TENNCARE POLICY MANUAL

Policy No.: ORG 06-004 (Rev. 4)	
Subject: TennCare Rules	
Approved by:	Date: July 22, 2016

PURPOSE:

The purpose of this policy is to outline the expectations for persons with the Division of Health Care Finanace and Administration who are responsible for writing and promulgating TennCare rules.

POLICY:

TennCare rules will be filed timely and kept updated in order to provide appropriate regulatory support for all operations of the TennCare program.

DISCUSSION:

State rules provide the authority for many of the activities that TennCare undertakes. It is therefore important that rules are filed and updated when appropriate. TennCare's rules are available at http://share.tn.gov/sos/rules/1200/1200-13/1200-13.htm.

The administrative requirements for writing and promulgating rules are detailed in state law (T.C.A. Title 4, Chapter 5, Part 2) and in state rules (Official Compilitation of the Rules and Regulations of the State of Tennessee at 1360-01). It is not the intent of this policy to restate those requirements.

TennCare routinely utilizes two types of rulemaking: emergency rule and rulemaking hearing rule. Emergency rules are authorized by law under specific circumstances which require immediate adoption of rules.[1] An emergency rule is effective at the time it is filed with the Secretary of State (unless stated differently in the rule). The emergency rule remains in effect for 180 days, after which it expires. A rulemaking hearing rule is promulgated through a process involving public notice and a public hearing, after which the rule is filed with the Secretary of State. Rulemaking hearing rules become effective 90 days after being filed with the Secretary of

[1] The circumstances in which state agencies are authorized to adopt emergency rules are specified at T.C.A. § 4-5-208.

State. Some TennCare rules fall into both categories. They are initially adopted as emergency rules which become effective immediately. In order to remain in effect after the 180 day emergency period, they are also simultaneously promulgated through the rulemaking hearing process. For there to be no gap in TennCare's regulatory authority, the rulemaking hearing process should be completed so that the rulemaking hearing rule is in effect prior to the expiration of the emergency rule. Before any rule can go into effect, it must be approved as to form and legality by the Attorney General. All rules are filed with the Secretary of State for official publication. Publication occurs online at http://sos.tn.gov/rules-and-regulations.

Because of various timeframes included in state law, it takes a minimum of 142 days from the filing of the public Notice of Rulemaking Hearing for a rulemaking hearing rule to become effective. Coordinating the timing of rulemaking therefore, is a critical process particularly when emergency rules are followed by rulemaking hearing rules.

PROCEDURES:

1. Each program manager at TennCare is responsible for being aware of all of the rules that affect his program area. The program manager is responsible for ensuring that the rules are appropriate and adequate to support the operations of his area. The program manager is responsible for identifying areas where rules or amendments to rules are required and for notifying the Policy Office when new rules or rule changes are needed.

2. The Policy Office is responsible for preparing and processing rules. Preparation of a rule requires conducting research, preparing content, and circulating drafts for internal review before arriving at a final version to submit for hearing or for consideration as an emergency rule. Program managers should provide as much time as possible to the Policy Office for completion of these tasks but no less than one week.

3. Emergency rules require a written statement of justification. They also require a fiscal impact statement. The originator of the rule is generally the person responsible for providing an explanation as to how the proposed rule meets the criteria for "emergency" status. (See T.C.A. § 4-5-208(a) for the criteria.) The Policy Office will seek information for the fiscal impact statement from appropriate staff persons within TennCare.

4. When a rulemaking hearing is held on a rule, the program manager requesting the rule should plan to attend the hearing or have someone present in his place. The purpose of the hearing is to receive public comments rather than to discuss the rules. Nevertheless, it is important that there be program representation. The hearing will be organized and conducted by the Policy Office.

5. After a rulemaking hearing has been held on a rule, all persons submitting comments in writing on the rule must receive written responses to their comments. It is the

responsibility of the program manager requesting the rule to draft these responses and provide them to the Policy Office.

6. The Office of General Counsel is responsible for reviewing all rules and approving them as to form and legality prior to their being sent to the Attorney General and then to the Secretary of State.

OFFICES OF PRIMARY RESPONSIBILITY:

TennCare Policy Office
Office of General Counsel

REFERENCES:

Tennessee Code Annotated Title 4, Chapter 5, Part 2.
http://www.lexisnexis.com/hottopics/tncode/

Tennessee Rule 1360-01.
http://share.tn.gov/sos/rules/1360/1360-01/1360-01.htm

Original: September 12, 2006; SB
Reviewed: December, 2007; GW
Rev 1: January 4, 2008; GW
Rev 2: July 20, 2010; SB/GW
Reviewed / Hyperlinks Updated: 07/22/11: GW
Reviewed: July 20, 2012; GW
Rev 3: December 19, 2013: AB
Reviewed: February 24, 2015: AB
Rev 4: 07/22/16: LSH