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Sequence Number: 12-12-13

Notice ID(s): 2105

File Date: 12/14/13

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:	Family Assistance Division
Contact Person:	Madeline Brough
	Office of General Counsel Citizens Plaza Building, 15 th Floor 400 Deaderick Street
Address:	Nashville, Tennessee 37243-1403
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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
	Office of General Counsel Citizens Plaza Building, 15 th Floor 400 Deaderick Street
Address:	Nashville, Tennessee 37243-1403
Phone:	615-313-4731
Email:	Jeffrey.Blackshear@tn.gov

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

Address 1:	Tennessee Department of Human Services Conference Room		
Address 2:	103 E. Walnut Street		
City:	Johnson City		
Zip:	37601		
Hearing Date :	02/04/14		
Hearing Time:	6:30 PM	<input type="checkbox"/> CST/CDT	<input checked="" type="checkbox"/> EST/EDT

Address 1:	Department of Human Services Large Conference Room		
Address 2:	2700 Middlebrook Pike, Ste. 200		
City:	Knoxville		
Zip:	37921-5667		
Hearing Date :	02/05/14		
Hearing Time:	6:30 PM	CST/CDT X EST/EDT	

Address 1:	1st Floor Auditorium
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Address 2:	540 McCallie Ave.		
City:	Chattanooga		
Zip:	37402		
Hearing Date :	02/06/14		
Hearing Time:	6:30 PM	<input type="checkbox"/> CST/CDT	<input checked="" type="checkbox"/> EST/EDT

Address 1:	Davidson County DHS Office Video Conference Room		
Address 2:	1000 2nd Avenue North		
City:	Nashville		
Zip:	37243		
Hearing Date :	02/07/14		
Hearing Time:	6:30 PM	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	Cookeville District Office Multi Purpose Room		
Address 2:	1000 England Drive, Suite B		
City:	Cookeville		
Zip:	38501		
Hearing Date :	02/10/14		
Hearing Time:	6:30 PM	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	Maury County Department of Human Services Office Conference Room		
Address 2:	1400 College Park Drive, Suite B		
City:	Columbia		
Zip:	38401		
Hearing Date :	02/11/14		
Hearing Time:	6:30 PM	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	2 nd Floor Conference Room B, Ste 210 Lowell Thomas State Office Building		
Address 2:	225 Martin Luther King, Jr. Drive		
City:	Jackson		
Zip:	38301		
Hearing Date :	02/13/14		
Hearing Time:	6:30 PM	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	Southwest Tennessee Community College Farris Auditorium		
Address 2:	5983 Macon Cove		
City:	Memphis		
Zip:	38134		
Hearing Date :	02/14/14		
Hearing Time:	6:30 PM	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> 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 SS-7037 (October 2011)

accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
1240-01-57	Families First Eligibility – Drug Screening and Testing
Rule Number	Rule Title
1240-01-57-.01	Purpose
1240-01-57-.02	Definitions
1240-01-57-.03	Program of Suspicion-Based Drug Testing
1240-01-57-.04	Drug Screening
1240-01-57-.05	Reasonable Cause
1240-01-57-.06	Drug Test
1240-01-57-.07	Referral for Substance Abuse Evaluation, Treatment, Ineligibility for Benefits, Appeals
1240-01-57-.08	Confidentiality

Chapter 1240-01-57
Families First Eligibility – Drug Screening and Testing

New Rules

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1240-01-57-.01 Purpose

- (1) The purpose of this Chapter is to establish a process to screen for, and, if appropriate, test for the use of drugs, as defined in this Chapter, by applicants for Families First/TANF benefits, and to refer persons found to be using such drugs for substance abuse evaluation and any necessary treatment; and
- (2) Provide for the appropriate use of Families First/TANF benefits for the children of applicants.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b.

1240-01-57-.02 Definitions

For the purposes of this Chapter:

- (1) "Applicant" is an individual who submits a new Families First application requesting cash assistance for a child(ren) in his/her care.
- (2) "Caretaker relative" means the father, mother, grandfather or grandmother of any degree, brother or sister of the whole or half-blood, stepfather, stepmother, stepbrother, stepsister, aunt or uncle of any degree, first cousin, nephew or niece, the relatives by adoption within the previously named classes of persons, and the biological relatives within the previous degrees of relationship, and the legal spouses of persons within the previously named classes of persons, even if the marriage has been terminated by death or divorce, with whom a child is living.
- (3) "Chain of custody" means the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances, and providing for accountability at each stage in handling, testing and storing specimens and reporting test results.
- (4) "Child" or "children" means:
 - (a) A person or persons under eighteen (18) years of age; or
 - (b) A person who has not attained nineteen (19) years of age and who is a full-time student in a secondary school or the equivalent and who is expected to graduate by the person's nineteenth birthday.
- (5) "Confirmation test," "confirmed test" or "confirmed drug test" means a second analytical procedure used to identify the presence of a specific drug as defined in this Chapter, or its metabolite, in a specimen, which test must be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity and quantitative accuracy.

- (6) "Department" means the Department of Human Services.
- (7) "Drug" means marijuana, cocaine, methamphetamine, amphetamine, and opiates, such as, but not limited to, morphine.
- (8) "Drug screening" consists of a questionnaire regarding the Families First applicant's current and prior use of drugs as defined in paragraph (7).
- (9) "Drug test" or "test" means any chemical, biological or physical instrumental analysis administered by an authorized drug testing agency, for the purpose of determining the presence or absence of a drug or its metabolites pursuant to this Chapter.
- (10) "Drug testing agency" means an entity that has the required credentials as established by regulatory or certification authorities to administer tests using a person's urine, blood or DNA that will detect and validate the presence of drugs in such person's body.
- (11) "Drug treatment period" is the length of the treatment plan, not to exceed six (6) months. If the treatment plan requires more than six (6) months in a continuum of care, the Families First applicant may take a drug test at the end of six (6) months of treatment to determine the applicant's continued eligibility for Families First benefits.
- (12) "Drug treatment program" means a service provider that provides confidential, timely and expert identification, assessment and resolution of drug or alcohol abuse problems affecting persons, including residential/in-patient drug treatment and outpatient drug treatment.
- (13) "Families First" refers to the temporary public assistance program provided under Temporary Assistance for Needy Families ("TANF"), pursuant to Title IV-A of the Social Security Act.
- (14) "Five panel test" means a drug test for marijuana, cocaine, methamphetamine, amphetamine, and opiates that uses a sample of the applicant's urine.
- (15) "Initial drug test" means a procedure that qualifies as a "screening test" or "initial test."
- (16) "Legal guardian" means a person or entity that has the legal authority to provide for the care, supervision or control of a minor child as established by law or court order.
- (17) "Minor" is a person less than eighteen (18) years of age. A minor is considered a "dependent child" if he/she is living with a specified relative and is otherwise eligible.
- (18) "New application" means that the applicant has not received prior cash assistance under the Families First/TANF program or has not received cash assistance under the Families First/TANF program for at least one (1) month due to case closure, for any reason, prior to the application date.
- (19) "Protective payee" means a caretaker relative or a legal guardian of the child; provided, however, that the person defined as a caretaker relative or guardian who is the applicant of Families First/TANF benefits who tests positive for the use of a drug as defined in this Chapter shall be exempt from this definition.
- (20) "Recovery support" means a group or resource for drug abuse treatment and recovery, which includes self-help and support groups, such as, but not limited to, Narcotics Anonymous.
- (21) "Specimen" means tissue, fluid or a product of the human body capable of revealing the presence of drugs or their metabolites.
- (22) "Treatment plan" is a document used by an approved drug treatment agency that specifies an applicant's drug treatment program, activities, and continuum of care for a defined time period, subject to continuing assessments. The drug treatment plan may include residential treatment, outpatient treatment, or recovery support groups, or resources for assistance with the Families First/TANF recipient's drug abuse recovery.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b.

1240-01-57-.03 Program of Suspicion-Based Drug Testing

- (1) Effective July 1, 2014, the Department's Families First/TANF Program shall conduct a drug screening of new Families First/TANF applicants to determine whether there is reasonable cause to believe the applicant engages in the use of drugs as defined in this Chapter.
- (2) Except as provided in subparagraphs (a) and (b) of this paragraph (2), all new Families First/TANF applicants who are eighteen (18) years of age or older and who are otherwise eligible to receive Families First/TANF benefits as defined in Chapters 1240-01-47, 1240-01-50, and 1250-01-51 are required to submit to the drug testing requirements under this Chapter, subject to the Department's finding of reasonable cause.
 - (a) Dependent children less than eighteen (18) years of age are exempt from the drug screening and testing, provided, however, that any minor parent who is a new Families First/TANF applicant who does not live with a parent, legal guardian, or other adult caretaker relative must submit to drug screening and any required drug testing.
 - (b) In a two (2)-parent household, only the new Families First/TANF applicant shall be required to submit to the drug screening and testing requirements of this Chapter.
- (3) The Department's drug screening and testing program for new Families First/TANF applicants is separate from any employer-required drug screening and/or drug test.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b.

1240-01-57-.04 Drug Screening

- (1) Effective July 1, 2014, new Families First/TANF applicants shall submit a completed drug screening questionnaire as a part of the eligibility determination for Families First/TANF cash assistance.
- (2) Refusal and/or failure, without good cause, to submit a completed drug screening questionnaire shall result in denial of the applicant's Families First/TANF application.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b.

1240-01-57-.05 Reasonable Cause

- (1) If the Department determines that there is reasonable cause to believe that a new Families First/TANF applicant is using drugs as defined in this Chapter, the applicant shall submit to a drug test at a drug testing agency approved by the Department.
- (2) Initial Drug Screening to Determine Reasonable Cause.
 - (a) Reasonable cause shall exist when the applicant's completed drug screening questionnaire contains one or more "yes" responses.
 - (b) Any applicant who answers "yes" on the drug screening questionnaire and who has a current, valid prescription or prescriptions for a drug or drugs, as defined in this Chapter, may present the prescription to the Department in such format as required by the Department. A valid, current prescription for any drug, as defined in this Chapter, shall exempt the applicant from drug testing.
 - (c) No drug for which an applicant has a current, valid prescription shall be a basis for denial of Families First/TANF benefits pursuant to this part.

- (3) Failure to complete the drug screening questionnaire or to submit a drug test based on the result of the drug screening questionnaire, without good cause or a current, valid prescription, shall result in denial of the applicant's Families First/TANF application.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b.

1240-01-57-.06 Drug Test

- (1) All drug tests conducted pursuant to this Chapter shall consist of a five panel drug test for the drugs as defined in this Chapter, administered by an approved drug testing agency that uses a sample of the applicant's urine. All drug tests required under this Chapter shall be paid for by the Department.
- (2) Confirmation Test. If a Families First/TANF applicant tests positive for the presence of drugs, as defined in this Chapter, the applicant shall undergo a confirmation test using the same urine specimen from the initial positive drug test. The Department shall use the results of the confirmation test to determine whether to refer the applicant for a substance abuse evaluation.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b.

1240-01-57-.07 Referral for Substance Abuse Evaluation, Treatment, Ineligibility for Benefits, Appeals

- (1) Drug Treatment Referral. If the results of the confirmation test indicate usage of drugs as defined in this Chapter, the Department shall refer the Families First/TANF recipient for a substance abuse evaluation to determine the appropriate treatment plan and/or recovery support group or resource.
 - (a) If, as a result of the substance abuse evaluation, the Families First/TANF recipient is determined not to need any drug treatment or drug recovery support, the applicant shall be exempt from the drug treatment requirements under this Chapter.
 - (b) After submitting to a substance abuse evaluation, if the Families First/TANF recipient is determined to require drug abuse treatment and/or recovery support, the recipient must take action to begin the drug treatment/recovery support plan. The applicant shall have ten (10) business days to provide the Department any of the following, as required under the drug treatment plan:
 1. Verification of enrollment in an approved drug treatment program;
 2. Verification of placement on a waiting list for an approved drug treatment program; or
 3. Verification of attendance at approved recovery support resource meeting.
 - (c) If the Families First/TANF recipient is placed on a waiting list for enrollment in an approved drug treatment program, the applicant shall receive benefits during the waiting list period; provided, however, the recipient is not eligible for immediate enrollment in any other comparable drug treatment program.
 - (d) The recipient shall receive benefits for the duration of the drug treatment period, not to exceed six (6) months.
 1. The drug treatment period shall begin with the date of the first treatment session in the drug treatment program or the first date of attendance at a drug recovery support group/resource meeting.
 2. To receive Families First/TANF benefits for the duration of the drug treatment program, not to exceed six (6) months, the recipient must provide the Department with evidence of ongoing compliance with the drug treatment program or recovery support resource, including, but not limited to, verification of attendance and participation in the program on a weekly basis or as otherwise necessitated by the individual treatment plan.

- (e) At the conclusion of the drug treatment period, the Families First/TANF recipient shall submit to another five-panel drug test in accordance with this Chapter.
 - 1. If the recipient tests positive for drugs as defined in this Chapter, validated by a confirmation test, at the end of their treatment period, the recipient shall be ineligible to receive cash assistance benefits for six (6) months from the date of the positive confirmation test.
 - 2. After the six (6) month disqualification period, if the disqualified individual reapplies for Families First/TANF benefits, the applicant shall submit to a drug test, conducted pursuant to this Chapter. If the applicant tests positive for drugs as defined in this Chapter in a subsequent drug test, validated by a confirmation test, the applicant shall be ineligible to receive Families First/TANF benefits for one (1) year from the date of the positive confirmation test.
- (2) If the recipient fails to begin, participate in, and/or complete, the drug treatment /recovery support resource program after the Department refers a Families First/TANF recipient for a substance abuse evaluation, the recipient shall be ineligible for cash assistance benefits for six (6) months.
 - (a) The Families First/TANF recipient may submit verification of good cause to the Department for his/her failure to begin, complete, and/or participate in the drug treatment program/recovery support resource.
 - (b) The Department shall determine whether an individual has good cause for failure to begin, participate in, and/or complete the drug treatment /recovery support resource program by considering the exigency of the applicant's circumstances, whether failure to comply is the result of circumstances beyond the applicant's control and the requirements of the applicant's drug treatment and/or recovery support program.
- (3) If a caretaker relative is found ineligible to receive Families First/TANF benefits as a result of a positive drug test or failure to begin, participate in, and/or complete the drug treatment/recovery support resource program, that caretaker relative shall be removed from the Assistance Unit and the dependent child's eligibility for Families First/TANF benefits shall not be affected. The Department shall designate a protective payee, either a caretaker relative or legal guardian of the child, to receive the dependent child's Families First/TANF benefits for a child less than sixteen (16) years of age; provided, however, for purposes of this Chapter, that no person who is the applicant for Families First/TANF benefits and tests positive for the use of drugs as defined in this Chapter shall serve as a protective payee.
- (4) The Families First/TANF recipients participating in a drug treatment or recovery support program under this Chapter shall receive necessary child care services during drug treatment, provided, however, that the recipient is participating in a work activities requirement as required by the Families First/TANF program.
- (5) Appeals. A Families First applicant or recipient may appeal any denial of eligibility for Families First/TANF benefits under this Chapter according to appeal procedures set forth in Chapter 1240-5 and Title 4, Chapter 5, Part 3 of the Uniform Administrative Procedures Act and which shall not be narrower than those in existence on August 31, 1996.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b, 42 U.S.C. § 608(b)(2)(A)(v).

1240-01-57-.08 Confidentiality

- (1) Except as provided in paragraph (2), the Department shall not disclose, without the applicant/recipient's written consent, any information, interviews, reports, statements, memoranda, drug screening and other questionnaires, drug tests results and samples, or any related materials:
 - (a) To any law enforcement authorities;

- (b) For use in any public or private proceedings or in a discovery proceeding related to any legal proceedings;
 - (c) For use as evidence in any criminal proceedings; or
 - (d) For any other public or private use.
- (2) Any information received as a part of the drug testing program may be used in accordance with the administration of the Families First/TANF program, in any proceedings concerning the protection or permanency of children, in adjudicating any claim or action arising from the administration of the Families First/TANF program, or in reporting child abuse, child sexual abuse, or child neglect.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b.

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: 12-16-13

Signature: _____

Nicole L. Armstrong

Name of Officer: Nicole Armstrong

Assistant General Counsel

Title of Officer: Tennessee Department of Human Services



Department of State Use Only

Subscribed and sworn to before me on: _____

December 16, 2013

Notary Public Signature: _____

Debra E. Batts

My commission expires on: _____

May 20, 2014

Filed with the Department of State on: 12/16/13

Tre Hargett

Tre Hargett
Secretary of State

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