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Sequence Number:	05-06-25
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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	TN Health Facilities Commission
Division:	N/A
Contact Person:	Logan Grant, Executive Director
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Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

___ Content based on previous emergency rule filed on _____
___ Content is identical to the emergency rule

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	**Chapter Title**
0720-39	Registry of Persons Who have Abused, Neglected, Misappropriated, or Exploited the Property of Vulnerable Individuals
Table of Contents	
0720-39-.04	Referrals of Reports of Abuse, Neglect, Misappropriation, or Exploitation to the Department
0720-39-.05	Department of Health's Notification of Intent to Place on the Registry
Rule Number	**Rule Title**
0720-39-.01	Scope of Rules
0720-39-.02	Definitions
0720-39-.03	Confidentiality of Records and Release of Information
0720-39-.04	Referrals of Reports of Abuse, Neglect, Misappropriation, or Exploitation to the Commission
0720-39-.05	Health Facilities Commission's Notification of Intent to Place on the Registry
0720-39-.06	Requests for Removal from the Registry

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to https://sos.tn.gov/products/division-publications/rulemaking-guidelines.

Chapter Number 0720-39
Registry of Persons Who have Abuse, Neglected, Misappropriated, or Exploited the Property of Vulnerable Individuals

The Table of Contents shall be deleted and a new Table of Contents shall read:

0720-39-.01	Scope of Rules	0720-39-.05	Health Facilities Commission's Notification of Intent to Place on the Registry
0720-39-.02	Definitions		
0720-39-.03	Confidentiality of Records and Release of Information	0720-39-.06	Requests for Removal from the Registry
0720-39-.04	Referrals of Reports of Abuse, Neglect, Misappropriation, or Exploitation to the Commission		

Rule 0720-39-.01 Scope of Rules is amended by deleting sub-paragraphs (1)(b), (1)(d), (2)(b), (2)(c), and adding new sub-paragraphs (1)(b), (1)(d), (2)(b), (2)(c), so that as amended, the new sub-paragraphs shall read:

(1) These rules shall apply to the:

(b) Referrals made to the Health Facilities Commission for placement on the Registry from any state or federal courts, Tennessee State Government Agencies, administrative bodies, Tennessee Bureau of Investigation (TBI) or law enforcement agencies;

(d) Requests for information from the Commission's Registry; and

(2) Due Process.

(b) Petitioners who have been denied removal from the Registry may appeal the State Government Agency's decision by requesting a contested case hearing, which will be conducted according to the Uniform Administrative Procedures Act, as set forth in T.C.A. Title 4, Chapter 5, Section 3 and Tenn. Comp. R. & Regs. 1360-04-01-.01 et seq.

(c) Notice and opportunity to be heard will be accorded to an individual based on each State Government Agency's procedures and definitions.

Authority: T.C.A. §§ 68-11-1001, et seq.

Rule 0720-39-.02 Definitions is amended by deleting paragraphs (1), (3), (6), (7), (9), (12), (17), and sub-paragraphs (14)(c), (18)(a), and 18(h) and parts (19)(b)(1), (19)(b)(2), (19)(b)(4), (19)(b)(5) and adding new paragraphs (1), (3), (6), (7), (9), (16), (17), (20), new sub-paragraphs (13)(c), (18)(a), (18)(h) and (18)(i), and new parts (19)(b)(1), (19)(b)(2), (19)(b)(4), (19)(b)(5) and renumbering the remaining paragraphs accordingly, so that as amended, the new paragraphs, sub-paragraphs, and parts and shall read:

(1) "Abuse" means willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Abuse also includes the deprivation by an individual of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology.

(3) "Commission" means the Tennessee Health Facilities Commission.

(6) "Designee" means the designee of the Executive Director of the Tennessee Health Facilities Commission.

(7) “Executive Director” means the Executive Director of the Health Facilities Commission.

(9) “Facility” means any facility licensed by the Tennessee Health Facilities Commission under T.C.A. Title 68, Chapter 11, Part 2.

(13) “Person” or “individual” means:

(c) However, the terms “vulnerable person” or “vulnerable individual” shall have the meaning set forth in 0720-39-.02(19).

(16) “Referral” means notification made to the Commission by any State Government Agency that finds that an individual has committed abuse, neglect, misappropriation, or exploitation of the property of a vulnerable person, pursuant to that State Government Agency’s procedures and definitions.

(17) “Registry” means the registry maintained by the Commission pursuant to T.C.A. Title 68, Chapter 11, Part 10, containing the names of any persons who, after receiving notice and opportunity to be heard, have been determined by Tennessee State Government Agencies or any state or federal court to have abused, neglected, misappropriated, or exploited the property of vulnerable persons.

(18) “State Government Agency” means an agency of Tennessee state government and its successor agency and includes but is not limited to:

(a) The Department of Disability and Aging;

(h) The Division of TennCare;

(i) The Tennessee Health Facilities Commission.

(19) “Vulnerable person”, or “vulnerable individual,” means anyone who:

(b) Is (18) years of age or older and, by reason of advanced age or other physical or mental condition, is vulnerable to or has been determined to have suffered from abuse, neglect, or misappropriation or exploitation of property and is or has been:

1. The subject of any report of harm, abuse, neglect, or exploitation of property made to any State Government Agency or investigative authority with responsibility to investigate those reports pursuant to T.C.A. Title 37, Chapter 1, Parts 1 or 6, or T.C.A. Title 71, Chapter 6, Part 1, or pursuant to any other law or regulation;

2. Receiving protective services from a State Government Agency pursuant to law;

4. In the care of either a State Government Agency, an entity that is licensed or regulated by a State Government Agency, or in the care of an entity providing services under the provisions of a contract between that entity and a State Government Agency; or

5. Receiving services in the person’s home from any agency licensed or regulated by or contracted to a State Government Agency, including, but not limited to home and community-based services, home health care, or other health care-related services provided through state or federal funds to assist persons to remain in their homes.

(20) “Willful” means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

Authority: T.C.A. §§ 68-11-1001, et seq.

Rule 0720-39-.03 Confidentiality of Records and Release of Information is amended by deleting paragraphs (1), (2), and (3) and adding new paragraphs (1), (2), and (3), so that as amended, the new paragraphs shall read:

(1) Any and all reports, investigations, inspections, incident reports, or referrals made to the Commission by facilities licensed pursuant to T.C.A. Title 68, Chapter 11, Part 2, regarding abuse, neglect, misappropriation, or exploitation of a vulnerable person are confidential.

(2) The Commission may not release information regarding the placement of an individual on the Registry by either the Commission or any State Government Agency for abuse, neglect, misappropriation, or exploitation except as authorized pursuant to T.C.A. Title 68, Chapter 11, Part 10 and federal law or regulation.

(3) The Commission will maintain the confidentiality of information received to the extent required by state or federal law.

Authority: T.C.A. §§ 63-11-211 and 68-11-1001, et seq.; and 42 C.F.R. §§ 488.332 and 488.335.

Rule 0720-39-.04 Referrals of Reports of Abuse, Neglect, Misappropriation, or Exploitation to the Commission amended by deleting paragraphs (1), (2), (3), sub-paragraph (3)(a), (3)(d), (3)(e), (3)(h), and part (3)(g)(1) and adding new paragraphs (1), (2), (3), and sub-paragraphs (3)(a), (3)(d), (3)(e), (3)(h), and part (3)(g)(1), so that as amended, the new paragraphs, sub-paragraphs, and part shall read:

(1) The Health Facilities Commission investigates and makes referrals to the Registry based on its investigation of reports of abuse, neglect, or misappropriation of the property of vulnerable persons in facilities licensed or certified, pursuant to T.C.A. Title 68, Chapter 11, Part 2.

(2) Any State Government Agency that finds that an individual has committed abuse, neglect, misappropriation, or exploitation of the property of a vulnerable person shall refer the individual to the Commission for placement on the Registry within ninety (90) calendar days of the completion of due process, unless release of such information is prohibited by applicable state or federal law. Due process is considered completed when an individual has fully exhausted all administrative and judicial remedies in accordance with the referring State Government Agency's standard procedures and the Uniform Administrative Procedures Act, as set forth in T.C.A. Title 4, Chapter 5, Part 3 and Tenn. Comp. R. & Regs. 1360-04-01-.01 et seq. This provision shall not apply to placement on the Registry by criminal disposition or judicial order in accordance with T.C.A. Title 68, Chapter 11, Part 10.

(3) Referrals for placement on the Registry by other State Government Agencies shall include the following prerequisites:

(a) The applicable definition of vulnerable person, as set forth in 0720-39-.02(19), or as defined by the referring State Government Agency;

(d) The nature and extent of the abuse, neglect, misappropriation, or exploitation and the applicable definition from the referring agency of abuse, neglect, misappropriation, or exploitation according to the State Government Agency's procedures and definitions;

(e) Where permissible by law, the identity of the complainant, which shall remain confidential;

(g) A statement summarizing the facts demonstrating that the person to be placed on the Registry received notice and an opportunity to show that he or she should not be placed on the Registry. The statement must include:

1. Emergency, initial, or final administrative orders by a State Government Agency;

(h) Any State Government Agency making referral to the Registry shall include an attestation that the requirements set forth in 0720-39-.04(3)(a-g) have been met; and

Authority: T.C.A. §§ 68-11-211 and 68-11-1003 and 42 U.S.C.A. § 5106a.

Rule 0720-39-.05 Health Facilities Commission's Notification of Intent to Place on the Registry is amended by deleting paragraphs (1), (2), (3), (4), sub-paragraph (2)(b), and parts (4)(b)(1), (4)(b)(4), (4)(b)(5), (4)(c)(1), and (4)(c)(2), and adding new paragraphs (1), (2), (3), (4), sub-paragraph (2)(b), and parts (4)(b)(1), (4)(b)(4), (4)(b)(5), (4)(c)(1), and (4)(c)(2), so that as amended, the new paragraphs, sub-paragraph and parts shall read:

(1) The Commission shall send a Notice of Intent to Place on the Registry when it receives information that an individual has abused, neglected, or misappropriated the property of a vulnerable person. The

Commission shall also send such a notice if it receives documentation from the TBI or other federal, state or local law enforcement agency or any court or criminal justice agency, substantiating that an offense against a vulnerable person has been committed by an individual whose name has not already been placed on the Registry.

(2) The Notice of Intent to Place sent by the Commission shall contain:

(b) Notification that the individual may, within thirty (30) days of the date of the notice, request an administrative hearing by submitting a written request to the Tennessee Health Facilities Commission;

(3) If the placement on the Registry is based on a referral from another State Government Agency, then the individual being placed will not be entitled or given opportunity to contest or dispute prior hearing conclusions, the content or terms of any prior criminal disposition, or the factual findings upon which the conclusion or disposition are based. Any hearing offered by the Commission shall be limited to the accuracy of the report that the criminal disposition occurred, hearing conclusions were made, or any fact issue related to the correct identity of the individual. No such hearing will be given unless such challenge is made within sixty (60) days of notification of inclusion on the Registry.

(4) Appeals in contested cases by the Commission.

(b) Initial Order. If an Administrative Law Judge orders an individual placed on the Registry via Initial Order, the Initial Order becomes a Final Order within fifteen (15) days after entry of the Initial Order, unless:

1. The individual files a petition for appeal to the Executive Director or the Executive Director's designee stating the basis for the appeal within fifteen (15) days after the entry of the Initial Order. A Final Order will not be issued until the Executive Director or designee has reviewed the Initial Order. A petition for appeal to the Commission must be filed with the Administrative Procedures Division of the Secretary of State; or

4. A new fifteen (15) day period for the filing of an appeal with the Commission starts to run from the entry date of an order disposition of a petition for reconsideration, or from the twentieth (20th) day after filing of the petition, if no order is issued.

5. A party may petition the Commission for a stay of the Initial Order within seven (7) days after the entry of the Initial Order.

(c) Final Order.

1. Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order with the Executive Director of the Commission, or designee, in which the petitioner shall state the specific reasons why the Initial Order was in error.

2. If no action is taken by the Executive Director or designee within twenty (20) days of filing of the petition, it is deemed denied.

Authority: T.C.A. §§ 4-5-301, et seq., 4-5-315, 4-5-316, 4-5-317, 4-5-322, and 68-11-1003; T.C.A. Title 4, Chapter 5, Part 3; Tenn. Comp. R. & Regs. 1360-04-01-.01, et seq; and 42 C.F.R. § 488.335(d).

Rule 0720-39-.06 Requests for Removal from the Registry is amended by deleting paragraphs (1), (2), (3), (5), (6), (7), (8) and (9) and adding new paragraphs (1), (2), (3), (5), (6), (7), (8) and (9), so that as amended, the new paragraphs shall read:

(1) A petitioner seeking removal from the Registry must request removal in writing. Requests for removal may be submitted to the Commission.

(2) In cases involving a request for removal from an individual placed by another State Government Agency, the Commission shall forward the request for removal to the agency that initially referred the individual for placement on the Registry.

(3) A State Government Agency that has referred a person for placement on the Registry may recommend to the Commission the removal of the person's name if:

(5) The final decision regarding the recommendation for removal from the Registry shall be made by the State Government Agency. The recommendation shall be reduced to writing, giving the agency's reasons for the decision and mailed to the petitioner seeking removal. The State Government Agency shall provide a copy of the final decision to the Commission.

(6) If the decision is to remove the person from the Registry, the recommendation shall be sent to the Commission and the person's name shall be removed by the Commission.

(7) If the petitioner seeking removal is dissatisfied with the determination made by the State Government Agency, the person shall be permitted to appeal. The appeal shall be conducted by the State Government Agency as a contested case hearing pursuant to the Uniform Administrative Procedures Act.

(8) The decision and the written recommendations of the advisory group and the State Government Agency shall be open for public inspection, after redactions are made to comply with applicable confidentiality law.

(9) For certified nurse aides:

(a) A certified nurse aide's name shall not be removed from the Registry when the placement was for abuse, misappropriation, or exploitation.

(b) A certified nurse aide's name may only be removed from the Registry when the following circumstances have been met:

1. The individual was placed on the Registry on the basis of one (1) instance of neglect;

2. The employment and personal history of the nurse aide do not reflect a pattern of abusive behavior or neglect; and

3. At least one calendar year has expired from the date of placement on the Registry.

(c) A certified nurse aide whose name was placed on the Registry shall not maintain an active certification.

(d) All Registry entries shall also be maintained on the Nurse Aide Registry.

Authority: T.C.A. §§ 68-11-1003(g), 42 U.S.C.A. § 1396r, and 42 C.F.R. 483.156.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows: N/A

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Health Facilities Commission on 1/18/2024, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/22/2023

Rulemaking Hearing(s) Conducted on: (add more dates). 1/18/2024

Date: 3/4/2025

Signature:

Name of Officer: Logan Grant

Title of Officer: Executive Director

Agency/Board/Commission: TN Health Facilities Commission

Rule Chapter Number(s): 0720-39

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Jonathan Skrmetti
Attorney General and Reporter

April 30, 2025
Date

Department of State Use Only

Filed with the Department of State on: 5/5/2025

Effective on: 8/3/2025

Tre Hargett
Secretary of State

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Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

No public comments were made during the rulemaking hearing

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The proposed rule amendments are not expected to have an impact on small business.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

The proposed rule amendments should not have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules update the responsible agency to the Health Facilities Commission from the Department of Health. Several of the definitions were updated to reflect the change from the Department of Health to the Health Facilities Commission. The definition of abuse was amended to reflect the change in the federal definition. The definition of "willful" was added to clarify what must occur for registry placement. Clarifying language for certified nurse aide registry placement was added.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

42 C.F.R. 488.301; the definition of abuse was amended.

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Any licensed health care facility in Tennessee.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

Morgan Winton v Dept of Health; the definition of willful was not in the state's rules and regulations.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

None.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Logan Grant, Executive Director

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Logan Grant, Executive Director

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

RULES
OF
THE TENNESSEE HEALTH FACILITIES COMMISSION

CHAPTER 0720-39
REGISTRY OF PERSONS WHO HAVE ABUSED, NEGLECTED, MISAPPROPRIATED, OR EXPLOITED THE PROPERTY OF VULNERABLE INDIVIDUALS

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0720-39-.04	~~Referrals of Reports of Abuse, Neglect, Misappropriation, or Exploitation to the Department~~ Referrals of Reports of Abuse, Neglect, Misappropriation, or Exploitation to the Commission		

PREAMBLE.

The purpose of the Registry of Persons Who Have Abused, Neglected, Misappropriated, or Exploited the Property of Vulnerable Individuals ("Registry") is to notify the public of those individuals who have been determined to have performed such acts against a vulnerable individual in the State of Tennessee. These rules outline procedures for reporting to the Registry and for seeking removal from the Registry.

0720-39-.01 SCOPE OF RULES.

(1) These rules shall apply to the:

(a) Notifications of intent to place any person suspected of abuse, neglect, misappropriation, or exploitation, as defined by the Registry of Persons Who Have Abused, Neglected, Misappropriated, or Exploited the Property of Vulnerable Individuals ("Registry") in T.C.A. Title 68, Chapter 11, Part 10;

(b) Referrals made to the Health Facilities Commission for placement on the Registry from any state or federal courts, Tennessee State Government Agencies, administrative bodies, Tennessee Bureau of Investigation (TBI) or law enforcement agencies;

~~Referrals made to the Department for placement on the Registry from any state or federal courts, Tennessee state government agencies, administrative bodies, Tennessee Bureau of Investigation or law enforcement agencies;~~

(c) Notification to the individual of the individual's inclusion on the Registry;

(d) Requests for information from the Commission's Registry; and

~~Requests for information from the Department's Registry; and~~

(e) Requests for removal from the Registry.

(2) Due Process.

(a) Administrative due process consists of contested case hearings and appeals conducted in accordance with the procedures set forth in the Uniform Administrative Procedures Act, as set forth in T.C.A. Title 4, Chapter 5, Part 3 and Tenn. Comp. R. & Regs. 1360-

04-01-.01 et seq.

(b) Petitioners who have been denied removal from the Registry may appeal the State Government Agency's decision by requesting a contested case hearing, which will be conducted according to the Uniform Administrative Procedures Act, as set forth in T.C.A. Title 4, Chapter 5, Section 3 and Tenn. Comp. R. & Regs. 1360-04-01-.01 et seq.

~~(b) Petitioners who have been denied removal from the Registry may appeal the state government agency's decision by requesting a contested case hearing, which will be conducted according to the Uniform Administrative Procedures Act, as set forth in T.C.A. Title 4, Chapter 5, Section 3 and Tenn. Comp. R. & Regs. 1360-04-01-.01 et seq.~~

(c) Notice and opportunity to be heard will be accorded to an individual based on each State Government Agency's procedures and definitions.

~~(c) Notice and opportunity to be heard will be accorded to an individual based on each state government agency's procedures and definitions.~~

Authority: *T.C.A. §§ 68-11-1001, et seq.* ***Administrative History:*** *Original rules filed September 28, 2016; effective December 27, 2016. Transferred from chapter 1200-08-38 pursuant to Public Chapter 1119 of 2022 effective July 1, 2022.*

0720-39-.02 DEFINITIONS.

(1) "Abuse" means willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Abuse also includes the deprivation by an individual of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology.

~~"Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.~~

(2) "Advisory Group" means a group convened by the state agency composed of persons with experience in the subject matter areas of the agency's work, or who by experience or education the agency determines are qualified to provide recommendations to the agency regarding a person's likelihood of committing further acts or omissions that led to the person's placement on the registry.

(3) "Commission" means the Tennessee Health Facilities Commission.

~~"Commissioner" means the Commissioner of the Tennessee Department of Health.~~

(4) "Criminal disposition" means the disposition of criminal charges constituting an offense against a vulnerable person, either by conviction, or by pretrial diversion authorized by any court pursuant to Tennessee Code Annotated, T.C.A. Title 40, Chapter 15, or by an order deferring further proceedings and placing an individual on probation by post-trial diversion issued pursuant to T.C.A. Title 40, Chapter 35.

(5) "Court" means any state or federal court.

~~(6) "Department" means the Tennessee Department of Health.~~

~~(7)~~(6) "Designee" means the designee of the Executive Director of the Tennessee Health Facilities Commission.

~~"Designee" means the designee of the Commissioner of the Tennessee Department of Health.~~

(7) "Executive Director" means the Executive Director of the Health Facilities Commission.

(8) "Exploitation" means, in cases that are investigated by the Department of Human Services, the improper use by a caretaker of funds that have been paid by a governmental agency to an adult or to the caretaker for the use or care of the adult.

(9) "Facility" means any facility licensed by the Tennessee Health Facilities Commission under T.C.A. Title 68, Chapter 11, Part 2.

~~"Facility" means any facility licensed by the Tennessee Department of Health, Office of Health Care Facilities under T.C.A. Title 68, Chapter 11, Part 2.~~

(10) Misappropriation" means any taking, possession, or use of the property of a vulnerable person the elements of which constitute any criminal offense involving such property, or that constitute a violation of a fiduciary duty of a caretaker of a vulnerable person.

(11) "Neglect" means the failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness.

~~(12) "Notification" means referrals made to the Department by any state government agency that finds that an individual has committed abuse, neglect, misappropriation, or exploitation of the property of a vulnerable person, pursuant to that state government agency's procedures and definitions.~~

~~(13)~~ (12) "Offense against a vulnerable person" means any act that constitutes abuse, neglect, misappropriation or exploitation of the property of a vulnerable person even if the act does not constitute a criminal act, or a crime the elements of which constitute abuse, neglect, or misappropriation or exploitation of the property of a vulnerable person.

~~(14)~~ (13) "Person" or "individual" means:

(a) Any individual eighteen (18) years of age or older, or

(b) Any individual younger than eighteen (18) years of age:

1. Who has been treated as an adult in a criminal court of competent jurisdiction, pursuant to T.C.A. Title 37, Chapter 1, Part 1, or

2. Whose placement on the Registry is otherwise required by law.

(c) However, the terms "vulnerable person" or "vulnerable individual" shall have the meaning set forth in 0720-39-.02(19).

~~However, the terms "vulnerable person" or "vulnerable individual" shall have the meaning set forth in 0720-39-.02(18).~~

~~(15)~~ (14) "Petitioner" means an individual seeking removal from the Registry.

~~(16)~~ (15) "Property" means any interests of any type in real property, and all interests of any type in personal property whether in moneys or financial instruments of any type, goods, furnishings, and similar property. In those cases investigated by the Department of Human Services pursuant to Title 71, Chapter 5, part 1, property shall only consist of funds paid by a governmental agency to an "adult" as defined in T.C.A. § 71-6-102.

(16) "Referral" means notification made to the Commission by any State Government Agency that

finds that an individual has committed abuse, neglect, misappropriation, or exploitation of the property of a vulnerable person, pursuant to that State Government Agency's procedures and definitions.

(17) "Registry" means the registry maintained by the Commission pursuant to T.C.A. Title 68, Chapter 11, Part 10, containing the names of any persons who, after receiving notice and opportunity to be heard, have been determined by Tennessee State Government Agencies or any state or federal court to have abused, neglected, misappropriated, or exploited the property of vulnerable persons.

~~"Registry" means the registry maintained by the Department pursuant to T.C.A. Title 68, Chapter 11, Part 10, containing the names of any persons who, after receiving notice and opportunity to be heard, have been determined by Tennessee state government agencies or any state or federal court to have abused, neglected, misappropriated, or exploited the property of vulnerable persons.~~

(18) "State Government Agency" means an agency of Tennessee state government and its successor agency and includes but is not limited to:

a. ~~The Department of Intellectual and Developmental Disabilities~~ The Department of Disability and Aging;

b. The Department of Mental Health and Substance Abuse Services;

c. The Department of Human Services, Adult Protective Services Division;

d. The Department of Children's Services;

e. The Department of Health;

f. The Department of Education;

g. The Tennessee Bureau of Investigation; ~~and~~

h. ~~The Bureau of TennCare~~

The Division of TennCare; and.

i. The Tennessee Health Facilities Commission.

(19) "Vulnerable person", or "vulnerable individual," means anyone who:

(a) Is under eighteen (18) years of age; or

(b) Is (18) years of age or older and, by reason of advanced age or other physical or mental condition, is vulnerable to or has been determined to have suffered from abuse, neglect, or misappropriation or exploitation of property and is or has been:

1. The subject of any report of harm, abuse, neglect, or exploitation of property made to any State Government Agency or investigative authority with responsibility to investigate those reports pursuant to T.C.A. Title 37, Chapter 1, Parts 1 or 6, or T.C.A. Title 71, Chapter 6, Part 1, or pursuant to any other law or regulation;

~~The subject of any report of harm, abuse, neglect, or exploitation of property made to any state government agency or investigative authority with responsibility to investigate those reports pursuant to T.C.A. Title 37, Chapter 1, Parts 1 or 6, or T.C.A. Title 71, Chapter 6, Part 1, or pursuant to any other law or regulation;~~

2. Receiving protective services from a State Government Agency pursuant to law;

~~Receiving protective services from a state government agency pursuant to law~~;

3. The victim of any criminal offense that constitutes abuse, neglect, or misappropriation or exploitation of property;

4. In the care of either a State Government Agency, an entity that is licensed or regulated by a State Government Agency, or in the care of an entity providing services under the provisions of a contract between that entity and a State Government Agency; or

~~In the care of either a state government agency, an entity that is licensed or regulated by a state government agency, or in the care of an entity providing services under the provisions of a contract between that entity and a state government agency; or~~

5. Receiving services in the person's home from any agency licensed or regulated by or contracted to a State Government Agency, including, but not limited to home and community-based services, home health care, or other health care-related services provided through state or federal funds to assist persons to remain in their homes.

~~Receiving services in the person's home from any agency licensed or regulated by or contracted to a state government agency, including, but not limited to home and community-based services, home health care, or other health care-related services provided through state or federal funds to assist persons to remain in their homes.~~

(20) "Willful" means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

Authority: *T.C.A. §§ 68-11-1001, et seq.* ***Administrative History:*** *Original rules filed September 28, 2016; effective December 27, 2016. Transferred from chapter 1200-08-38 pursuant to Public Chapter 1119 of 2022 effective July 1, 2022.*

0720-39-.03 CONFIDENTIALITY OF RECORDS AND RELEASE OF INFORMATION.

(1) Any and all reports, investigations, inspections, incident reports, or referrals made to the Commission by facilities licensed pursuant to T.C.A. Title 68, Chapter 11, Part 2, regarding abuse, neglect, misappropriation, or exploitation of a vulnerable person are confidential.

~~Any and all reports, investigations, inspections, incident reports, or referrals made to the Department by facilities licensed pursuant to T.C.A. Title 68, Chapter 11, Part 2, regarding abuse, neglect, misappropriation, or exploitation of a vulnerable person are confidential.~~

(2) The Commission may not release information regarding the placement of an individual on the Registry by either the Commission or any State Government Agency for abuse, neglect, misappropriation, or exploitation except as authorized pursuant to T.C.A. Title 68, Chapter 11, Part 10 and federal law or regulation.

~~The Department may not release information regarding the placement of an individual on the Registry by either the Department or any state government entity for abuse, neglect, misappropriation, or exploitation except as authorized pursuant to T.C.A. Title 68, Chapter 11, Part 10 and federal law or regulation.~~

(3) The Commission will maintain the confidentiality of information received to the extent required by state or federal law.

~~The Department will maintain the confidentiality of information received to the extent required~~

~~by state or federal law.~~

Authority: *T.C.A. §§ 63-11-211 and 68-11-1001, et seq.; and 42 C.F.R. §§ 488.332 and 488.335.* ***Administrative History:*** *Original rules filed September 28, 2016; effective December 27, 2016. Transferred from chapter 1200-08-38 pursuant to Public Chapter 1119 of 2022 effective July 1, 2022.*

0720-39-.04 ~~REFERRALS OF REPORTS OF ABUSE, NEGLECT, MISAPPROPRIATION, OR EXPLOITATION TO THE DEPARTMENT.~~ REFERRALS OF REPORTS OF ABUSE, NEGLECT, MISAPPROPRIATION, OR EXPLOITATION TO THE COMMISSION.

(1) The Health Facilities Commission investigates and makes referrals to the Registry based on its investigation of reports of abuse, neglect, or misappropriation of the property of vulnerable persons in facilities licensed or certified, pursuant to T.C.A. Title 68, Chapter 11, Part 2.

~~The Department's Office of Health Care Facilities investigates and makes referrals to the Registry based on its investigation of reports of abuse, neglect, or misappropriation of the property of vulnerable persons in facilities licensed or certified, pursuant to T.C.A. Title 68, Chapter 11, Part 2.~~

(2) Any State Government Agency that finds that an individual has committed abuse, neglect, misappropriation, or exploitation of the property of a vulnerable person shall refer the individual to the Commission for placement on the Registry within ninety (90) calendar days of the completion of due process, unless release of such information is prohibited by applicable state or federal law. Due process is considered completed when an individual has fully exhausted all administrative and judicial remedies in accordance with the referring State Government Agency's standard procedures and the Uniform Administrative Procedures Act, as set forth in T.C.A. Title 4, Chapter 5, Part 3 and Tenn. Comp. R. & Regs. 1360-04-01-.01 et seq. This provision shall not apply to placement on the Registry by criminal disposition or judicial order in accordance with T.C.A. Title 68, Chapter 11, Part 10.

~~Any state government agency that finds that an individual has committed abuse, neglect, misappropriation, or exploitation of the property of a vulnerable person shall refer the individual to the Department for placement on the Registry within one hundred eighty (180) days of the completion of due process, unless release of such information is prohibited by applicable state or federal law. Due process is considered completed when an individual has fully exhausted all administrative and judicial remedies in accordance with the referring state government agency's standard procedures and the Uniform Administrative Procedures Act, as set forth in T.C.A. Title 4, Chapter 5, Part 3 and Tenn. Comp. R. & Regs. 1360-04-01-.01 et seq. This provision shall not apply to placement on the Registry by criminal disposition or judicial order in accordance with T.C.A. Title 68, Chapter 11, Part 10.~~

(3) Referrals for placement on the Registry by other State Government Agencies shall include the following prerequisites:

~~Referrals for placement on the Registry by other state government agencies shall include the following prerequisites.~~

(a) The applicable definition of vulnerable person, as set forth in 0720-39-.02(19), or as defined by the referring State Government Agency;

~~The applicable definition of vulnerable person, as set forth in 0720-39-.02(17);~~

(b) The location and/or facility where the abuse, neglect, misappropriation, or financial exploitation occurred;

(c) The identity of the caregiver or alleged perpetrator including:

1. Name, street address, phone number, license or certificate number (if applicable),

and other identifying contact information; and

2. Date of birth and social security number;

(d) The nature and extent of the abuse, neglect, misappropriation, or exploitation and the applicable definition from the referring agency of abuse, neglect, misappropriation, or exploitation according to the State Government Agency's procedures and definitions;

~~The nature and extent of the abuse, neglect, misappropriation, or exploitation and the applicable definition from the reporting agency of abuse, neglect, misappropriation, or exploitation according to the state government agency's procedures and definitions.~~

(e) Where permissible by law, the identity of the complainant, which shall remain confidential;

~~The identity of the complainant which shall remain confidential;~~

(f) Information regarding the investigation and substantiation of the allegation or findings of the agency, examples of which may include the investigative report, investigative summary, documents, witness statements or other evidence supporting the allegations or findings of the agency;

(g) A statement summarizing the facts demonstrating that the person to be placed on the Registry received notice and an opportunity to show that he or she should not be placed on the Registry. The statement must include:

1. Emergency, initial, or final administrative orders by a State Government Agency;

~~Emergency, initial, or final administrative orders by a state government agency;~~

2. Evidence of service of process meeting the requirements of Tenn. Comp. R. & Regs. 1360-04-01-.06(3); or

3. In the case of a criminal disposition, a copy of the criminal disposition from the Tennessee Bureau of Investigation, or other federal, state, or local law enforcement agency, court, or criminal justice agency, verifying that a criminal disposition against the named individual was the result of an offense against a vulnerable person;

(h) Any State Government Agency making referral to the Registry shall include an attestation that the requirements set forth in 0720-39-.04(3)(a-g) have been met; and

~~Any state government agency making referral to the Registry shall include an attestation that the requirements set forth in 0720-39-.04(3)(a-g) have been met.~~

(i) A letter notifying the individual that the individual has been placed on the Registry will be sent to the individual's last known mailing address by United States Postal Service First Class mail and by Certified Mail.

Authority: *T.C.A. §§ 68-11-211 and 68-11-1003 and 42 U.S.C.A. § 5106a.* ***Administrative History:*** *Original rules filed September 28, 2016; effective December 27, 2016. Transferred from chapter 1200-08-38 pursuant to Public Chapter 1119 of 2022 effective July 1, 2022.*

0720-39-.05 HEALTH FACILITIES COMMISSION'S NOTIFICATION OF INTENT TO PLACE ON THE REGISTRY.

~~**DEPARTMENT OF HEALTH'S NOTIFICATION OF INTENT TO PLACE ON THE REGISTRY.**~~

(1) The Commission shall send a Notice of Intent to Place on the Registry when it receives information that an individual has abused, neglected, or misappropriated the property of a vulnerable person. The Commission shall also send such a notice if it receives documentation from the TBI or other federal, state or local law enforcement agency or any court or criminal justice agency, substantiating that an offense against a vulnerable person has been committed by an individual whose name has not already been placed on the Registry.

~~The Department shall send a Notice of Intent to Place on the Registry when it receives information that an individual has abused, neglected, or misappropriated the property of a vulnerable person. The Department shall also send such a notice if it receives documentation from the TBI or other federal, state or local law enforcement agency or any court or criminal justice agency, substantiating that an offense against a vulnerable person has been committed by an individual whose name has not already been placed on the Registry.~~

(2) The Notice of Intent to Place sent by the Commission shall contain:

~~The Notice of Intent to Place sent by the Department shall contain:~~

(a) The allegations supporting the determination that the individual has abused, neglected, or misappropriated the property of a vulnerable person;

(b) Notification that the individual may, within thirty (30) days of the date of the notice, request an administrative hearing by submitting a written request to the Tennessee Health Facilities Commission;

~~Notification that the individual may, within thirty (30) days of the date of the notice, request an administrative hearing by submitting a written request to the Tennessee Department of Health, Office of Health Care Facilities;~~

(c) Notice that the hearing will be a contested case hearing which will be conducted by an Administrative Law Judge or Hearing Officer pursuant to the Tennessee Administrative Procedures Act, set forth in T.C.A. Title 4, Chapter 5, Section 3 and Tenn. Comp. R. & Regs. 1360-04-01-.01 et seq., and that the individual may be represented by an attorney at his or her own expense; and

(d) Notice that if the individual fails to request a hearing within thirty (30) days, the individual's name shall be placed on the Registry by default.

(3) If the placement on the Registry is based on a referral from another State Government Agency, then the individual being placed will not be entitled or given opportunity to contest or dispute prior hearing conclusions, the content or terms of any prior criminal disposition, or the factual findings upon which the conclusion or disposition are based. Any hearing offered by the Commission shall be limited to the accuracy of the report that the criminal disposition occurred, hearing conclusions were made, or any fact issue related to the correct identity of the individual. No such hearing will be given unless such challenge is made within sixty (60) days of notification of inclusion on the Registry.

~~If the placement on the Registry is based on a referral from another state government agency, then the individual being placed will not be entitled or given opportunity to contest or dispute prior hearing conclusions, the content or terms of any prior criminal disposition, or the factual findings upon which the conclusion or disposition are based. Any hearing offered by the Department shall be limited to the accuracy of the report that the criminal disposition occurred, hearing conclusions were made, or any fact issue related to the correct identity of the individual. No such hearing will be given unless such challenge is made within sixty (60) days of notification of inclusion on the Registry.~~

(4) Appeals in contested cases by the Commission.

~~Appeals in contested cases by the Department.~~

(a) All appeals in contested cases shall be conducted in accordance with Uniform Administrative Procedures Act and rules of the Administrative Procedures Division.

(b) Initial Order. If an Administrative Law Judge orders an individual placed on the Registry via Initial Order, the Initial Order becomes a Final Order within fifteen (15) days after entry of the Initial Order, unless:

1. The individual files a petition for appeal to the Executive Director or the Executive Director's designee stating the basis for the appeal within fifteen (15) days after the entry of the Initial Order. A Final Order will not be issued until the Executive Director or designee has reviewed the Initial Order. A petition for appeal to the Commission must be filed with the Administrative Procedures Division of the Secretary of State; or

   ~~The individual files a petition for appeal to the Commissioner or the Commissioner's designee stating the basis for the appeal within fifteen (15) days after the entry of the Initial Order. A Final Order will not be issued until the Commissioner or his designee has reviewed the Initial Order. A petition for appeal to the Department must be filed with the Administrative Procedures Division of the Secretary of State; or~~

2. A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error, within fifteen (15) days after the Initial Order's entry. This petition must also be filed with the Administrative Procedures Division as listed above.

3. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing.

4. A new fifteen (15) day period for the filing of an appeal with the Commission starts to run from the entry date of an order disposition of a petition for reconsideration, or from the twentieth (20th) day after filing of the petition, if no order is issued.

   ~~A new fifteen (15) day period for the filing of an appeal with the Department starts to run from the entry date of an order disposition of a petition for reconsideration, or from the twentieth (20th) day after filing of the petition, if no order is issued.~~

5. A party may petition the Commission for a stay of the Initial Order within seven (7) days after the entry of the Initial Order.

   ~~A party may petition the Department for a stay of the Initial Order within seven (7) days after the entry of the Initial Order.~~

(c) Final Order.

1. Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order with the Executive Director of the Commission, or designee, in which the petitioner shall state the specific reasons why the Initial Order was in error.

   ~~Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order with the Commissioner of the Department, or his designee, in which the petitioner shall state the specific reasons why the Initial Order was in error.~~

2. If no action is taken by the Executive Director or designee within twenty (20) days

of filing of the petition, it is deemed denied.

~~If no action is taken by the Commissioner or his designee within twenty (20) days of filing of the petition, it is deemed denied.~~

(d) Judicial Review.

1. If the individual is aggrieved with the outcome of a contested case hearing, the individual may seek judicial review of the Final Order by filing a petition for review in Chancery Court within sixty (60) days after the entry of a Final Order, or if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition.

2. The filing of a petition for reconsideration does not extend the sixty (60) day period for judicial review, if the petition for reconsideration is not granted.

(5) A letter notifying the individual that the individual has been placed on the Registry will be sent to the individual's last known mailing address by United States Postal Service First Class mail and by Certified Mail.

Authority: *T.C.A. §§ 4-5-301, et seq., 4-5-315, 4-5-316, 4-5-317, 4-5-322, and 68-11-1003; T.C.A. Title 4, Chapter 5, Part 3; Tenn. Comp. R. & Regs. 1360-04-01-.01, et seq; and 42 C.F.R. § 488.335(d).* ***Administrative History:*** *Original rules filed September 28, 2016; effective December 27, 2016. Transferred from chapter 1200-08-38 pursuant to Public Chapter 1119 of 2022 effective July 1, 2022.*

0720-39-.06 REQUESTS FOR REMOVAL FROM THE REGISTRY.

(1) A petitioner seeking removal from the Registry must request removal in writing. Requests for removal may be submitted to the Commission.

~~A petitioner seeking removal from the Registry must request removal in writing. Requests for removal may be submitted to the Office of Health Care Facilities.~~

(2) In cases involving a request for removal from an individual placed by another State Government Agency, the Commission shall forward the request for removal to the agency that initially referred the individual for placement on the Registry.

~~In cases involving a request for removal from an individual placed by another state government agency, the Department shall forward the request for removal to the agency that initially referred the individual for placement on the Registry.~~

(3) A State Government Agency that has referred a person for placement on the Registry may recommend to the Commission the removal of the person's name if:

~~A state government agency that has referred a person for placement on the Registry may recommend to the Department the removal of the person's name if:~~

(a) The agency determines that the placement of the person's name on the registry was in error; or

(b) An advisory group, convened by such state agency, composed of persons with experience in the subject matter areas of the agency's work, or who by experience or education the agency determines are qualified to provide recommendations to the agency regarding a person's likelihood of committing further acts or omissions that led to the person's placement on the Registry determines, based upon evidence presented to the group, that removal of the person from the Registry is clearly warranted.

(4) The advisory group may require the petitioner seeking removal to provide documentation

supporting removal from the Registry, including, but not limited to:

(a) Tennessee Open Records Information Services (TORIS) background check conducted by the Tennessee Bureau of Investigation.

(b) Employment history from the time the petitioner was placed on the Registry;

(c) Statement from the petitioner regarding the circumstances of their placement on the Registry;

(d) Letters of reference;

(e) Information regarding petitioner's rehabilitative efforts after the circumstances leading to the placement, including but not limited to, continuing education; anger management; and with proper authorizations, evidence of therapy and/or alcohol and drug rehabilitation information.

(5) The final decision regarding the recommendation for removal from the Registry shall be made by the State Government Agency. The recommendation shall be reduced to writing, giving the agency's reasons for the decision and mailed to the petitioner seeking removal. The State Government Agency shall provide a copy of the final decision to the Commission.

~~The final decision regarding the recommendation for removal from the Registry shall be made by the state government agency. The recommendation shall be reduced to writing, giving the agency's reasons for the decision and mailed to the petitioner seeking removal. The state government agency shall provide a copy of the final decision to the Department.~~

(6) If the decision is to remove the person from the Registry, the recommendation shall be sent to the Commission and the person's name shall be removed by the Commission.

~~If the decision is to remove the person from the Registry, the recommendation shall be sent to the Department and the person's name shall be removed by the Department.~~

(7) If the petitioner seeking removal is dissatisfied with the determination made by the State Government Agency, the person shall be permitted to appeal. The appeal shall be conducted by the State Government Agency as a contested case hearing pursuant to the Uniform Administrative Procedures Act.

~~If the petitioner seeking removal is dissatisfied with the determination made by the state government agency, the person shall be permitted to appeal. The appeal shall be conducted by the state government agency as a contested case hearing pursuant to the Uniform Administrative Procedures Act.~~

(8) The decision and the written recommendations of the advisory group and the State Government Agency shall be open for public inspection, after redactions are made to comply with applicable confidentiality law.

~~The decision and the written recommendations of the advisory group and the state government agency shall be open for public inspection, after redactions are made to comply with applicable confidentiality law.~~

(9) For certified nurse aides:

(a) A certified nurse aide's name shall not be removed from the Registry when the placement was for abuse, misappropriation, or exploitation.

(b) A certified nurse aide's name may only be removed from the Registry when the following

circumstances have been met:

1. The individual was placed on the Registry on the basis of one (1) instance of neglect;

2. The employment and personal history of the nurse aide do not reflect a pattern of abusive behavior or neglect; and

3. At least one calendar year has expired from the date of placement on the Registry.

(c) A certified nurse aide whose name was placed on the Registry shall not maintain an active certification.

(d) All Registry entries shall also be maintained on the Nurse Aide Registry.

~~(9) A certified nurse aide's name may only be removed from the Registry when the following circumstances have been met:~~

~~(a) The individual was placed on the Registry on the basis of one (1) instance of neglect;~~

~~(b) The employment and personal history of the nurse aide do not reflect a pattern of abusive behavior or neglect; and~~

~~(c) At least one calendar year has expired from the date of placement on the Registry.~~

Authority: *T.C.A. §§ 68-11-1003(g) and 42 U.S.C.A. § 1396r.* ***Administrative History:*** *Original rules filed September 28, 2016; effective December 27, 2016. Transferred from chapter 1200-08-38 pursuant to Public Chapter 1119 of 2022 effective July 1, 2022.*