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Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Tennessee Department of Finance and Administration
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Rule Type:

☒ Emergency Rule

Revision Type (check all that apply):

☐ Amendment
☒ New
☐ Repeal

Statement of Necessity:

On September 2, 2014, a Preliminary Injunction Order was entered in the United States District Court for the Middle District of Tennessee Nashville Division in the matter of Melissa Wilson, et al. v. Darin Gordon, et al. by United States District Judge Todd J. Campbell, ordering the Defendants, which include the Bureau of TennCare, to provide an opportunity for a fair hearing to all individuals who have applied for TennCare on or after October 1, 2013, who have not received a final eligibility determination in 45 days, or 90 days in the case of disability applicants, and who have not been given an opportunity for a fair hearing by TennCare.

In order to provide the fair hearings on delayed adjudications as ordered by the District Court, the Bureau of TennCare is required to promulgate rules for conduct of the hearings. In furtherance of TennCare's resolution of the pending applications, these rules also enable the Bureau to conduct fair hearings relating to eligibility determinations.

T.C.A. § 4-5-208(a)(3) permits an agency to adopt an emergency rule when it is required by court order.

For a copy of these emergency rules contact: George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.



Darin J. Gordon
Director, Bureau of TennCare
Tennessee Department of Finance and
Administration

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1200-13-19	Appeals of Certain Eligibility Determinations and TennCare Delay Hearings
Rule Number	Rule Title
1200-13-19-.01	Scope and Authority
1200-13-19-.02	Definitions
1200-13-19-.03	Accessibility
1200-13-19-.04	Notice of Eligibility Determination
1200-13-19-.05	Appeal Rights, Notices and Procedures
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1200-13-19-.15	Order of Proceedings
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1200-13-19-.19	Appeal of Initial Orders
1200-13-19-.20	Reconsideration
1200-13-19-.21	Stay
1200-13-19-.22	Judicial Review
1200-13-19-.23	Clerical Mistakes
1200-13-19-.24	Agency Record
1200-13-19-.25	Code of Judicial Conduct, Disqualification and Separation of Functions

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Rules of the Bureau of TennCare/Medicaid, 1200-13, are amended by adding a New Chapter 19 titled Appeals of Certain Eligibility Determinations and TennCare Delay Hearings, as follows:

New Rule

Chapter 1200-13-19 Appeals of Certain Eligibility Determinations and TennCare Delay Hearings

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1200-13-19-.01 Scope and Authority. This chapter governs all administrative hearings conducted for the purpose of reviewing eligibility determinations for the following categories which use the MAGI income methodology: Children Under 19, Pregnant Women, Caretaker Relatives, CHIP – Children and Pregnancy (CoverKids/HealthyTNBabies). Eligibility determination appeals for any other eligibility category will not be governed by this chapter. This chapter will govern all delay hearings for all eligibility categories. These rules preempt any other TennCare Rules to the extent that they are in conflict with this chapter.

- (1) The Tennessee Medical Assistance Act of 1968 and Executive Order Number 23, dated October 19, 1999, designate the Tennessee Department of Finance and Administration as the single state agency for purposes of administering Title XIX of the Social Security Act (Medicaid).
- (2) The CoverKids Act of 2006 authorizes the Tennessee Department of Finance and Administration to establish and administer a program to provide health care coverage to uninsured children under Title XXI of the Social Security Act (State Children's Health Insurance Program).
- (3) Titles XIX and XXI of the Social Security Act, TennCare II Medicaid Section 1115 Demonstration Waiver, and 42 CFR Subpart E require the designated state agency to provide for appeals and fair hearings concerning eligibility determinations for applicants and recipients of assistance and services provided through the programs.
- (4) The Commissioner of the Department of Finance and Administration has placed responsibility for eligibility determination appeal hearings in the Division of Health Care Finance and Administration (HCFA), except as specifically delegated to the Department of Human Services. HCFA employs Administrative Judges vested with full authority to conduct the hearing process, including authority to schedule and conduct a hearing; administer oaths; issue subpoenas; rule upon offers of proof; regulate the course of the hearing; set the time and place for continued hearings; enter an Initial Order; rule on petitions for reconsideration; and perform duties or actions that are necessary for the fair and timely management of the administrative hearing process.
- (5) Tennessee Code Annotated § 71-5-112 requires any hearing concerning matters of eligibility for medical assistance to be conducted under the Tennessee Uniform Administrative Procedures Act.
- (6) Any procedural matter not specifically addressed by these rules is to be resolved by consulting the following authorities in the order listed: the Tennessee Uniform Administrative Procedures Act (UAPA), the Uniform Rules of Procedure For Hearing Contested Cases Before State Administrative Agencies (UAPA Rules), and the Tennessee Rules of Civil Procedure (TRCP).

1200-13-19-.02 Definitions.

- (1) Administrative Judge. An impartial employee of the Agency who has no direct involvement in the action under consideration prior to the filing of the appeal; is licensed to practice law; is authorized to conduct administrative hearings; and, will hear contested cases and will enter Initial Orders as set out in T.C.A. §§ 4-5-301(a)(2) and 314(b).
- (2) Agency. The TennCare Bureau or CoverKids, as applicable.

- (3) Agency Record. The Agency record will consist solely of: notice of all proceedings; any pre-hearing order; any motions, pleadings, briefs, petitions, requests and intermediate rulings; evidence received or considered; a statement of matters officially noticed; proffers of proof and objections and rulings thereon; proposed findings, requested orders, and exceptions; the tape recording, stenographic notes or symbols, or transcript of the hearing; any Final Order, Initial Order, or order on reconsideration; staff memoranda or data submitted to the Agency unless prepared and submitted by personal assistants and not inconsistent with T.C.A. § 4-5-304(b); and matters placed on the record after an ex parte communication. The Record must be maintained for a period of time not less than three (3) years as required by T.C.A. § 4-5-319(a). This will be the official record for the purposes of T.C.A. § 4-5-322.
- (4) Appeal. The process of obtaining an administrative hearing as a result of an Agency action or inaction regarding matters affecting eligibility for TennCare or CoverKids, or the process of obtaining review of an Initial Order by the Commissioner's Designee or judicial review of a Final Order.
- (5) Appeal Request. Request for a hearing.
- (6) Appellant. An applicant or enrollee whose appeal of an action or inaction of the Agency has been determined to present a valid factual dispute. The Appellant bears the burden of proof in any hearing conducted under this chapter. Also referred to as the Petitioner.
- (7) Applicant. An individual who submits an application for TennCare or CoverKids health coverage, or the Medicare Savings Program, or the person who acts as an authorized representative for the applicant.
- (8) Burden of Proof. The minimum evidentiary standard required in order to prevail in an administrative hearing is a preponderance of the evidence. A "preponderance of the evidence" means the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion. The Appellant bears the burden of proof in any hearing conducted under this chapter.
- (9) Children's Health Insurance Program (CHIP). A program established and administered by a State, jointly funded with the Centers for Medicare and Medicaid Services (CMS), to provide health assistance to uninsured, low-income children through a separate child health program, a Medicaid expansion program, or a combination program.
- (10) Clerk's Office. The Agency Appeals Clerk's Office which may be contacted at: Tennessee Health Connection, P.O. Box 305240, Nashville, TN 37230-5242; fax number 1-855-315-0669; telephone number 1-844-202-5618; or appeals.clerk.tenncare@tn.gov.
- (11) Commissioner. The chief administrative officer of the Tennessee department where the Bureau of TennCare is administratively located.
- (12) Commissioner's Designee. A person authorized by the Commissioner to review appeals of Initial Orders and to enter Final Orders under T.C.A. § 4-5-315, or to review Petitions for Stay or Reconsideration of Final Orders. Petitions for Reconsideration of an Initial Order will be disposed of by the same person who rendered the Initial Order, if available.
- (13) Contested Case Proceeding. See "Hearing".
- (14) CoverKids. The Children's Health Insurance Program in Tennessee.
- (15) Delay Appeal. An appeal of an application that has been pending for longer than 45 days, or 90 days for CHOICES applications, with the sole purpose of determining whether the delay in processing is unreasonable.
- (16) Ex Parte Communication. An exchange of information regarding an issue of fact in a contested case proceeding between one party and the Administrative Judge without including the opposing party. Communication may take place orally or in writing, by telephone, face-to-face, or electronically. Communications between Agency members or their attorneys are not considered to be ex parte. An Administrative Judge, hearing officer, or Agency member may communicate with the Agency regarding any

matter pending before the Agency if such persons do not receive ex parte communications of a type that the Administrative Judge, hearing officer, or Agency members would be prohibited from receiving, and do not furnish, augment, diminish, or modify the evidence in the record. Matters of scheduling, dismissal, withdrawal or other administrative issues are not ex parte communications

- (17) Fair Hearing. See "Hearing".
- (18) Findings of Fact. The factual findings following the administrative hearing, enumerated in the Initial and Final Order, which include a concise and explicit statement of the underlying facts of record to support the findings.
- (19) Final Order. The Initial Order becomes a Final Order in fifteen (15) days without further notice if not appealed. If the Initial Order is reviewed under T.C.A. § 4-5-315, the Commissioner or Commissioner's Designee may render a Final Order. The Final Order is binding upon all parties unless it is stayed, reversed or set aside according to applicable rules. A statement of the procedures and time limits for seeking reconsideration or judicial review must be included.
- (20) Good Cause. A legally sufficient reason. In reference to an omission or an untimely action, a reason based on circumstances outside the party's control and despite the party's reasonable efforts.
- (21) Hearing. A contested case proceeding where evidence is heard by an Administrative Judge to render a decision regarding an applicant's or enrollee's delayed adjudication or eligibility appeal, conducted under this Chapter. Also referred to as a Fair Hearing or a Contested Case Proceeding.
- (22) Initial Order. The decision of the Administrative Judge following an administrative hearing. The Initial Order must contain the decision, findings of fact, conclusions of law, the policy reasons for the decision and the remedy prescribed. It must include a statement of any circumstances under which the Initial Order may, without further notice, become a Final Order. A statement of the procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review will be included.
- (23) Modified Adjusted Gross Income (MAGI). Has the same meaning as is found in 42 C.F.R. § 435.603.
- (24) Notice of Hearing. The pleading filed with the TennCare Administrative Hearing Unit by the Agency upon receipt of an appeal. It must contain a statement of the time, place, nature of the hearing, and the right to be represented by counsel or another authorized person of his choice; a statement of the legal authority and jurisdiction under which the hearing is to be held, referring to the particular statutes and rules involved; and a short and plain statement of the matters asserted, in compliance with T.C.A. §4-5-307(b).
- (25) Party. Each person or Agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.
- (26) Petitioner. See Appellant.
- (27) Pleadings. Written statements of the facts and law which constitute a party's position or point of view in a contested case and which, when taken together with the other party's pleadings, will define the issues to be decided in the case. Pleadings may be in legal form, such as a "Notice of Hearing", "Petition for Hearing" or "Answer", or, where not practicable to put them in legal form, letters or other papers may serve as pleadings in a contested case, if necessary to define what the parties' positions are and what the issues in the case will be.
- (28) Request for a Hearing. A clear expression by the applicant or beneficiary, or his authorized representative, that he wants the opportunity to present his case to a reviewing authority.
- (29) Representative. An individual or organization, including legal counsel, a relative, a friend, or another spokesperson, authorized by an appellant to represent him during an appeal.
- (30) Respondent. The party who is responding to the action brought by the petitioner, usually the Agency.
- (31) Single State Agency. The Tennessee Department of Finance and Administration, designated by the State and CMS pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration

waiver granted to the State of Tennessee to administer TennCare.

(32) TennCare. The program administered by the Single State Agency as designated by the State and CMS pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration waiver granted to the State of Tennessee.

(33) Valid Factual Dispute. A dispute that, if resolved in favor of the appellant, would prevent the state from taking the action that is the subject of the appeal.

1200-13-19-.03 Accessibility. Information concerning the availability of language assistance must be provided to applicants and enrollees, including individuals with disabilities or who have limited English proficiency, in plain language and in a manner that is accessible and timely as required by the Americans with Disabilities Act and section 504 of the Rehabilitation Act.

1200-13-19-.04 Notice of Eligibility Determination.

- (1) The Agency must send each applicant a written notice of the Agency's decision on his application, and if eligibility is denied, the reasons for the action, the specific regulation supporting the action, and an explanation of his right to request a hearing.
- (2) Before an application is denied for lack of documentation or conflicting information, the Agency will notify the applicant of the type of documentary proof he must submit in order to meet the eligibility requirements set out in 42 C.F.R. Part 435.

1200-13-19-.05 Appeal Rights, Notices and Procedures.

- (1) The Agency must grant an opportunity for a hearing to the following:
 - (a) Any applicant who requests it because his claim for services is denied or is not acted upon with reasonable promptness.
 - (b) Any beneficiary who requests it because he believes the Agency has taken an action erroneously.
 - (c) Any enrollee who is entitled to a hearing under 42 C.F.R. 438 subpart B.
- (2) The Agency need not grant a hearing if the sole issue is a Federal or State law requiring an automatic change adversely affecting some or all beneficiaries.
- (3) When the Agency receives an appeal from an appellant, the Agency will dismiss this appeal unless the appellant has established a valid factual dispute relating to the appeal. The Agency will screen all appeals submitted by appellants to determine if each appellant has presented a valid factual dispute. If the Agency determines that an appellant failed to present a valid factual dispute, the Agency will immediately provide the appellant with a notice informing him that he must provide additional information as identified in the notice. If the appellant does not provide this information within ten (10) days of the date of the notice, the appeal will be dismissed without the opportunity for a fair hearing. If the appellant adequately responds to this notice, the Agency will inform the appellant that the appeal will proceed to a hearing. If the appellant responds but fails to provide adequate information, the Agency will provide a notice to the appellant, informing him that the appeal is dismissed without the opportunity for a fair hearing. If the appellant does not respond, the appeal will be dismissed without the opportunity for a fair hearing, without further notice to the appellant.
- (4) The Agency must provide notice of his right to a hearing; of the method by which he may obtain a hearing; and that he may represent himself or use a representative at the time:
 - (a) The individual applies for CoverKids or TennCare; and
 - (b) Of any action affecting his eligibility.
- (5) The notice of appeal rights and procedures must contain:
 - (a) A statement of what action the Agency intends to take;

- (b) The reasons for the intended action;
- (c) The specific rules that support, or the change in Federal or State law that requires, the action;
- (d) An explanation of:
 - 1. The individual's right to request a hearing; or
 - 2. In cases of an action based on a change in law, the circumstances under which a hearing will be granted; and
 - 3. The circumstances under which Medicaid is continued if a hearing is requested.

1200-13-19-.06 Time.

- (1) In computing any period of time prescribed or allowed by statute, rule or order, the date of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the time period is to be included unless it is a Saturday, a Sunday or a legal holiday, which extends the period until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays are excluded in the computation. The Notice of Hearing shall provide notice of this provision or inform the applicant or recipient of the specific calendar dates by which certain actions must be taken.
- (2) Except in regard to petitions for appeal, reconsideration or review under T.C.A. §§ 4-5-315, 4-5-317 and 4-5-322, or where otherwise prohibited by law, when an act is required or allowed to be done at or within a specified time, the Agency or Administrative Judge may, at any time:
 - (a) With or without motion or notice, order the period enlarged if the request is made before the expiration of the period originally prescribed or as extended by previous order; or
 - (b) Upon motion made after the expiration of the specified period, permit the act to be done late, where the failure to act was the result of excusable neglect. Nothing in this section is to be construed to allow any ex parte communications concerning any issue in the proceeding that would be prohibited by T.C.A. § 4-5-304.
- (3) An appeal or request for a hearing must be received by the Agency within forty (40) calendar days (inclusive of mail time) of the date of the Agency notice to the individual regarding the intended action or prior to the date of action specified in the notice, whichever is later, unless good cause can be shown as to why the appeal or request for a hearing could not be filed within the required time limit.
- (4) Any communication submitted electronically must be received by midnight of the designated date.

1200-13-19-.07 Dismissal of Appeal or Request for Hearing.

- (1) The Agency may close a request for a delay appeal upon making an eligibility determination.
- (2) The Agency may dismiss a request for hearing if the appeal request has been withdrawn by the appellant in writing or through electronic or oral notification.
- (3) The Agency may dismiss a previously accepted appeal upon evidence presented at a good cause hearing, pre-hearing conference, or in the pleadings that the appeal was not timely filed and that good cause for the untimely filing did not exist.
- (4) Upon appropriate proof, the Agency may dismiss an appeal at any point in the hearing process for any of the reasons that the appeal might be denied by the Agency by rule or law, if such facts had been known by the Agency before the appeal was accepted for hearing.
- (5) The Agency must dismiss an appeal or request for hearing if the appeal does not present a valid factual dispute and the appellant does not provide additional information or clarification to establish a valid factual

dispute within fifteen (15) (inclusive of mail time) days of an Agency request. The Agency decision that an appeal does not raise a valid factual dispute is not appealable.

- (6) When the Agency dismisses an appeal it must provide a timely notice of dismissal to the appellant, stating:
 - (a) The reason for dismissal;
 - (b) An explanation of the dismissal's effect on the appellant's eligibility; and
 - (c) An explanation of how the appellant may show good cause why the dismissal should be vacated.

1200-13-19-.08 Filing and Service of Pleadings and Other Materials.

- (1) After an appeal is filed, all pleadings and any other materials that are required to be filed by a time certain must be received by the Clerk's Office by the specified time. The materials may be filed by delivering them to the Agency in person, electronically, by mail or by private carrier.
- (2) Upon initiation of a contested case, all pleadings and other materials required to be filed or submitted prior to the hearing must be filed with the Clerk's Office, where they will be stamped with the date of receipt.
- (3) A petition for appeal of an Initial Order or for reconsideration or stay of an Initial or Final Order must be filed with the Agency.
- (4) Discovery materials that are not actually introduced as evidence need not be filed, except as provided in this Chapter.
- (5) Copies of all materials filed with the Agency in a contested case shall also be served upon all parties, or upon their counsel, and contain a statement indicating that copies have been served upon all parties. Service may be by mail or equivalent carrier, by hand delivery, or in electronic format.

1200-13-19-.09 Telephonic and Alternate Electronic Methods for Conducting Prehearing Conferences and Hearings. In the discretion of the Administrative Judge, and with the concurrence of the parties, any pre-hearing conference or hearing may be conducted by telephone or other electronic means, if each participant in the conference or hearing has an opportunity to fully participate in the entire proceeding while it is taking place.

1200-13-19-.10 Commencement of Contested Case Proceedings.

- (1) The appellant or his representative may request an appeal or a hearing by any clear expression, oral, written, or through other commonly available electronic means.
- (2) Upon determination that an appeal or a request for a hearing contains a valid factual dispute, the Agency will issue a notice of hearing as defined in this chapter. The notice of hearing must:
 - (a) Contain a statement of the date, time, place, and nature of the hearing;
 - (b) Inform the appellant of the right to be represented by counsel or another authorized person of his choice;
 - (c) Contain a statement of the legal authority and jurisdiction under which the hearing will be held, including references to the specific statutes and rules involved;
 - (d) Contain instructions to the appellant to notify the Agency if he requires a change in the schedule;
 - (e) Provide a short and plain statement of the matters asserted and define the issues and refer to detailed statements of the matters involved, if available;
 - (f) Provide information about hearing procedures, including the right to present written evidence and testimony and to bring witnesses and members of his family to the hearing.

- (g) Inform the appellant of his right to inspect the Agency file regarding the matter under appeal and to copy from the file.
- (3) Service of Notice of Hearing.
- (a) The Agency will provide the appellant or his representative with a copy of the notice of hearing by delivering it to the party electronically; by U.S. Mail; by certified mail; FedEx, UPS, or equivalent carrier; or by personal service. The notice will be sent a minimum of ten (10) days in advance of the date of the hearing. Delivery is presumed within five (5) days if sent by regular mail; the day following for expedited or overnighted delivery; the same day for electronic delivery and personal service.
 - (b) Service of the notice of hearing will be made at the address required to be kept current by the applicant or recipient with the Agency by T.C.A. §§ 71-5-106(l) and 110(c)(1), and at the address provided with the request for hearing, if different from the address on file with the Agency. The Agency must use the best address known to it, whether provided directly by the applicant or recipient or obtained indirectly.
 - (c) If there is a motion for default and there is no indication of actual service on a party, in determining whether to grant the default the Administrative Judge must consider the following:
 - 1. Whether any other attempts at actual service were made;
 - 2. Whether and to what extent actual service is feasible in any given case;
 - 3. What attempts were made to make contact with the party electronically, by telephone, by regular mail, or otherwise; and
 - 4. Whether the Agency has actual knowledge or reason to know that the party may be located at an address other than the address to which the notice was mailed.
- (4) Supplemented Notice. In the event it is impractical or impossible to include every element required for notice in the notice of hearing, elements such as the time and place of the hearing may be supplemented in a later written notice.
- (5) Filing of Documents. When a contested case is commenced in which an Administrative Judge will be conducting the proceedings, the Agency will provide all the papers that make up the notice of hearing and all pleadings, motions, and objections, formal or otherwise, that have been provided to or generated by the Agency. Legible copies may be filed in lieu of originals.
- (6) Answer. The party may respond to the issues set out in the notice or other original pleading by filing a written answer with the Agency in which the party may:
- (a) Object to the notice upon the ground that it does not state acts or omissions upon which the Agency may proceed;
 - (b) Object on the basis of lack of jurisdiction over the subject matter;
 - (c) Object on the basis of lack of jurisdiction over the person;
 - (d) Object on the basis of insufficiency of the notice;
 - (e) Object on the basis of insufficiency of service of the notice;
 - (f) Object on the basis of failure to join an indispensable party;
 - (g) Generally deny all the allegations contained in the notice or state that he is without knowledge as to each and every allegation, both of which shall be deemed a general denial of all charges;
 - (h) Admit in part or deny in part allegations in the notice and elaborate on or explain relevant issues of fact in a manner that will simplify the ultimate issues; and

- (i) Assert any available defense.
- (7) Amendment to Notice. The notice or other original pleading may be amended within two (2) weeks from service of the notice and before an answer is filed, unless it is shown that undue prejudice will result from this amendment. Otherwise the notice or other original pleading may only be amended by written consent of the parties or by leave of the Administrative Judge, and leave shall be freely given when justice so requires. No amendment to the notice may introduce a new statutory or regulatory basis for denial or termination of enrollment without original service and running of times applicable to service of the original notice. The Administrative Judge shall not grant a continuance to amend the notice or original pleading if it would prejudice the right to a hearing and Initial Order within any mandatory time frames.
- (8) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they will be treated as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time; but failure to amend for this reason does not affect the result of the determination of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues in the pleadings, the Administrative Judge may allow the pleadings to be amended unless the objecting party shows that the admission of such evidence would prejudice his defense. The Administrative Judge may grant a continuance to enable the objecting party to have reasonable notice of the amendments. However, when the individual is not represented by counsel, the burden is on the Administrative Judge to rule on whether to allow additional evidence and the need for continuances to enable the party additional time to address the new grounds.
- (9) Pre-hearing Conference.
 - (a) In any action set for hearing the Administrative Judge, upon his own motion or upon motion of a party or qualified representative, may direct the parties to appear before him for a conference to consider:
 - 1. The simplification of issues;
 - 2. The necessity or desirability of amendments to the pleadings;
 - 3. The possibility of obtaining admissions of fact and of documents to avoid unnecessary proof;
 - 4. The limitation of the number of expert witnesses; or
 - 5. Other matters that may aid in the disposition of the action.
 - (b) The Administrative Judge will enter an order reciting the action taken at the conference, the amendments allowed to the pleadings, the agreements made by the parties to the matters considered, and limiting the issues for hearing to those not disposed of by the admissions or agreements of the parties. When entered such order controls the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.
 - (c) If a pre-hearing conference is not held, the Administrative Judge may issue a pre-hearing order, based on the pleadings, to regulate the conduct of the proceedings.

1200-13-19-.11 Representation by Counsel.

- (1) Any party to a contested case hearing may be advised and represented, at his own expense, by an attorney in good standing and possessing a current license to practice law in the state of Tennessee.
- (2) Any party to a contested case hearing may represent himself or be represented by a non-attorney of his choice, such as a relative, friend or another spokesperson. If the party is represented by a non-attorney, he must provide valid written or oral attestation on the record authorizing representation.
- (3) The Agency will notify all parties in a contested case hearing of the right to be represented by counsel. An appearance by a party at a hearing without counsel may be deemed a waiver of the right to counsel.
- (4) Entry of an appearance by counsel will be made by the filing of pleadings, or of a formal or informal notice

of appearance, or appearance as counsel at a pre-hearing conference or a hearing.

- (5) After appearance of counsel has been made, all pleadings, motions, and other documents must be served upon counsel. If appearance is by a non-attorney representative, all documents must be served on both the party and the representative.
- (6) Counsel wishing to withdraw must give written notice to the Agency and the Administrative Judge.
- (7) Out-of-state attorneys shall comply with T.C.A. § 23-3-103(a) and Tenn. Sup. Ct. R. 19, except that the affidavit referred to in Rule 19 and a motion requesting pro hac vice admission shall be filed with the Clerk's Office, and served upon the Board of Professional Responsibility according to Rule 19 not later than the first occasion in which the out-of-state attorney files any pleading or paper with the Clerk's Office or otherwise personally appears.

1200-13-19-.12 Pre-Hearing Motions.

- (1) Motions. Parties to a contested case are encouraged to resolve matters on an informal basis prior to a contested case hearing. If efforts at informal resolution fail, any party may request relief in the form of a motion by serving a copy on all parties and by filing the motion with the Administrative Judge. The motion must contain a request for the relief sought and the grounds which entitle the moving party to relief. A motion is considered submitted for disposition seven (7) days after it was filed, unless oral argument is requested and granted, or unless a longer or shorter time is set by the Administrative Judge.
- (2) Time Limits; Oral Argument. Each opposing party may file a written response to a motion within seven (7) days of the date the motion was filed. If oral argument is requested, the motion may be argued by conference telephone call. A brief memorandum of law submitted with the motion is preferable to oral argument.
- (3) Affidavits; Briefs and Supporting Statements.
 - (a) Motions and responses to motions must be accompanied by supporting affidavits and briefs or supporting statements. Motions and responses to motions must be supported by affidavits for facts relied upon which are not of record or the subject of official notice. Supporting affidavits must contain only facts admissible in evidence under T.C.A. § 4-5-313, and to which the affiants are competent to testify. Properly verified copies of all papers or parts of papers referred to in the affidavits may be attached.
 - (b) In the discretion of the Administrative Judge, a schedule may be established for submitting briefs or supporting statements.
- (4) Disposition of Motions; Drafting the Order. The Administrative Judge must render a decision on a motion by issuing an order or by instructing the prevailing party to prepare and submit an order within seven (7) days of the ruling on the motion, or as otherwise ordered by the Administrative Judge. After signing an order, the Administrative Judge will cause the order to be served upon the parties.

1200-13-19-.13 Continuances.

- (1) Continuances may be granted for good cause in any stage of the proceeding. The need for a continuance must be brought to the attention of the Administrative Judge as soon as practicable by the appellant, by the Agency, or by mutual consent of the parties.
- (2) If an appellant requests a continuance, any mandatory time limits or deadlines for conducting hearings and issuing Initial Orders by an Administrative Judge may be extended by a like period of time. The applicable time frame will be extended only by the number of days that the appellant delays the proceedings, either by his acts or omissions.

1200-13-19-.14 Discovery.

- (1) Any party to a contested case proceeding has the right to examine Agency manuals, the Agency case file regarding the matter being contested, and all documents and records used as evidence, at the Agency office

during normal State office hours, except that records, the confidentiality of which is protected by law may not be inspected consistent with T.C.A. § 4-5-311. A party or his representative may copy entries or documents to be introduced at the hearing as supporting evidence.

- (2) Any party to a contested case proceeding has the right to reasonable discovery under T.C.A. § 4-5-311.
- (3) The Administrative Judge will issue subpoenas to require the attendance of witnesses and the production of books, records, papers, or other tangible things necessary and proper for the hearing proceeding, when requested by a party involved in the case. Subpoenas may be served at any place within the State by certified mail in addition to means of service provided by the TRCP.
- (4) The Administrative Judge may at or before the time specified in the subpoena for compliance:
 - (a) Void or modify a subpoena if it is unreasonable and oppressive, or
 - (b) Tax the party making the request with reasonable costs in the production of books, papers, documents, or other tangible things.
- (5) The parties should attempt to achieve discovery informally. Only if such attempts have failed or if the complexity of the case makes informal discovery impracticable shall discovery be sought and conducted under the TRCP.
- (6) Upon motion of a party or upon the Administrative Judge's own motion, the Administrative Judge may order that discovery be completed by a certain date.
- (7) Any motion to compel discovery, motion to quash, motion for protective order, or other discovery related motion must:
 - (a) Quote verbatim the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena, or excerpt of a deposition which shows the question and objection or response if applicable;
 - (b) State the reason or reasons supporting the motion; and
 - (c) Be accompanied by a detailed statement certifying that the moving party or his counsel has made a good faith effort to resolve by agreement the issues raised and that agreement has not been achieved; such efforts must be set out with particularity in the statement.
- (8) The Administrative Judge will decide any motion relating to discovery according to the UAPA, the UAPA Rules, or the TRCP.
- (9) Other than as provided in paragraph (7) above, discovery materials need not be filed with the Clerk's Office.

1200-13-19-.15 Order of Proceedings.

- (1) Hearings of contested cases, including reconsideration hearings, will be conducted as follows:
 - (a) The Administrative Judge may confer with the parties prior to a hearing to explain the order of proceedings, admissibility of evidence, number of witnesses and other matters.
 - (b) The hearing is called to order by the Administrative Judge.
 - (c) The Administrative Judge introduces himself and gives a very brief statement of the nature of the proceedings, including a statement of his role in making factual and legal rulings.
 - (d) The Administrative Judge then calls on the petitioner to ask if the petitioner is represented by counsel, and if so, counsel is introduced. The Administrative Judge then introduces the respondent's counsel and any other officials who may be present at the hearing.

- (e) The Administrative Judge states what documents the record contains.
- (f) The Administrative Judge swears the witnesses.
- (g) The parties are asked whether they wish to have all witnesses excluded from the hearing room except during their testimony. If so, all witnesses are instructed not to discuss the case during the pendency of the proceeding and asked to leave the hearing room. Individual parties are permitted to stay in the hearing room, and the State may have one appropriate individual, who may also be a witness, act as its party representative.
- (h) Any preliminary motions, stipulations, or agreed orders are heard by the Administrative Judge.
- (i) Opening statements are allowed by both parties.
- (j) The petitioner, as the moving party, has the burden of proof, calls the first witness and questioning proceeds as follows:
 - 1. Moving party questions.
 - 2. State cross-examines.
 - 3. Moving party redirects.
 - 4. State re-cross-examines.
 - 5. Administrative Judge may ask questions.
 - 6. Further questions by parties as long as necessary to provide all pertinent testimony.
- (k) State calls witnesses and questioning proceeds as follows:
 - 1. State questions.
 - 2. Moving party cross-examines.
 - 3. State redirects.
 - 4. Moving party re-cross-examines.
 - 5. Administrative Judge may ask questions.
 - 6. Further questions by parties as long as necessary to provide all pertinent testimony.
- (l) The moving party and the other party are allowed to call appropriate rebuttal and rejoinder witnesses with examination proceeding as outlined above.
- (m) Closing arguments are allowed to be presented by both parties.
- (n) The Administrative Judge announces the decision or takes the case under advisement.
- (2) The parties are informed that an Initial Order will be written and sent to the parties and that the Initial Order will inform the parties of their appeal rights.
- (3) Paragraphs (1) and (2) of this rule are intended to be a general outline for the conduct of a contested case proceeding. A departure from the literal form or substance of this outline, in order to expedite or ensure the fairness of proceedings, is not a violation of this rule.

1200-13-19-.16 Default and Uncontested Proceedings.

- (1) The failure of a party to attend or participate in a pre-hearing conference, hearing or other stage of

contested case proceedings after appropriate notice of those actions is cause for holding that party in default under T.C.A. § 4-5-309. Failure to comply with any lawful order of the Administrative Judge, necessary to maintain the orderly conduct of the hearing, may be deemed a failure to participate in a stage of a contested case and is cause for a holding of default.

- (2) If a party fails to attend or participate as provided in paragraph (1) above, the Administrative Judge will enter into the record evidence of service of notice to that party and determine whether the service of notice is sufficient as a matter of law, according to this chapter. If the notice is held to be sufficient, the Administrative Judge may do either of the following:
 - (a) Hold the party failing to attend or to participate in default and, after determining that the party in default has the burden of proof, adjourn the proceedings and enter an order of default stating the grounds for the default that will become a Final Order without further notice as provided in this chapter, unless a petition for reconsideration is timely filed; or
 - (b) Hold the party failing to attend or to participate in default and, after determining that the party not in default has the burden of proof, conduct the proceedings without the participation of the defaulting party and include in the Initial Order a written notice of default stating the grounds for the default. The Initial Order will become a Final Order without further notice as provided in this chapter, unless a petition for reconsideration is timely filed.
- (3) The Administrative Judge will serve the written notice of entry of default for failure to appear as provided in paragraph (2) above on all parties. The defaulting party, no later than fifteen (15) days after receipt of a notice of default, may file a petition for reconsideration as provided in this chapter and T.C.A. § 4-5-317, requesting that the default be set aside for good cause shown, and stating the grounds relied upon. The Administrative Judge may rule on the petition or take no action for twenty (20) days after which the petition is deemed denied. T.C.A. § 4-5-317.

1200-13-19-.17 Evidence. The Administrative Judge will consider the information used to determine the applicant's eligibility as well as additional relevant information presented as evidence during the course of the appeal. The standard for admissibility of evidence is set out at T.C.A. § 4-5-313.

- (1) The testimony of witnesses will be taken in open hearings, except that witnesses may be excluded from the hearing prior to their testimony.
- (2) The Administrative Judge will admit and give probative effect to evidence admissible in a court. When necessary to establish facts not reasonably susceptible to proof under the rules of court, evidence may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The Administrative Judge will give effect to the rules of privilege recognized by law and to state or federal statutes or regulations protecting the confidentiality of certain records and will exclude evidence which in his judgment is irrelevant, immaterial or unduly repetitious.
- (3) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the Agency. Upon request, parties will be given an opportunity to compare the copy with the original, if reasonably available.
- (4) Official notice may be taken of:
 - (a) Any fact that could be judicially noticed in the courts of Tennessee;
 - (b) The record of other proceedings before the Agency;
 - (c) Technical or scientific matters within the Administrative Judge's specialized knowledge; and
 - (d) Codes or standards that have been adopted by an agency of the United States, of Tennessee or of another state, or by a nationally recognized organization or association. Parties will be notified before or during the hearing, or before the issuance of any Initial or Final Order that is based in whole or in part on facts or material noticed, of the specific facts or material noticed and the source, including any staff memoranda and data, and be given an opportunity to contest and rebut the facts or material so noticed.

- (5) Every party has the right to present evidence, to make arguments, and to confront and cross-examine witnesses.
- (6) Any party intending to introduce an affidavit into evidence must deliver a copy of the affidavit along with the notice described below to the opposing party at least ten (10) days prior to a hearing or a continued hearing. The opposing party has seven (7) days after delivery of the affidavit to deliver to the proponent a request to cross-examine the affiant or the right to cross-examination is waived and the affidavit, if introduced in evidence, will be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not provided after a proper request is made, the affidavit will not be admitted into evidence. Delivery means actual receipt, for purposes of this paragraph. The Administrative Judge may admit affidavits not submitted in compliance with this paragraph where necessary to prevent injustice.
- (7) The notice required to accompany an affidavit must contain the following information and be substantially in the following form:

The accompanying affidavit of _____ (here insert name of affiant) will be introduced as evidence at the hearing in _____ (here insert title of proceeding). _____ (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question such affiant unless you notify _____ (here insert name of the proponent or the proponent's attorney) at _____ (here insert address) that you wish to cross-examine such affiant. To be effective, your request must be mailed or delivered to _____ (here insert name of proponent or the proponent's attorney) on or before _____ (here insert a date seven (7) days after the date of mailing or delivering the affidavit to the opposing party).

1200-13-19-.18 Initial and Final Orders.

- (1) At the conclusion of the hearing, the Administrative Judge may allow the parties a designated amount of time to submit proposed findings of fact and conclusions of law.
- (2) The Administrative Judge will issue an Initial Order which automatically becomes the Final Order fifteen (15) days after it is issued unless the Agency receives a timely filed petition for appeal, petition for reconsideration, or petition for a stay of effectiveness. The effective date of an Initial Order that becomes final by operation of law is its original date of entry. The Final Order is binding upon all parties unless it is stayed, reversed or set aside according to applicable rules.
- (3) If the Administrative Judge becomes unavailable for any reason before issuing an Initial Order or Final Order, a substitute will be appointed as provided in T.C.A. § 4-5-302. The substitute must use the existing record and may conduct further proceedings as appropriate in the interest of justice.
- (4) Contents of the Order.
 - (a) An Initial Order or a Final Order will include findings of fact, conclusions of law, the policy reasons for the decision, the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. The Agency member's experience, technical competence, and specialized knowledge may be utilized to evaluate the evidence.
 - (b) Findings of fact are concise and explicit statements of the underlying facts of record that support the order and must be based exclusively upon the evidence of record from the hearing and on matters officially noticed in that proceeding.
 - (c) The Initial Order must include a statement that it will automatically become a Final Order without further notice unless a petition for reconsideration or petition for appeal is filed.
 - (d) The Initial Order or Final Order must include a statement of the procedures and time limits to request an appeal, reconsideration or stay of the Initial or Final Order and the time limits for seeking judicial review of the Final Order.
- (5) The Administrative Judge must cause copies of the Initial Order to be sent to each party at the time the order is entered. If an Initial Order becomes final by operation of law, no further notice shall be provided.

- (6) If a Final Order is issued, the Agency must cause copies of the Final Order to be sent to each party at the time the order is entered.

1200-13-19-.19 Appeal of Initial Orders.

- (1) Written notice of the right to petition for stay, reconsideration, or appeal must accompany the Initial Order sent to the parties.
- (2) If an Initial Order is subject to both a timely petition for reconsideration and a petition for appeal, the petition for reconsideration will be disposed of first and a new fifteen (15) day period will start to run.
- (3) A petition for appeal from an Initial Order must be addressed to the Commissioner's Designee and filed with the Clerk's Office within fifteen (15) days after entry of an Initial Order and comply with T.C.A. § 4-5-315.
- (4) A petition for appeal must state its basis.
- (5) The Commissioner's Designee, on his own motion, may review an Initial Order after giving written notice to the parties within fifteen (15) days after entry of an Initial Order.
- (6) On appeal the parties will be permitted an opportunity to file briefs. The Agency may provide the parties an opportunity to present oral argument.
- (7) The Commissioner's Designee may enter a Final Order disposing of the proceeding or may remand the matter for further proceedings with instructions to the Administrative Judge who entered the Initial Order. When remanding a matter, the Commissioner's Designee may order temporary relief if authorized and appropriate.
- (8) A Final Order or an order remanding the matter for further proceedings will be entered in writing within sixty (60) days after receipt of briefs and oral argument, unless that period is waived or extended with the written consent of all parties or for good cause shown. The order will identify any differences from the Initial Order and include or incorporate by express reference to the Initial Order, all information required by paragraph .18(4).

1200-13-19-.20 Reconsideration.

- (1) Written notice of the right to petition for stay, reconsideration, or appeal must accompany the Initial Order sent to the parties.
- (2) If a separate Final Order is entered following the entry of an Initial Order, written notice of the right to petition for reconsideration of the Final Order will accompany the Final Order sent to the parties.
- (3) A petition for reconsideration stating in detail the reasons for the request and the relief requested may be addressed to the Administrative Judge and filed with the Clerk's Office by any party within fifteen (15) days after entry of an Initial Order or Final Order.
- (4) If an Initial Order is subject to both a timely petition for reconsideration and a petition for appeal, the petition for reconsideration will be disposed of first and a new fifteen (15) day period will start to run.
- (5) Filing a petition for reconsideration of the Final Order does not supersede or delay the effective date of the Final Order. The Final Order takes effect on the date entered by the Agency and continues in effect until the petition for reconsideration is granted or until the Final Order is stayed, superseded, modified, or set aside in a manner provided by law. If a change affecting benefits or services occurs while reconsideration is pending, action to implement that change is not delayed pending the decision concerning reconsideration of the Final Order.
- (6) Within twenty (20) days of receiving a petition for reconsideration of the Initial or Final Order, the Administrative Judge who entered the Initial or Final Order will enter a written order as set out at T.C.A. § 4-5-317:

- (a) Denying the petition;
 - (b) Granting the petition and setting the matter for further proceedings; or
 - (c) Granting the petition and issuing a new Initial or Final Order.
 - (d) If no action is taken on the petition for reconsideration within twenty (20) days, the petition is deemed to be denied.
- (7) An order granting a petition for reconsideration and setting the matter for further proceedings will contain:
- (a) A statement of the extent and scope of the proceedings;
 - (b) A statement limiting the proceedings to argument upon the existing record; and
 - (c) State that no new evidence will be introduced, unless the party proposing new evidence shows good cause for his failure to introduce the evidence in the original proceeding.

1200-13-19-.21 Stay.

- (1) Written notice of the right to petition for stay, reconsideration, or appeal must accompany the Initial Order or Final Order sent to the parties.
- (2) A petition for stay of effectiveness of an Initial Order or Final Order may be submitted to the Agency within seven (7) days after entry of the order. The Agency may take action on the petition for stay before or after the effective date of the Initial or Final Order.

1200-13-19-.22 Judicial Review.

- (1) Written notice of the right to seek judicial review of the Final Order and the time within which to file a petition for judicial review of the Final Order must be included with the Initial and Final Order sent to the parties.
- (2) Judicial review is initiated by filing a petition for review in a Chancery Court of Tennessee having jurisdiction within sixty (60) days after the Final Order is entered. T.C.A. § 4-5-322 sets out the judicial review information.

1200-13-19-.23 Clerical Mistakes. Prior to any appeal being perfected by either party to Chancery Court, clerical mistakes in orders or other parts of the record, and errors of oversight or omission may be corrected by the Administrative Judge or the Commissioner's Designee at any time on his own initiative or on motion of any party and after such notice, if any, as the Administrative Judge or Commissioner's Designee may require. The entry of a corrected order does not affect the dates of the original appeal time period.

1200-13-19-.24 Agency Record.

- (1) The agency record as defined in this chapter will remain on file in the Bureau of TennCare for not less than three (3) years and be available to the appellant or his representative at any reasonable time during business hours.
- (2) Public access to Final Orders. Hearing decisions will be accessible to the public for inspection and copying, subject to the requirements of safeguarding information which is confidential under any provision of law or rule. Those portions of any record that contain confidential information may be deleted prior to providing access to the Final Order.

1200-13-19-.25 Code of Judicial Conduct, Disqualification and Separation of Functions. Administrative Judges must comply with the code of judicial conduct requirements set out in the UAPA Rules and the requirements of T.C.A. §§ 4-5-302 and 4-5-303 concerning disqualification of Administrative Judges and separation of functions. Complaints regarding an individual Administrative Judge's conduct are to be made to the supervising

Administrative Judge and complaints regarding the supervising Administrative Judge are to be made to the commissioner.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-112; 42 U.S.C. §§ 1396a(a)(3), (5), (8); 42 C.F.R. 431 Subpart E and 42 C.F.R. § 435.912.

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 10/17/2014

Signature: D. J. Gordon

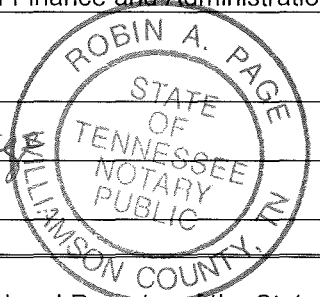
Name of Officer: Darin J. Gordon
Director, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration

Subscribed and sworn to before me on: 10/17/2014

Notary Public Signature: Robin A. Page

My commission expires on: 10/18/2016



All emergency 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.

Hubert H. Slattery
Attorney General and Reporter

11/7/2014
Date

Department of State Use Only

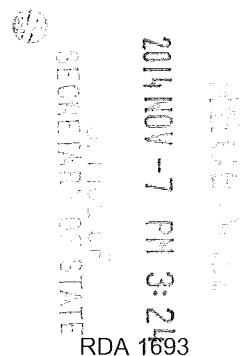
Filed with the Department of State on: 11-07-14

Effective for: 180 *days

Effective through: 05-06-15

* Emergency rule(s) may be effective for up to 180 days from the date of filing.

Tre Hargett
Tre Hargett
Secretary of State



Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

(Insert statement here)

These rules are not anticipated to have an 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 brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule chapter provides rules necessary for the Bureau of TennCare to provide hearings for determining eligibility of applicants for TennCare, CoverKids and Medicare Savings Programs.

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;

T.C.A. § 71-5-112; 42 U.S.C. §§ 1396a(a)(3), (5), (8); 42 C.F.R. 431 Subpart E and 42 C.F.R. § 435.912 all provide for hearings for determining eligibility.

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;

The persons and entities most directly affected by this rule chapter are the applicants. The governmental entity most directly affected by this rule chapter is the Bureau of TennCare.

Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

This emergency rule chapter was approved by the Tennessee Attorney General. No additional opinion was requested or given.

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;

The promulgation of this rule chapter is anticipated to have a minimal fiscal impact on state and local government revenues and expenditures.

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

Donna K. Tidwell, Deputy General Counsel

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

Donna K. Tidwell, Deputy General Counsel

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

310 Great Circle Road, Nashville, TN 37243; (615) 507-6852; donna.tidwell@tn.gov

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