RULES
OF
THE HEALTH SERVICES AND DEVELOPMENT AGENCY

CHAPTER 0720-08
CONDUCT OF BUSINESS

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0720-08-.01 COMMUNICATIONS.

(1) All documents, information, and written communications which are required to be filed with the Tennessee Health Services and Development Agency (hereinafter the "Agency") must be received during normal business hours at the Agency's business office located in Nashville, Tennessee, or electronically pursuant to the Agency's instructions.

(2) The filing date of any document shall be the actual date of receipt in the Agency office or delivery electronically during normal business hours pursuant to the Agency's instructions. In the event the last appropriate filing date falls on a Saturday, Sunday, or legal holiday, such filing must occur no later than the next regular business day.

(3) Such documents, information, and written communications shall not be sent by facsimile transmission. Any such documents, information, and written communications which are received by facsimile transmission will not be considered as having been "filed" with the Agency.

Authority: *T.C.A §§ 4-5-202, 68-11-1605, and 68-11-1607.* ***Administrative History:*** *Original rule filed August 31, 2005; effective November 14, 2005. Emergency rules filed September 28, 2021; effective through March 27, 2022. Amendments filed December 27, 2021; effective March 27, 2022.*

0720-08-.02 CONFLICT OF INTEREST.

(1) Definitions

(a) "Conflict of interest" means any matter before the Agency in which the member or employee of the Agency has a direct or indirect interest that is in conflict or gives the appearance of conflict with the discharge of the member's or employee's duties;

(b) "Direct interest" means a pecuniary interest in the persons involved in a matter before the Agency. This interest applies to the Agency member or employee, the Agency member's or employee's relatives or an individual with whom or business as to which the member or employee has a pecuniary interest. For the purposes of this part, a relative is a spouse, parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece, or nephew by blood, marriage or adoption; and

(c) "Indirect interest" means a personal interest in the persons involved in a matter before the Agency that is in conflict or gives the appearance of conflict with the discharge of the Agency member's or employee's duties;

(2) All Agency members shall annually review and sign a statement acknowledging the statute, rules and policies concerning conflicts of interest.

(Rule 0720-08-.02, continued)

(3) Any member, upon determining that a matter scheduled for consideration by the Agency results in a conflict with a direct interest, shall immediately notify the executive director and shall be recused from any deliberation of the matter, from making any recommendation, from testifying concerning the matter, or from voting on the matter. The member shall join the public during the proceedings.

(a) Any member with an indirect interest shall publicly acknowledge such interest.

(b) All members shall make every reasonable effort to avoid even the appearance of a conflict of interest. If a member is uncertain whether the relationship justifies recusal, the member shall follow the determination by the legal counsel for the Agency.

(c) A determination by the Agency or any court that a member of the Agency with a direct interest failed to provide notice and be recused from deliberations of the matter, from making any recommendation, from testifying concerning the matter, or from voting on the matter, shall result in the member's automatic termination from the Agency and the position shall be considered vacant. The member shall not be eligible for appointment to any agency, board or commission of the state for a period of two (2) years.

(d) The executive director, upon determining that a conflict exists for the executive director or any member of the staff, shall notify the chair of the Agency and take such action as the chair prescribes and pursuant to this part.

Authority: *T.C.A §§ 68-11-1602, 68-11-1604, and 68-11-1605.* ***Administrative History:*** *Original rule filed August 31, 2005; effective November 14, 2005.*

0720-08-.03 STAFF AND AGENCY DETERMINATIONS.

(1) Persons seeking information and/or guidance from the Agency or staff may receive such information and/or guidance by any of three methods: informal staff advice, staff determinations, or official Agency determinations.

(2) Staff Advice. Staff members may give advice or guidance orally or in writing when requested. Such informal staff advice is merely the personal opinion of the staff member, and does not represent the position of the Agency or any member thereof. Such advice is not binding on the Agency, and creates no precedent.

(3) Staff Determinations. A staff determination may be issued in writing, and signed by the executive director or general counsel. While a staff determination represents the considered position of staff, it does not necessarily represent the position of the Agency. A staff determination is not required to be officially adopted by the Agency, and creates no binding precedent on the Agency.

(a) When an inquiry is received which does not specifically request an official Agency determination, the executive director will determine whether the inquiry should be handled as a staff determination or as an Agency determination.

(4) Agency Determinations. An Agency determination represents a formal opinion of the Agency. Agency determinations are initially analyzed and drafted by staff, and presented to the full Agency during a regularly scheduled Agency meeting. The Agency may then adopt, reject, or modify staff's recommendation.

(a) Written requests for Agency determinations should be received by the last business day of the preceding month to be included on the Agency's agenda for that month. In the discretion of the executive director, the first inclusion of the request for

(Rule 0720-08-.03, continued)

determination on the Agency's agenda may be for the purpose of public notice; the request may then be placed on the agenda for the next succeeding Agency meeting for the Agency's consideration and decision. The executive director may waive the provisions of this subsection, and place the request for determination before the Agency for consideration on the first inclusion on the agenda.

(b) If the issue upon which a request for determination is based has been addressed by the Agency in prior determinations, or if the issue is otherwise not appropriate for a request for determination, staff will notify the person making the request and the request will not be placed on the Agency's agenda.

Authority: *T.C.A. §§ 4-5-202, 68-11-1605, 68-11-1606, and 68-11-1607.* ***Administrative History:*** *Original rule filed August 31, 2005; effective November 14, 2005.*

0720-08-.04 ACCESS TO AGENCY RECORDS.

(1) Public Inspection. All public records of the Agency are available for inspection during normal business hours in accordance with reasonable office policies.

(2) Copies. Upon a request for records under Tennessee's Public Records Act, Tenn. Code Ann. §§ 10-7-501 et seq., the Agency shall assess charges for the copying and labor based on the most current version of the Schedule of Reasonable Charges, issued by the Office of Open Records Counsel. Should any charge assessed under this rule total ten dollars ($10.00) or less, the Agency shall waive the charge and provide the requested documents without payment. The Executive Director, or his or her designee, may reduce any part of the charges calculated under these rules upon a written determination that such a reduction would be in the best interests of the public.

(3) Audio Recordings of meetings of the Agency are available for review and duplication. For each audio tape or disc to be duplicated, the person requesting the duplication shall pay a fee of fifteen dollars ($15.00).

Authority: *T.C.A. §§ 4-5-201, et seq., 4-5-202, 8-4-604, 10-7-501, 10-7-506, 68-11-1605, and 68-11-1606.* ***Administrative History:*** *Original rule filed August 31, 2005; effective November 14, 2005. Amendment filed June 22, 2012; effective November 28, 2012. Amendments filed October 24, 2017; effective January 22, 2018.*

0720-08-.05 CONDUCTING AGENCY MEETINGS.

(1) The Agency will hold regularly scheduled, public meetings to consider applications for certificates of need, and to conduct other business.

(2) Meetings of the Agency will be under the direction of the Chair, or in the Chair's absence or at his/her request, the Vice-Chair or other designated member as determined by the Chair. The meetings will be conducted in accordance with Robert's Rules of Order, except where otherwise provided by rule or statute.

(3) All motions for the approval or disapproval of certificates of need and for Agency Determinations will be determined by roll call vote. Except where otherwise provided by rule or by statute, matters other than the approval or disapproval of a certificate of need and Agency Determinations may, at the discretion of the Chair or acting Chair, be determined by voice vote.

(a) Any Agency member present and voting on a matter which has been determined by a voice vote may request that a roll call vote be taken. In the event such a request is made, a roll call vote will be taken. No additional debate or discussion will be allowed

(Rule 0720-08-.05, continued)

on the matter, unless otherwise appropriate under applicable rules of parliamentary procedure.

(b) Conditions placed upon the granting of a certificate of need should be included in the motion for approval, or an amendment thereto, and determined in accordance with these rules.

Authority: *T.C.A. §§ 4-5-202, 68-11-1604, 68-11-1605, 68-11-1607, and 68-11-1609.* ***Administrative History:*** *Original rule filed August 31, 2005; effective November 14, 2005.*

0720-08-.06 REPEALED.

Authority: *T.C.A. §§ 4-5-202, 68-11-1602, 68-11-1605, and 68-11-1607 and 2021 Tenn. Pub. Acts Ch. 557.* ***Administrative History:*** *Original rule filed August 31, 2005; effective November 14, 2005. Emergency rules filed September 28, 2021; effective through March 27, 2022. Repeal filed December 27, 2021; effective March 27, 2022.*