside Funds

Amendments

Rule 1240-06-09-.01 Set-Aside Assessment is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, paragraph (2) shall read as follows:

- (2) Net proceeds are determined from gross sales, less merchandise cost and other allowable expenditures, plus commissions, vending machine income remitted to the manager under chapter 1240-06-14, and rebates, bonuses, ATM and other fees paid to or collected by the manager. The amount of set-aside assessment may not be deducted as an expense in computing net proceeds.

Rule 1240-06-09-.01 Set-Aside Assessment is amended by inserting a new paragraph (3) and renumbering the existing paragraph (3) as the new paragraph (4), so that as amended, new paragraph (3) shall read as follows:

- (3) All funds collected as set-aside assessments are deposited into an interest-bearing account, and earned interest income shall be used for the same purposes as outlined in 1240-06-09-.02.

Rule 1240-06-09-.01 Set-Aside Assessment is amended by inserting the words "or modified" in the second sentence after the word "new".

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), 71-4-509, 71-4-604 and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.9(c).

Rule 1240-06-09-.02 Purpose for Which Set-Aside Assessments May Be Used is amended by inserting new subparagraphs (e) and (f) under paragraph (1), so that as amended, paragraph (1) shall read as follows:

- (1) Pursuant to the provisions of 34 C.F.R. §§ 395.8 and 395.9, funds derived from set-aside assessments can only be used for the following purposes:
 - (a) maintenance and repair of equipment,
 - (b) the purchase of new equipment,
 - (c) the replacement of equipment,
 - (d) management services,
 - (e) assuring a fair minimum of return to vendors, and
 - (f) the establishment and maintenance of retirement or pension funds and/or health insurance contributions, if it is so determined by a majority vote of blind vendors licensed by the State licensing agency, after such agency provides to each such vendor information on all matters relevant to such proposed purposes.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), 71-4-501 et seq., and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. 395.9(c).

Rule 1240-06-09-.03 Requirements for Financial Reporting is amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, paragraph (1) shall read as follows:

- (1) Each vending facility manager must file with the Agency a monthly financial report of his/her business operation. The report and payment of set-aside assessments currently due the Agency shall be due on the 8th day of the month following the month in which the business was transacted. Reports shall be submitted in the format and method required by the Agency.

Rule 1240-06-09-.03 Requirements for Financial Reporting is amended by inserting a new paragraph (3) and renumbering the existing paragraph (3) accordingly, so that as amended, new paragraph (3) shall read as follows:

- (3) In the event managers file online and pay their set-aside fees via electronic transfer, the probation and penalties outlined in 1240-06-09.03(2) above shall apply if an Automatic Clearing House (ACH) transfer is returned for insufficient funds.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), 71-4-501 et seq., and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.9(c).

Chapter 1240-06-10
Facility Operational Requirements

Amendments

Rule 1240-06-10-.01 Days and Hours of Operation is amended by changing "five (5)" to "four (4)" in paragraph (1).

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(c).

Rule 1240-06-10-.04 Standards of Performance is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, paragraph (2) shall read as follows:

- (2) If a manager fails to meet any of the established standards, the TBE Consultant/Specialist and the manager will jointly develop a plan of action, with specified time frames, that will enable the manager to make the necessary improvements to meet the standards. It will be the responsibility of the manager to implement agreed upon action steps to improve performance. Failure by the manager to implement such action steps will result in disciplinary action.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(c).

Rule 1240-06-10-.11 Record Keeping and Reporting subparagraph (2) is amended by deleting the second sentence and replacing it with the following:

- (2) The reports and supporting documentation will be periodically reviewed by the Agency and will be subject to examination, analysis, and/or audit at any time by Fiscal Services, Internal Audit, or TBE staff.

Authority: T.C.A. §§ 4-5-201 et seq., 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395.7(c).

Chapter 1240-06-10
Facility Operational Requirements

New Rules

1240-06-10-.12 Business Plan.

- (1) Each manager will be required to develop and submit to his/her TBE Consultant/Specialist a business plan no later than Feb. 15 of each year. This plan shall set sales and profit targets for the year and strategies for achieving those targets and for meeting all performance standards. The plan shall be submitted in the format jointly developed by the Agency and Committee. Once received, the TBE Consultant/Specialist will meet with the manager to review, revise, and finalize the plan. Failure to submit or make reasonable efforts to adhere to the business plan may subject the manager to disciplinary action.

Authority: T.C.A. §§ 4-5-201 et seq.; 49-11-601 et seq., 71-1-104; 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7.

1240-06-10-.13 Performance Bond.

- (1) In certain types of facilities as determined by the Agency, the manager will be required to maintain on account funds that have been given to him/her to prepay for products. An example would be an inmate commissary where the manager maintains the inmate trust fund. In such cases the manager shall be required by the Agency to secure a performance bond to protect these funds in the event the manager leaves the facility without turning over the balance of funds to the Agency or incoming manager.

Authority: T.C.A. §§ 4-5-201 et seq.; 49-11-601 et seq., 71-1-104; 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7.

Chapter 1240-06-12
Committee of Blind Vendors

Amendments

Rule 1240-06-12-.03 Election of the Committee is amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, paragraph (1) shall read as follows:

- (1) The full Committee shall be elected biennially in every odd numbered year. Nominees for the Committee must be licensed managers who are either permanently or temporarily assigned to a vending facility. Only licensed managers who are permanently or temporarily assigned to a vending facility may vote in the elections. Managers must manage a facility in the same regions from which membership on the Committee is being determined. The number of Committee members from each region will be determined jointly by the Agency and Committee. By seeking membership on the Committee, a manager agrees to have his record of performance for the previous twelve (12) months released for inspection by all managers to be considered when casting their votes.

Rule 1240-06-12-.03 Election of the Committee is amended by adding three sentences to the end of paragraph (2), as follows:

- (2) A manager must be present at the regional meeting to nominate a candidate or have their name submitted for nomination. A manager may submit his/her own name for nomination. These meetings may be held in person or by teleconference.

Rule 1240-06-12-.03 Election of the Committee is amended by changing "thirty (30)" to "twenty-one (21) calendar" in subparagraph (3).

Rule 1240-06-12-.03 Election of the Committee is amended by changing "thirty-five (35)" to "twenty-eight (28)" in subparagraph (3)(b).

Rule 1240-06-12-.03 Election of the Committee subparagraph (3)(e) is amended by deleting the language "leaves the region to assume the management of a different facility" at the end of the first sentence and substituting instead the following language:

- (e) for whatever reason no longer has a temporary or permanent assignment or no longer meets the requirements of 1240-06-12-.03(1).

Rule 1240-06-12-.04 Committee Meetings is amended by adding a new paragraph (4), which shall read as follows:

- (4) In lieu of 1240-06-12-.03(3) above, the Agency and Committee may elect to hold the biennial elections at the annual Statewide Managers' Meeting or via the Internet provided that accessible voting machines, websites, or other methods of secret ballot can be made available. In the event elections are held at the Statewide Managers' Meeting the provisions of 1240-06-12-.03(3)(c), (d), and (e) are still applicable.

Authority: T.C.A. §§ 4-5-201 et seq., 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395.14.

Chapter 1240-06-13
Priority for the Establishment of Vending Facilities

Amendments

Rule 1240-06-13-.01 Priority for the Establishment of Vending Facilities on Public Properties in Tennessee subparagraph (a) is amended by inserting the following language at the beginning of this subparagraph:

- (a) For purposes of determining the competitive range, the Agency's bid must be within two (2) percentage points of the bid deemed to be the winning bid. This means that if the commission of the would-be winning bid is eight (8) percent; the Agency's proposal must offer at least six (6) percent. At its sole discretion, the Public Property may elect to enter into direct negotiations with the Agency in lieu of the above.

Rule 1240-06-13-.01 Priority for the Establishment of Vending Facilities on Public Properties in Tennessee is amended by inserting a new subparagraph (d) under paragraph (1) and renumbering the current subparagraph (d) as subparagraph (e), so that as amended, paragraph (1), subparagraphs (d) shall read as follows:

- (d) Public Property management may not require the payment of rent, utilities, or commissions as a condition for operating a vending facility on Public Property except as provided for in 1240-06-13-.01(1) above. However, the Agency, at its discretion and with the active participation of the Committee of Blind Vendors, may negotiate less restrictive agreements that do require such payments. If such payments are negotiated and are included in the permit agreement, the licensed manager will be obligated to make such payments; however, no subsequent priority is waived either expressly or by implication.

Authority: T.C.A. §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-1-105(12), 71-1-501, 71-4-507, 71-4-603, and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.30.

Chapter 1240-06-16
Health Insurance and Retirement Program

Amendments

Rule 1240-06-16-.01 Health Insurance Eligibility is amended by inserting a new paragraph (2) which shall read as follows:

- (2) If managers are required to pay a portion of their premiums and their checks or Automatic Clearing House (ACH) transfers are returned for insufficient funds, this will be treated as any other delinquency and shall subject the manager to the same penalties as prescribed in 1240-06-09-.03(2). Once a manager is notified by virtue of receiving a probation letter that a check or ACH transfer has been returned, he/she will have insurance coverage terminated if the manager fails to get current with all premiums due within thirty (30) days. Reinstatement will be subject to the requirements of the carrier.

Authority: T.C.A. §§ 4-5-201 et seq., 71-1-105(12), 71-4-503, 71-4-509, and 71-4-604; 34 C.F.R. § 395.

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: 12-15-2016

Signature: *R.A. Baker*

Name of Officer: Rebekah A. Baker
Deputy General Counsel

Title of Officer: Tennessee Department of Human Services



Subscribed and sworn to before me on: December 15 2016

Notary Public Signature: *Debra E. Batts*

My commission expires on: May 8, 2018

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Filed with the Department of State on: 12/15/16

Tre Hargett
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Secretary of State

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