

**RULES
OF
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES
OFFICE OF LICENSURE**

**CHAPTER 0940-5-38
MINIMUM PROGRAM REQUIREMENTS FOR PERSONAL SUPPORT
SERVICES AGENCIES**

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0940-5-38-.01 DEFINITIONS FOR THE DISTINCT CATEGORY OF PERSONAL SUPPORT SERVICES AGENCIES.

- (1) “Agency” means a sole proprietorship, partnership, corporation, limited liability company or limited liability partnership providing personal support services as defined below. Agency includes all entities that employ or subcontract with individuals who provide personal support services to service recipients.
- (2) “Chronic condition” means a mental and/or physical impairment that is expected to last indefinitely.
- (3) “Service recipient” means an individual who, because of a chronic condition, has substantial limitations in two or more major life activities, and who is receiving services in either a regular or temporary residence.
- (4) “Education services” means consultation provided by a licensed nurse to the service recipient or primary family caregiver concerning a chronic condition.
- (5) “Personal support services” means one or more of the following services provided to a service recipient in the individual’s regular or temporary residence, in addition to assistance with major life activities.

Personal support services include but are not limited to:

- (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 access community activities such as transportation, social, recreational or other personal activities; and
 - (d) Education services.
- (6) “Major life activities” means
- (a) self-care;
 - (b) receptive and expressive language;

(Rule 0940-5-38-.01, continued)

- (c) learning;
- (d) mobility;
- (e) self-direction;
- (f) capacity for independent living; or
- (g) economic self-sufficiency.

Authority: T.C.A. §§4-4-103, 4-5-202, 4-5-204, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, and 33-2-404.
Administrative History: Original rule filed July 21, 2004; effective November 26, 2004.

0940-5-38-.02 APPLICATION OF RULES FOR PERSONAL SUPPORT SERVICES AGENCIES.

- (1) The licensee providing personal support services must comply with and provide services that comply with the following rules:
 - (a) Chapter 0940-5-6 Minimum program requirements for all facilities;
 - (b) Chapter 0940-5-38 Minimum program requirements for personal support services agencies; and
 - (c) Regardless of whether a licensee is a sole proprietorship, partnership, corporation, limited liability company or limited liability partnership, it must meet all requirements of chapters 0940-5-6, and 0940-5-38.

Authority: T.C.A. §§4-4-103, 4-5-202, 4-5-204, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, and 33-2-404.
Administrative History: Original rule filed July 21, 2004; effective November 26, 2004.

0940-5-38-.03 SCOPE.

- (1) These rules apply to all agencies providing one or more personal support services in the regular or temporary residence of service recipients who have substantial limitations in two or more major life activities. The following are exempt from licensure under this chapter:
 - (a) A person who provides personal support services to only one individual;
 - (b) A person who provides personal support services only to members of the individual's own family;
 - (c) A person who provides only household services to a service recipient and no other assistance with major life activities;
 - (d) A person who provides services in homeless shelters;
 - (e) A person who provides only delivery services, such as dry-cleaning, food, medication delivery, or medical equipment; and
 - (f) Home care organizations licensed under Tennessee Code Annotated, Title 68, Chapter 11, Part 2 as a home care organization, which provides personal support services; and
 - (g) Chore services as defined by the Tennessee Commission on Aging and Disability.

(Rule 0940-5-38-.03, continued)

Authority: T.C.A. §§4-4-103, 4-5-202, 4-5-204, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, and 33-2-404.
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0940-5-38-.04 POLICIES AND PROCEDURES.

- (1) The licensee must maintain written policies and procedures that include the following:
 - (a) Requirements that each employee or contract worker comply with procedures for detection and prevention of communicable diseases according to procedures of the Tennessee Department of Health;
 - (b) The plans and procedures to be followed in the event of fire evacuation and natural disaster emergencies;
 - (c) Receipt and disbursement of money on behalf of service recipients;
 - (d) Backup plan for staffing; and
 - (e) Consultation for any service.

Authority: T.C.A. §§4-4-103, 4-5-202, 4-5-204, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, and 33-2-404.
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0940-5-38-.05 PERSONNEL REQUIREMENTS.

- (1) The licensee must:
 - (a) Ensure that individuals who provide personal support services practice infection control procedures and universal precautions that will protect the service recipient from infectious diseases.
 - (b) Have proof of liability insurance coverage for the agency and others who provide personal support services.
 - (c) Have proof of compliance with Tennessee employment and labor laws and regulations.
 - (d) Perform criminal background checks on each individual who provides personal support services within ten (10) days of employment.
 - (e) Check the Tennessee Elderly or Vulnerable Abuse Registry and the Tennessee Sexual Offender Registry for entry of any individual before he or she provides personal support service to a service recipient.
 - (f) Ensure that individuals providing personal support services demonstrate the following prior to providing personal support services to service recipients:
 1. Have language skills sufficient to read and understand instructions, prepare and maintain written reports and records;
 2. Have language skills sufficient to communicate with the service recipient; and
 3. Have documented training specific to meeting individual service recipient needs in the areas of self-care, household management and community living, and methodologies for service delivery.

(Rule 0940-5-38-.05, continued)

- (g) Ensure that individuals providing personal support services have access to consultation for any service provided under this chapter;
- (h) Evaluate, at least annually, the ability of individuals providing personal support services to provide daily supports to service recipients; and
- (i) Provide at least semi-annual documentation that the service recipient is satisfied with the quality of services provided.

Authority: T.C.A. §§4-4-103, 4-5-202, 4-5-204, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, and 33-2-404.
Administrative History: Original rule filed July 21, 2004; effective November 26, 2004.

0940-5-38-.06 STANDARDIZED TRAINING AND CONTINUING EDUCATION REQUIREMENTS.

- (1) The licensee must ensure that:
 - (a) Individuals who provide personal support services demonstrate basic competency in the following skill/knowledge areas within the first 30 days of employment/contract:
 1. Observing, reporting and documenting changes in service recipient's daily living skills;
 2. Abuse and neglect detection, reporting and prevention;
 3. Service recipient rights;
 4. Universal health precautions, including infection control;
 5. How to assist service recipients with personal hygiene;
 6. Service recipient safety; and
 7. Procedures to be followed in the event of an emergency or disaster that at least includes emergency transportation, emergency medical care and staff coverage in such events.
 - (b) Individuals who provide personal support services receive training on job related topics at least annually.

Authority: T.C.A. §§4-4-103, 4-5-202, 4-5-204, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, and 33-2-404.
Administrative History: Original rule filed July 21, 2004; effective November 26, 2004.

0940-5-38-.07 SERVICE RECIPIENT RECORD REQUIREMENTS.

- (1) The licensee must ensure that each service recipient's record includes the following information:
 - (a) An assessment of the need for a specific personal support service to be provided;
 - (b) A written service plan based on a needs assessment which indicates, type, frequency, duration, and amount of services to be provided;
 - (c) Consent for services by the service recipient or conservator, parent, guardian or legal custodian, or attorney-in-fact under a durable power of attorney (DPOA) for health care, when applicable;

(Rule 0940-5-38-.07, continued)

- (d) Address and methods to reach the service recipient's conservator, parent, guardian or legal custodian, surrogate decision maker under T.C.A. §§33-3-219 and 3-220, or attorney-in-fact under a durable power of attorney (DPOA) for health care;
- (e) Documentation of party responsible for payment of services;
- (f) A record of services actually delivered with dates and times documented;
- (g) Documentation of medical problems, illnesses and treatments, accidents, seizures, adverse incidents and follow-up, while the service recipient receives services; and
- (h) Documentation of all funds received and disbursed on behalf of the service recipient.

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