

**RULES
OF
THE TENNESSEE COMMISSION ON AGING AND DISABILITY**

**CHAPTER 0030-01-11
UNLICENSED FACILITY REGISTRY**

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0030-01-11-.01 PURPOSE.

The purpose of the Unlicensed Facility Registry is to notify the public of those individuals operating facilities which Tennessee State Government Agencies have determined require licensure. These unlicensed residential facilities are operating without the appropriate licensure by Tennessee State Government Agencies and are providing care to vulnerable Tennesseans without complying with the necessary licensure statutes and regulations in the State of Tennessee. The purpose of this Registry is to inform and protect the public. These rules outline procedures for reporting to the Registry and for seeking removal from the Registry after a facility has obtained licensure. Operation of an unlicensed facility after receiving notice of placement on the Registry is a Class D felony. The rules outline the Registry's injunctive authority and also address when a referral may be made for criminal prosecution.

Authority: T.C.A. § 71-2-118 and 2022 Tenn. Pub. Ch. No. 1081. **Administrative History:** Emergency rules filed July 1, 2022; effective through December 28, 2022. New rules filed September 30, 2022; effective December 29, 2022.

0030-01-11-.02 SCOPE OF RULES.

- (1) These rules shall apply to the:
 - (a) Unlicensed facilities which have been deemed to require licensure under T.C.A. §§ 68-11-213 or 33-2-405;
 - (b) Notifications of intent to place any person who has been identified by a State Government Agency as operating an unlicensed facility that has been found to be in violation of T.C.A. §§ 68-11-213 or 33-2-405;
 - (c) Referrals made to the Executive Director for placement on the Registry from State Government Agencies;
 - (d) Notification to the individual of the individual or facility's inclusion on the Registry;
 - (e) Requests for removal from the Registry;
 - (f) Requests for injunctive relief; and
 - (g) Referrals for criminal prosecution.
- (2) Due Process.
 - (a) Notice and opportunity to be heard will be accorded to an individual based on each State Government Agency's standard procedures.

(Rule 0030-01-11-.02, continued)

- (b) The Registry's administrative due process consists of contested case hearings and appeals conducted according to 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.

Authority: T.C.A. § 71-2-118 and 2022 Tenn. Pub. Ch. No. 1081. **Administrative History:** Emergency rules filed July 1, 2022; effective through December 28, 2022. New rules filed September 30, 2022; effective December 29, 2022.

0030-01-11-.03 DEFINITIONS.

- (1) "Elderly person" means a person sixty (60) years of age or older.
- (2) "Executive Director" means the executive director of the Tennessee Commission on Aging and Disability.
- (3) "Court" means any state or federal court.
- (4) "Designee" means the designee of the Executive Director of the Tennessee Commission on Aging and Disability.
- (5) "Facility" means any facility licensed pursuant to T.C.A. §§ 68-11-213 or 33-2-405.
- (6) "Finding" means a determination by a State Government Agency that a facility has been operating without a license in violation of T.C.A. §§ 68-11-213 and/or 33-2-405.
- (7) "Owner or Operator" means any person who owns, leases, operates, controls, or supervises a facility.
- (8) "Petitioner" means an individual seeking removal from the Registry.
- (9) "Registry" means the Registry maintained by the Executive Director of the Commission on Aging and Disability pursuant to T.C.A., Title 71, Chapter 2, Part 1, containing the names of any persons who, after receiving notice and opportunity to be heard, have been determined by a State Government Agency to be in violation of T.C.A. §§ 68-11-213 or 33-2-405.
- (10) "State Government Agency" means an agency of Tennessee state government and its successor agency, including, but not limited to:
 - (a) The Department of Intellectual and Developmental Disabilities;
 - (b) The Department of Mental Health and Substance Abuse Services;
 - (c) The Department of Human Services, including the division of Adult Protective Services;
 - (d) The Department of Commerce and Insurance, including the State Fire Marshal's Office;
 - (e) The Tennessee Bureau of Investigation;
 - (f) The Bureau of TennCare;
 - (g) The Department of Health; and
 - (h) The Health Facilities Commission.

(Rule 0030-01-11-.03, continued)

- (11) "Vulnerable person," or "vulnerable individual," means a person eighteen (18) years of age or older who, by reason of advanced age or other physical or mental condition, is deemed by a State Government Agency to be vulnerable.

Authority: T.C.A. § 71-2-118 and 2022 Tenn. Pub. Ch. No. 1081. **Administrative History:** Emergency rules filed July 1, 2022; effective through December 28, 2022. New rules filed September 30, 2022; effective December 29, 2022.

0030-01-11-.04 UNLICENSED FACILITY OPERATION REFERRALS.

- (1) A State Government Agency that makes a Finding shall notify the Executive Director within five (5) business days of the completion of due process for placement on the Registry. 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, if applicable, 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 71, Chapter 2, Part 1.
- (2) Referrals for placement on the Registry by other State Government Agencies shall include the following prerequisites, unless release of such information is prohibited by applicable Federal or State law or regulation. The State Government Agency shall provide the Executive Director with the following:
- (a) The name of the facility;
 - (b) The names of the facility's Owners or Operators;
 - (c) The physical location or mailing address of the facility;
 - (d) A citation to the statutory or regulatory authority used by the State Government Agency in making the Finding;
 - (e) Other information that the State Government Agency deems necessary to adequately identify the facility to the public;
 - (f) The identity of the complainant, which shall remain confidential;
 - (g) Information regarding the investigation and substantiation of the allegation or findings of the State Government 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, unless release of such information is prohibited by applicable Federal or State law or regulation; and
 - (h) An attestation that the requirements set forth in 0030-01-11-.04(1) have been met.
- (3) Referrals for placement on the Registry, including supporting documentation, by other State Government Agencies must be sent to the Executive Director by:
- (a) Email to unlicensed.facility@tn.gov; or
 - (b) Certified Mail, FedEx, or UPS.

Authority: T.C.A. § 71-2-118 and 2022 Tenn. Pub. Ch. No. 1081. **Administrative History:** Emergency rules filed July 1, 2022; effective through December 28, 2022. New rules filed September 30, 2022; effective December 29, 2022.

0030-01-11-.05 PLACEMENT ON THE REGISTRY.

- (1) The Executive Director shall place the following information on the Tennessee Commission on Aging and Disability's Unlicensed Facility Registry within five (5) business days of receiving notice of a Finding from a State Government Agency:
 - (a) The name of the facility;
 - (b) The names of the facility's Owners or Operators;
 - (c) The physical location or mailing address of the facility;
 - (d) A citation to the statutory or regulatory authority used by the State Government Agency in making the Finding; and
 - (e) Other information that the State Government Agency deems necessary to adequately identify the facility to the public.
- (2) The Executive Director shall notify the person or facility in writing, based on the mailing address provided by the State Government Agency, within three (3) business days of publication on the Registry. Such notice will be sent by Certified Mail, FedEx, or UPS. If an email address of an Owner or Operator of the facility is provided to the Executive Director, notice may also be sent via email to the Owner or Operator. At a minimum, this notice must contain:
 - (a) Notification that the individual has been published on the Registry for operating an unlicensed facility;
 - (b) The allegations supporting the Finding that the individual has operated an unlicensed facility;
 - (c) Notification that the individual may, within thirty (30) days of the date of the notice, request an administrative hearing to contest being published on the Registry by submitting a written request to the Executive Director or the Executive Director's designee to unlicensed.facility@tn.gov; and
 - (d) Notice that the hearing will be a contested case hearing which will be conducted 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.
- (3) Appeals in contested cases by the Registry.
 - (a) Notice of Hearing. Notice of Hearing will be provided and served in compliance with 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.
 - (b) Initial Order. The administrative judge or hearing officer will issue an Initial Order which automatically becomes the Final Order fifteen (15) days after it is issued unless:
 1. The Executive Director or the Executive Director's designee receives a petition for appeal 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 his designee has reviewed the Initial Order. A petition for appeal must be filed within the Administrative Procedures Division of the Secretary of State; or

(Rule 0030-01-11-.05, continued)

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 Registry 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 Registry 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 or Executive Director's 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 Executive Director's 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.

Authority: T.C.A. §§ 4-5-301, et seq., 4-5-315, 4-5-316, 4-5-317, 4-5-322, and 71-2-118; and 2022 Tenn. Pub. Ch. No. 1081. **Administrative History:** Emergency rules filed July 1, 2022; effective through December 28, 2022. New rules filed September 30, 2022; effective December 29, 2022.

0030-01-11-.06 REQUESTS FOR REMOVAL FROM THE REGISTRY.

- (1) A State Government Agency that notified the Executive Director of a Finding may later recommend to the Executive Director the removal of a person or facility's information from the Registry, if:
 - (a) The State Government Agency finds that the original notice to the Executive Director was in error; or
 - (b) The facility has applied for and obtained the necessary licensure, and the State Government Agency provides the facility's license number and the date of licensure.
- (2) A State Government Agency must send a recommendation of removal from the Registry to the Executive Director by:
 - (a) Email to unlicensed.facility@tn.gov; or

(Rule 0030-01-11-.06, continued)

- (b) Certified Mail, FedEx, or UPS.
- (3) The decision and the written recommendations of the State Government Agency shall be open for public inspection, after redactions are made to comply with applicable confidentiality law.

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0030-01-11-.07 INJUNCTIVE AUTHORITY AND REFERRALS FOR CRIMINAL PROSECUTION.

- (1) Following the contested case, if the Executive Director finds that the person or facility was appropriately placed on the Registry and was in operation after receiving notice, then the Executive Director may seek injunctive relief in Davidson County Chancery Court.
- (2) On or after July 1, 2022, it is unlawful for a person or facility to operate a facility after notification of publication on the Registry. A violation of T.C.A. § 71-2-118(f) is a Class D felony.
- (3) In addition to seeking injunctive relief, if the Executive Director finds that the facility is in operation after receiving notice of publication on the Registry, a referral may be made to the District Attorney of that geographic area notifying them of the unlicensed operation and providing them with a copy of the notice and publication on the Registry.

Authority: T.C.A. § 71-2-118 and 2022 Tenn. Pub. Ch. No. 1081. **Administrative History:** Emergency rules filed July 1, 2022; effective through December 28, 2022. New rules filed September 30, 2022; effective December 29, 2022.