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File Date (effective date): 7/1/16
End Effective Date: 12/28/16

# 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 Human Services |
| **Division:** | Family Assistance Division |
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**Rule Type:**
✓ Emergency Rule

**Revision Type (check all that apply):**
✓ Amendment
___ New
___ Repeal

**Statement of Necessity:**

It is essential to promulgate rules to amend the Families First EBT rules to comply with Public Chapter No. 392, HB 1339, which amends Tenn. Code Ann. § 71-3-126 relative to electronic benefit card transactions involving persons receiving cash assistance. This law is set to go into effect on July 1, 2016. The statute's July 1, 2016, effective date does not provide adequate time to conduct a notice of rulemaking hearing. Due to the length of time necessary to complete the rulemaking process to promulgate rules related to electronic benefit card transactions, these emergency rules are required in order for the Commissioner to comply with the enactment of the Legislature. The Department is simultaneously issuing a notice of rulemaking hearing regarding these rules and will promptly conduct a rulemaking hearing to consider comments on the adoption of these as permanent rules.

**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/RuleTitle per row)

| **Chapter Number** | **Chapter Title** |
|---|---|
| 1240-01-47 | Non-Financial Eligibility Requirements Families First Program |
| **Rule Number** | **Rule Title** |
| 1240-01-47-.16 | Personal Responsibility Plan |

| **Chapter Number** | **Chapter Title** |
|---|---|
| 1240-01-58 | Electronic Benefits Transfer Card - Prohibited Uses |
| **Rule Number** | **Rule Title** |
| 1240-01-58-.01 | Purpose |

| | |
|---|---|
| 1240-01-58-.02 | Definitions |
| 1240-01-58-.03 | Prohibited Uses |
| 1240-01-58-.04 | Monitoring and Penalties |
| 1240-01-58-.05 | Appeals |

Chapter 1240-01-47
Non-Financial Eligibility Requirements Families First Program

Amendments

Rule 1240-01-47-.16 Personal Responsibility Plan is amended by deleting part 9 under subparagraph (b), paragraph (1), and by substituting instead the following language, so that, as amended, paragraph (1), subparagraph (b), part 9 shall read as follows:

9. Agree to proper use of the electronic benefit transfer card, including agreement not to access public assistance benefits through an electronic benefit transfer card at:

   (i) any point of sale device or automated teller machine located in any liquor store, casino, gambling casino, gaming establishment, or adult cabaret as prohibited under Chapter 1240-01-58; or

   (ii) any point of sale device located in any tobacco store as prohibited under Chapter 1240-01-58.

Authority: T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-103, 71-1-104, 71-1-105, 73-1-126, 71-3-192, 71-3-103, 71-3-104, 71-3-108(d)(2)(D), 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D);42 U.S.C. §§ 601 et seq., 42 U.S.C. § 603, 42 U.S.C. § 604(i); 42 U.S.C. § 607(c), (d) and (e); 42 U.S.C. § 608(a)(2), (3) and (12), 42 U.S.C. § 608(b)(3); 42 U.S.C. § 609(a)(14) and 42 U.S.C. §§ 654 and 657; 45 C.F.R. § 261.2, 45 C.F.R. § 261.12 and 45 C.F.R. § 261.14; and Public Acts of 1996, Chapter 950, §1115 of the Social Security Act; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31.

Chapter 1240-01-58
Electronic Benefits Transfer Card - Prohibited Uses

Amendments

Rule 1240-01-58-.01 Purpose is amended by deleting the paragraph in its entirety, and by substituting instead the following language, so that, as amended, Rule 1240-01-58-.01 shall read as follows:

1240-01-58-.01 Purpose.

The purpose of this Chapter is to prevent public assistance benefits, provided pursuant to the Families First/TANF program, from being used in any EBT transaction in any liquor store, casino, gambling casino, gaming establishment, adult cabaret, or tobacco store.

Authority: T.C.A. §§ 4-5-201 et seq.; 57-2-101(1); 71-3-126; 42 U.S.C. § 603; 42 U.S.C. § 608(a)(12).

Rule 1240-01-58-.02 Definitions is amended by adding a new paragraph (17), and by deleting paragraphs (11) and (13), and substituting instead the following language for paragraphs (11) and (13), so that, as amended, paragraphs (11), (13), and (17) shall read as follows:

(11) "Knowingly" means that an EBT card user, merchant, or business entity has actual knowledge that the EBT card contains public assistance benefits and the ATM or point of sale device used for the illegal transaction is located in a liquor store, casino, gambling casino, gaming establishment, adult cabaret, or tobacco store (however, ATM use is permitted in tobacco stores). The term "knowingly" may be established by direct or circumstantial evidence of knowledge that the EBT card contains public assistance benefits and the ATM or point of sale device is located in a liquor store, casino, gambling casino, gaming establishment, adult cabaret, or tobacco store.

(13) "Located in". An ATM, POS device, or other online system used for the withdrawal of funds or processing of payments is "located in" a liquor store, casino, gambling casino, gaming establishment, adult cabaret, or tobacco store, when the ATM, POS device, or other online system is located on any part of the merchant's business property, which is either owned or leased by the merchant.

(17) "Tobacco store" means a licensed retail store that derives its largest category of sales from the sale of loose tobacco, cigars, cigarettes, pipes, and other smoking accessories.

Authority: T.C.A. §§ 4-5-201 et seq.; 4-51-102; 7-51-1102; 39-17-501; 39-17-1802(13); 57-3-101; 71-3-103; 71-3-126, 42 U.S.C. § 601 et seq.; 42 U.S.C. § 608(a)(12)(B).

Rule 1240-01-58-.03 Prohibited Uses is amended by adding a new paragraph (2) and renaming the old paragraph (2) as paragraph (3), and adding a new subparagraph (f) under the new paragraph (3), so that, as amended, Rule 1240-01-58-.03 shall read as follows:

1240-01-58-.03 Prohibited Uses.

(1) It is illegal for any Families First/TANF recipient to knowingly use an EBT card to purchase any goods or services through a POS device or any other online system used to process payments or access public assistance benefits through an ATM or other online system used for the withdrawal of funds located in any of the following businesses:

(a) liquor store;

(b) casino;

(c) gambling casino;

(d) gaming establishment; or

(e) adult cabaret.

(2) It is illegal for any Families First/TANF recipient to knowingly use an EBT card to purchase any goods or services through a POS device or any other online system used to process payments located in any of the following businesses:

(a) tobacco store.

(3) It is illegal for any person or business entity, or any agent or employee of the person or business entity, to knowingly accept public assistance benefits from an EBT card for the purchase of any goods or services in the following locations:

(a) liquor store;

(b) casino;

(c) gambling casino;

(d) gaming establishment;

(e) adult cabaret; or

(f) tobacco store.

Authority: T.C.A. §§ 4-5-201 et seq.; 7-51-1102; 39-17-501; 57-3-101; 71-3-126, 42 U.S.C. § 608(a)(12)(B).

Rule 1240-01-58-.04 Monitoring and Penalties is amended by deleting paragraph (1) in its entirety, and by substituting instead the following language, so that, as amended, paragraph (1) shall read as follows:

(1) Any Families First/TANF recipient or caretaker must submit to the Department a signed Personal Responsibility Plan (PRP) acknowledging his/her understanding that it is illegal to knowingly use an EBT card containing public assistance benefits at any POS device, ATM, or other online system used for the processing of payments or withdrawal of funds located in any liquor store, casino, gambling casino, gaming establishment, adult cabaret, or tobacco store (however, ATM use is permitted in tobacco stores) to purchase any goods or services as described in this Chapter.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-3-126; 42 U.S.C. § 608(a)(12).

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

Date: 6/21/16

Signature: CMHewlett

Name of Officer: Catrina Hewlett

Title of Officer: Assistant General Counsel
Tennessee Department of Human Services

DEBRA E. BATTS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires MAY 8, 2018

Subscribed and sworn to before me on: June 21, 2016

Notary Public Signature: Debra E. Batts

My commission expires on: May 8, 2018

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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.

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

6/29/2016
Date

**Department of State Use Only**

Filed with the Department of State on: 7/1/16

Effective for: 180 *days

Effective through: 12/28/16

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

Tre Hargett

Tre Hargett
Secretary of State

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**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)

These rules have no projected 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 rule amendments are required to comply with Public Chapter No. 392 which amends Tenn. Code Ann. § 71-3-126 restricting use of electronic benefit transfer card (EBT) transactions in tobacco stores by persons receiving cash assistance. This law was passed on April 21, 2015, and signed into law on May 8, 2015. The law takes effect July 1, 2016. The relevant portions of the legislation are as follows:

SECTION 1. Tennessee Code Annotated, Section 71-3-126(b)(1), is amended by adding the following language as a new subdivision:

( ) A retail store licensed to do business in this state that derives its largest category of sales from the sale of loose tobacco, cigars, cigarettes, pipes, and other smoking accessories;

SECTION 2. Tennessee Code Annotated, Section 71-3-126(c)(1), is amended by adding the following language as a new subdivision:

( ) A retail store licensed to do business in this state that derives its largest category of sales from the sale of loose tobacco, cigars, cigarettes, pipes, and other smoking accessories;

SECTION 3. Tennessee Code Annotated, Section 71-3-126(b), is amended by adding the following language as a new subdivision:

(3) The department shall notify all recipients of electronic benefit cards of the prohibitions set forth in subdivision (b)(1) and the penalties under current law for knowingly using an EBT card in any prohibited business location.

SECTION 4. This act shall take effect July 1, 2016, the public welfare requiring it.

The rules restrict use of benefits funds on EBT card on Point of Sale devices from tobacco discount and/or retail stores that derive their largest category of sales from loose tobacco, cigars, cigarettes, pipes, and other smoking accessories.

**(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;

These rule amendments are required to comply with Public Chapter No. 392, HB 1339, that amends Tenn. Code Ann. § 71-3-126 relative to EBT card transactions involving persons receiving cash assistance. This law passed on April 21, 2015, and signed into law on May 8, 2015. This law shall take effect July 1, 2016.

**(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;

This Rule will implement a state policy to prevent misuse of cash assistance benefits in the Department of Human Services' Families First/TANF program by recipient's using those funds in any licensed retail stores that derive their largest category of sales from loose tobacco, cigars, cigarettes, pipes, and other smoking accessories.

The rules will impact a limited group of businesses that are prohibited by state law from knowingly allowing the use of the EBT cards in the businesses' location. The State law imposes significant civil penalties on certain

businesses that do not comply in order to encourage compliance.

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

There are no legal opinions or judicial rulings that directly relate to the rule.

**(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;

The Department intends to fund this directive by reallocating resources within the existing TANF grant monies to account for the implementation costs. The Department has concluded that the costs associated with implementation of these requirements can be handled with existing TANF dollars. Implementation of the legislation will come at no additional cost since existing resources are sufficient to administer it.

The businesses listed in the rules may be impacted if they knowingly allow the use of EBT cards from the TANF program. This can result in civil penalties ranging from $1000.00 for the first offense to $5,000.00 for the third and subsequent offenses.

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

Keisha Malone, Family Assistance Director of Operations

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

Keisha Malone, Family Assistance Director of Operations

**(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

Keisha Malone, Family Assistance Director of Operations
400 Deaderick Street
Citizens Plaza Building, 8th Floor
Nashville, TN 37243
(615) 313-5292
Keisha.Malone@tn.gov

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

N/A

# REDLINE VERSION
# CHAPTER 1240-01-47
# JULY 1, 2016

# RULES
# OF
# TENNESSEE DEPARTMENT OF HUMAN SERVICES
# FAMILY ASSISTANCE DIVISION

## CHAPTER 1240-01-47
## NON-FINANCIAL ELIGIBILITY REQUIREMENTS
## FAMILIES FIRST PROGRAM

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**1240-01-47-.01 NON-FINANCIAL ELIGIBILITY REQUIREMENTS.** Every applicant and recipient of Families First must meet certain technical eligibility requirements other than financial eligibility.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Chapter 950 (1996), Section 1115 of the Social Security Act, and 45 CFR 233.10.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997.*

**1240-01-47-.02 RESIDENCE.**

(1) As a condition of eligibility to receive benefits, an AG must reside in Tennessee. The Families First application is to be filed in the county of residence for processing purposes.

(2) No individual may receive benefits as a member of more than one assistance group or in more than one county or state within the same month. There is no durational residence requirement for Families First.

(a) Definition of a Resident

1. For the purpose of the Families First Program, a resident is defined as one who:

(i) Is living in the state (or county) voluntarily with the intention of making his/her home here and not for a temporary purpose. A child is a resident of the state (or county) in which he/she is living other than on a temporary basis. (Persons in the state or county for visits or vacations are not residents.); or

(ii) Is living, at the time of application, in the state (or county), not receiving benefits from another locality, and who entered the state (or county) with a job commitment or to seek employment. For this purpose, a child is a resident of the state (or county) where the caretaker is a resident.

(Rule 1240-01-47-.02, continued)
***Authority:*** *T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.40.*
***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997.*

**1240-01-47-.03 TEMPORARY ABSENCES.** Temporary absences from the state (or county), with subsequent returns to the state or intent to return once the purpose of the absence has been accomplished, do not terminate residence. Residence is retained until abandoned. A decision to continue assistance to a recipient out of state will be based on two factors:

(1) Whether it can be established that he/she is actually maintaining any identifiable living arrangement in Tennessee and he/she has plans to return to Tennessee; and

(2) Whether he/she has applied for or is receiving assistance in the state where he/she presently is. If it cannot be established that the recipient is maintaining a home in Tennessee or it is established that he/she has applied for or is receiving assistance in the state where he/she is, it will be assumed that he/she intends to remain out of Tennessee and assistance from this state will be discontinued. If he/she does not return to Tennessee within 3 months, Families First will be discontinued.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.40.*
***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997.*

**1240-01-47-.04 TERMINATION OF RESIDENCE.**

(1) When a Families First recipient notifies the department (or it is learned that he/she is moving out of state, payments must be terminated promptly within current fiscal and notice constraints. If a recipient is moving to another county within the state, the case is to be transferred to the new county.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.40.*
***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997.*

**1240-01-47-.05 REPORTING ADDRESSES.** An applicant/recipient may have both a physical address and a mailing address. If the two are different, both addresses will be required. A mailing address only, such as post office box, general delivery, or a rural route, will not be sufficient as it does not indicate that the AG resides in the county. If the address is a rural route, information must be given to identify the exact location of the home.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.40.*
***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997.*

**1240-01-47-.06 BASIC ELIGIBILITY REQUIREMENTS.**

(1) As a condition of eligibility to receive Families First benefits, an individual must be either:

(a) A citizen of the United States; or

(b) An alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law as described in Section 1240-01-47-.12.

1. The United States is defined as the 50 states and the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. In addition, nationals from American Samoa or Swain's Island are considered US citizens for eligibility purposes.

2. An ineligible alien will be excluded from the Families First assistance group, but may receive a grant for children in his/her care if they are eligible.

(Rule 1240-01-47-.06, continued)
***Authority:*** *T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.50.*
***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997.*

**1240-01-47-.07 VERIFICATION OF US CITIZENSHIP.** An applicant's statement that he/she and members of the AG are US citizens must be affirmed by signature on the Department's Application or Review of Eligibility (HS-0169). Each adult member of the AG is required to sign the form.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.50.*
***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997.*

**1240-01-47-.08 METHOD OF VERIFICATION OF US CITIZENSHIP.** Acceptable forms of verification of citizenship include birth certificates, religious records, voter registration cards, certificates of citizenship or naturalization provided by INS, such as Identification Cards for use of Resident Citizens in the US (INS Form 1-179 or INS Form 1-197) or US passports. If the above forms of verification cannot be obtained and the person can provide a reasonable explanation as to why verification is not available, a signed statement will be accepted from someone who is a US citizen which declares, under penalty of perjury, that the member in question is a US citizen. The signed statement shall contain a warning of the penalties for helping someone commit fraud.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.50.*
***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997.*

**1240-01-47-.09 PROMPTNESS OF CASE ACTION - QUESTIONABLE CITIZENSHIP.**

(1) When there is a question as to whether a member of an AG is in fact a US citizen, prompt action is to be taken on the application as follows: the person whose US citizenship cannot be verified within the promptness standard will be excluded from the AG. The income and resources of the excluded individual will not be taken into consideration in determining eligibility or the amount of payment for the remaining members unless the excluded member is a parent, spouse of an AG member or stepparent living in the home. Determination of eligibility and authorization of payment will not be denied or delayed pending determination of citizenship of the individual in question. When it is subsequently verified that the person is a US citizen he/she may be added to the assistance group (no new application required). Payments retroactive to the date of application (but not prior to 10/1/94) may be made if all other eligibility requirements were met at that time.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.50.*
***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997.*

**1240-01-47-.10 ELIGIBLE ALIENS.**

(1) General Requirements. In addition to US Citizens, certain aliens who are otherwise eligible are eligible to receive Families First benefits. The alien status of each individual in the AG listed on the application as an alien is to be determined prior to certification/approval. INS documents presented or secured by the applicant/recipient shall be the primary source of verification of alien status. The Systematic Alien Verification for Entitlements (SAVE) system must be used to validate the alien's documents and status.

(2) Description Of Eligible Aliens.

(a) Citizens and eligible aliens. The Department shall prohibit participation in the program by any person who is not a resident of the United States and one of the following:

1. A United States citizen; or

(Rule 1240-01-47-.10, continued)

2. An alien that, under federal laws and regulations, is permitted to receive Families First benefits funded by federal TANF dollars. These eligible aliens may include, but are not necessarily limited to, certain individuals lawfully present in the United States as a result of the application of the Immigration and Nationality Act and the Immigration Reform and Control Act of 1986.

(3) Aliens who apply for Families First for the first time must have the income and resources of their sponsor considered in determining their eligibility for assistance. The income and resources of the sponsor shall be considered for a period of three years after the alien's entry into the United States. A sponsor is a person who signed an affidavit or other statement accepted by INS as an agreement to support an alien as a condition of the alien's admission for permanent residence in the United States. The alien is responsible for obtaining the cooperation of his/her sponsor and for providing the information necessary to determine the alien's eligibility. This will include material provided in support of the alien's immigration application. Failure to obtain the sponsor's cooperation or to supply the information will result in denial/closure of the application/case. Aliens who are exempted from this provision are aliens who were: paroled into the United States as refugee; granted political asylum by the Attorney General; admitted as Cuban or Haitian entrants; admitted under Section 203(a)(7) of the Immigration and Nationality Act prior to April 1, 1980; admitted under Section 207(c) of the Act after March 31, 1980; alien children of sponsors or of sponsor's spouse; or recipients of AFDC prior to October 1, l981 or a former AFDC or Families First recipient who reapplies in the future. Any alien under the sponsorship of a public or private agency/organization is not eligible to receive Families First within three years of entry into the Country unless it is proven (and documented) that the agency is unable to meet their sponsorship obligations to the alien. (This may mean that the agency is no longer in existence.) The alien is required to submit documentary evidence as is available to facilitate this determination. Exception: An alien granted permanent resident status through the legalization process is ineligible for a five year period beginning with the date on which she/he was granted temporary resident status.

(a) Establishing Income and Resource Amounts. The following steps are necessary in establishing the amount of income and resources which shall be deemed from the sponsor to the alien, whether or not these are actually available to the alien.

1. Income

(i) Determine the gross earned and unearned income of the sponsor and the sponsor's spouse (the latter's income will be considered even if the marriage occurred after the affidavit of support was executed). If the sponsor and/or spouse receive Families First or SSI, no income is to be considered available to the alien.

(ii) Deduct from the gross earned income (wages, salaries or net earnings from self employment) 20% of the total of such amounts or $175.00, whichever is less.

(iii) Deduct the standard of need for the number of individuals living with the sponsor who are claimed by the sponsor and/or the sponsor's spouse as dependents for federal personal income tax liability.

(iv) Deduct the amount the sponsor and/or his/her spouse pays to individuals outside the home who are claimed as dependents for federal income tax purposes.

(v) Deduct any amount paid by the sponsor and/or his/her spouse for child support or alimony to individuals living outside the home.

(Rule 1240-01-47-.10, continued)

(vi) The remaining income shall be considered as unearned income to the alien and shall be added to the alien's own income in determining eligibility for assistance.

(vii) Follow Families First budgeting procedures beginning with the Gross Income Standard test.

2. Resources. The provision of considering the income and resources of the sponsor as available to the alien is not waived even though the sponsor may have revoked his/her sponsorship agreement. In those situations where the sponsor has absconded and his/her whereabouts is unknown, the alien(s) would not be eligible for assistance for the period of time for which the sponsor is liable for support, as need could not be established. Income and resources which are deemed to a sponsored alien shall not be considered available to unsponsored members of the alien's family except to the extent the income and resources are actually available. Unsponsored members are not ineligible simply because a sponsored member fails to provide information regarding his/her sponsor. The following are steps to be taken in determining the amount of resources to be deemed from the sponsor to the alien:

(i) Determine the amount of countable resources of the sponsor and the sponsor's spouse as though the sponsor was applying for Families First.

(ii) Deduct $1500.00 from the total countable resources.

(iii) The balance of the resources shall be considered available to the alien and added to the alien's own countable resources in determining eligibility.

(b) Multiple Sponsorship. When it is determined that an individual has agreed to sponsor multiple families, the amount to be deemed to the eligible families shall be divided equally among the families who are applying for assistance. If only one family applies for Families First, then the total amount of the sponsor's liability (income and resources) shall be applied to the family so applying.

(c) Liability for overpayments. Both the sponsor of the alien and the alien shall be jointly and severally liable for any overpayment made to such alien during the three year period following the alien's entry into the United States, if such overpayment was due to the sponsor's failure to provide correct information except where it can be established that the sponsor was without fault or where good cause for failure to provide such information can be established. The same procedure for handling overpayments shall be applicable to aliens as for any other Families First recipient.

(d) Establishing Good Cause. Good cause for failure of the sponsor to provide correct information to the Department includes the following:

1. The Department fails to request information regarding the sponsor's income and resources.

2. The sponsor has had no direct contact with the Department concerning his/her income and resources and he/she is unaware of the information provided by the sponsored alien.

3. Social and/or language barriers preclude the sponsor's understanding and ability to provide the correct information.

(Rule 1240-01-47-.10, continued)

4. Other unusual circumstances exist which indicate the failure to provide correct information is beyond the sponsor's control.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 71-1-105, 71-3-154, 71-3-158, Public Acts of 1996, Chapter 950, 42 USCA §1315(a), and 45 CFR 233.50 and 233.51.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed December 19, 2003; effective March 3, 2004.*

**1240-01-47-.11 NELIGIBLE ALIENS.** All aliens other than those listed in 1240-01-47-.10(2)(a) are ineligible for Families First benefits.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.50 and 233.51.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997.*

**1240-01-47-.12 VERIFICATION OF ALIEN STATUS.** Verification of alien status must be by the applicant prior to approval.

(1) Required Verification of Alien Status. Aliens identified in 1240-01-47-10(2) have been lawfully admitted to the US and are therefore eligible for benefits on this basis. They must also meet other eligibility requirements. These aliens will be able to present (or obtain) one of the following types of verification of their status:

(a) Immigration and Nationality Services (INS) Form I-151 or I-551 - Alien Registration Receipt Card or the Re-Entry Permit, a passport booklet for lawful permanent resident aliens.

(b) If an INS Form I-94 is annotated with the letter (A) through (L), this is verification that the alien does not meet citizenship requirements for Families First purposes and is ineligible for benefits. If, however, the alien can present other documentation from INS that he does meet requirements, this will be acceptable. INS Form I-94, Arrival Departure Record, which will be acceptable only if annotated with:

1. Section 212(d)(5) or 243(h) of the Immigration and Nationality Act, or an (S) indicating Haitian Nationals; or

2. One of the following terms and a combination of the following terms:

(i) Refugee;

(ii) Parolee or paroled;

(iii) Conditional entry or entrant; or

(iv) Asylum.

(c) There may be considerable delay (because of methods of issuance) in the receipt of Form I-551 by an alien recently admitted to the US. Passport booklets stamped with the annotation Processed for I-551, Temporary Evidence of Lawful Admission for Permanent Residence will be acceptable verification of eligible alien status.

(d) Unless an Iranian has documentation of status as listed in 1240-01-3-.12(2)(a), (regardless of date of entry to the US) he is not eligible for Families First.

(e) Temporary Resident Card, Form I-688, means that an amnesty alien has been approved for temporary residence. If the form is coded to show the alien was admitted under Section 245A, the alien is not eligible. If the form is coded to show the alien was

(Rule 1240-01-47-.12, continued)

admitted under Section 210, the alien is eligible until the expiration date stated on the face of the document.

Forms such as I-688A, Employment Authorization Card or Employment Authorization Document (EAD) and I-689 show that an alien has applied for admission. They are not acceptable documents to show that a person has been admitted under an eligible section. In addition, Form I-181-B cannot be used as acceptable verification.

(f) If the INS Form I-94 does not bear any of the above annotations, the alien may state the reason and submit other conclusive verification, such as a notice, letter or identification card that establishes that the alien has been admitted for permanent residence as a legal alien.

(2) Need For Documentation. If the INS Form I-94 does not bear any of the above annotations, the alien may state the reason and submit other conclusive verification, such as a notice, letter or identification card that establishes that the alien has been admitted for permanent residence as a legal alien. Other evidence of eligible status includes:

(a) Verification of the client's classification under Section 101(a)(15), 101(a)(20), 207, 208, 212(d)(5), 243, 249 of the Immigration and Nationality Act; or

(b) Form G-641 (Application for Verification of Information from Immigration and Naturalization Service Records) when it is properly annotated at the bottom by an INS representative that the alien was admitted lawfully for permanent residence or paroled for humanitarian reasons; or

(c) A court order stating that deportation has been withheld pursuant to section 243(h) of the Immigration and Nationality Act;

(d) The client may contact INS or otherwise obtain the necessary verification. If the AG does not wish to contact INS, give the AG the option of withdrawing the application or participating without the ineligible alien. If the client wishes and signs a written consent, the worker will contact INS to obtain clarification of the alien's status.

(3) Inability to Obtain INS Documentation. If an alien is unable to provide any INS document at all, then the worker has no responsibility to contact INS on the alien's behalf. If the proper INS documentation is not available, the alien may state the reason and submit other conclusive verification. The worker shall accept other forms of documentation or corroboration from INS that the alien is classified pursuant to Sections 101(a)(15), 101(a)(7), 212(d)(5), 243 or 249 of the Immigration and Nationality Act or other conclusive evidence such as a court order stating that deportation has been withheld pursuant to Section 243(h) of the Immigration and Nationality Act.

(a) Systematic Alien Verification for Entitlements (SAVE) System Procedures. The SAVE System is the process of verifying the alien's immigration status by validating the alien's INS documents through the Immigration and Naturalization Service (INS).

1. Benefits may not be denied or reduced pending verification of an alien's documentary evidence through SAVE.

2. One of the following SAVE verification procedures must be used to establish an alien's status.

(i) Primary Verification. By telephone, using the INS' Alien Systematic Verification Index (ASVI) data base as the primary verification method.

(Rule 1240-01-47-.12, continued)

(ii) Secondary Verification. Complete INS Form G-845 for each applicant who is not a US citizen and submit to INS.

(4) Certification/Approval of Remaining AG Members. Aliens who do not meet requirements as specified will be excluded from the Families First budget and grant. Their income and resources will not be taken into consideration in the determination of eligibility/payment for assistance group members unless the alien is a legally responsible relative of the AG member(s). In the case of an ineligible alien parent, income is deemed to the eligible dependent child using the stepparent deeming formula. If the alien subsequently presents acceptable verification of alien status which results in his/her meeting eligibility requirements, he/she will be added to the AG (and his/her income and resources taken into consideration) effective the date verification is received in the county office. (No new application is required). Payment may be made retroactive to the date of application (but not prior to 10/1/94) if all other eligibility requirements were met as of that date.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 71-1-105, 71-3-154(l), Public Acts of 1996, Chapter 950, and 45 CFR 233.50.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed July 5, 2002; effective September 18, 2002.*

**1240-01-47-.13 SOCIAL SECURITY ENUMERATION REQUIREMENTS.**

(1) Enumeration is the procedure by which the Social Security Administration (SSA), in cooperation with the Department, assigns and/or verifies social security numbers (SSN) for Families First applicants/recipients.

The SSN will be used by the Department only in the administration of the Family Assistance Program.

(2) As a condition of eligibility to receive Families First each applicant/recipient must:

(a) Furnish to the Department a Social Security Account Number (SSN) or numbers if more than one has been issued; or

(b) If an individual's account number is unknown or one has not been issued to him, application for an SSN must be filed;

(c) The Social Security Administration will not accept an application for a social security number for an unborn child. Such application can be submitted only after the child is born.

(3) This eligibility requirement applies to the grantee relative, caretaker, second parent, and each child in the Families First AG. A person who does not furnish or apply for a Social Security Number is not eligible to receive Families First. If an otherwise eligible A/R does furnish or apply for an SSN he/she may be approved for Families First benefits.

(4) Informing Requirement.

(a) Federal law and regulations require that each applicant or recipient be advised of the regulation requiring that he/she furnish a Social Security Number to this Department and how the number is to be used.

(b) If, after an explanation is given, individual(s) who are required to furnish or apply for a Social Security Number refuse to do so, they shall be excluded from the Families First AG .

(Rule 1240-01-47-.13, continued)
***Authority:*** *T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 205.52.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997.*

**1240-01-47-.14 AGE REQUIREMENTS.**

(1) To be eligible for Families First a child must be under 18 years of age or age 18, but less than 19 if a full-time student in a secondary school or the equivalent level of vocational or technical training and is reasonably expected to complete the program before reaching age 19. Payment may be made for an otherwise eligible child for the month in which he/she attains age 18 years.

(2) There is no eligibility requirement regarding the age of the caretaker, grantee relative, or second parent.

(3) Attainment of Specific Age.

(a) For Families First eligibility purposes a person is considered to have attained a certain age on the anniversary of his/her birth.

(b) The age of a Families First child must be proven to fall within the age limit given in the preceding paragraph prior to approval or continuation of benefits.

(c) Adults. There is no requirement that the age of the grantee relative, second parent, caretaker, legal guardian or conservator be proved.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 71-1-105, 71-3-154(h)(2)(B), Public Acts of 1996, Chapter 950, and 45 CFR 233.39.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed July 5, 2002; effective September 18, 2002.*

**1240-01-47-.15 SCHOOL ATTENDANCE.**

(1) All school age children are required to attend school, including kindergarten, where available, unless good cause is established for non-attendance.

(a) The Department of Human Services will accept the school's determination as to whether the child is in attendance or truant.

(b) A home schooling program which is recognized by the county/city Board of Education will be acceptable in meeting the school attendance requirement for a school age child; however, a parent/caretaker relative who is home-schooling his/her children will not be exempt from the Families First Employment and Training participation requirement.

(c) Failure to comply with the school attendance requirement will result in a 20 percent reduction in the assistance group's cash payment.

1. The penalty will be assessed whenever the child is truant unless it is determined that there was good cause for failure of the child to attend school.

2. Good cause for non-attendance includes a verified illness that prohibits attendance, suspension from school with reentry forbidden and no alternative school available, removal of the child from the school by the courts, and other verified situations which prevent the child from attending.

3. The school attendance requirement applies to all assistance groups, whether or not the caretaker is included in the AG.

(Rule 1240-01-47-.15, continued)

(i) This requirement extends to all minors in the AG, including married minors and minor parents.

4. Compliance with the requirement following a period of non-compliance will result in the reinstatement of the 20 percent effective the next calendar month.

5. The maximum penalty that can be assessed against an AG for failure to comply with the school attendance requirement is 20 percent, even if more than one child is truant.

(2) An individual who is not the head of household, who has not reached eighteen (18) years of age, who has a child who is at least sixteen (16) weeks of age in such person's care, and who has not successfully completed a high school education or its equivalent, will be removed from the Families First AG unless the individual participates in educational activities directed toward the attainment of a high school diploma or its equivalent.

(3) An individual who is the head of his/her household, who has not reached twenty (20) years of age, who has a child who is at least sixteen (16) week s of age in such person's care, and who has not successfully completed a high school education or its equivalent, will be subject to sanction for his/her entire AG unless the individual participates in:

(a) Educational activities directed toward the attainment of a high school diploma or its equivalent; or

(b) Thirty (30) hours of countable work activities as described in 1240-01-49-.03.

(4) Earned Income Exclusions/Disregards for Student Child Recipients.

(a) Exclusion of Earnings for a Full-Time Student. Earnings of a child recipient who is a full-time student are excluded for the gross income standard test and grant computations up to six months each calendar year. An additional exclusion for purposes of the GIS test may be applied to earnings from JTPA employment for up to six months each calendar year.

(b) Disregard of Earnings for a Full-Time Student or a Part-Time Student not Employed Full-Time.

1. If a child's gross earnings are within the gross income standard, the earnings of a child recipient who is a full-time student or a part-time student not employed full-time are disregarded.

2. For a part-time student employed full-time, or for a child recipient without student status, the applicable earned income disregards ($150, child/dependent care) are applied.

3. For purposes of applying these exclusions/disregards, a student is a child recipient attending school, college, university, or a course in vocational or technical training designed to prepare him/her for gainful employment and includes participation in the Job Corps Program under JTPA.

(5) The caretaker/parent is required to report any change in a child's school attendance (e.g., a child drops out of school).

(6) A student retains student status during official school vacations and breaks if he/she met requirements prior to the vacation/break and intends to return to school after the vacation/break.

(Rule 1240-01-47-.15, continued)

(7) A child who is receiving elementary/secondary or equivalent level vocational/technical instruction from a homebound teacher meets student requirements. A homebound teacher is a certified teacher employed by the school in which the child is enrolled.

(8) Participation in correspondence courses, other courses of home study, apprenticeships and rehabilitation programs other than academic or instructional, vocational/technical training, does not qualify a child as a student.

(9) A child who is age 18 but not yet 19 may be eligible for Families First as a dependent child if she/he is a full-time student in a secondary school or the equivalent level of vocational or technical training and is reasonably expected to complete the program before reaching age 19.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-153, 71-3-154, and 71-3-154(h), 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 607(c)(2)(C), 42 U.S.C. § 607 (c), (d) and (e), 42 U.S.C. § 608(a)(4), and 42 U.S.C. § 608(a)(6)(A), 42 USC §1315(a), Public Acts of 1996, Chapter 950, 45 C.F.R. § 261.2 and 45 CFR 233.20, §1115 of the Social Security Act; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed July 5, 2002; effective September 18, 2002. Public necessity rule filed July 2, 2007; expires December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.*

**1240-01-47-.16 PERSONAL RESPONSIBILITY PLAN.**

(1) Personal Responsibility Plans Required for Eligibility.

(a) As a condition of eligibility for the entire AU, the caretaker (both parents in a two (2) parent AU) who applies for or receives Families First/TANF must sign a Personal Responsibility Plan (PRP). Signing the PRP indicates an intent to comply with the requirements of the plan. The PRP is developed by the Department in consultation with the caretaker relative and:

(b) Requires that all caretakers (both parents in a two (2) parent AU):

1. Agree to cooperate with child support enforcement activities;

2. Assure that the children in the AU receive regular immunizations and health checks;

3. Agree to participate in thirty (30) hours per week of activities as described in 1240-01-49-.03 if not exempt;

4. Agree not to falsify work and/or educational activities documentation, such as providing a falsified employer's statement, attendance, etc. to verify thirty (30) hours per week of activities;

5. Assure that the children in the AU attend school, including kindergarten;

6. Agree to attend two (2) or more parent-teacher conferences within a school year with the child(ren)'s teacher to review the child(ren)'s status in school if the Department determines that the need is identified relative to the child(ren) in the AU;

(Rule 1240-01-47-.16, continued)

7. Agree to attend a minimum of eight (8) hours of parenting classes if the Department determines that the need is identified relative to the child(ren) in the AU;

8. Agree to participate, in such support services that the child(ren) may require to overcome school, family, or other barriers that may interfere with the AU's ability to become self-sufficient, as determined pursuant to the Department's policy; and

9. ~~Agree to proper use of the electronic benefit transfer card, including agreement not to access public assistance benefits through an electronic benefit transfer card at any point of sale device or automated teller machine located in any liquor store, casino, gambling casino, gaming establishment, or adult cabaret as prohibited under Chapter 1240-01-58.~~

   [Agree to proper use of the electronic benefit transfer card, including agreement not to access public assistance benefits through an electronic benefit transfer card at:

   (i) any point of sale device or automated teller machine located in any liquor store, casino, gambling casino, gaming establishment, or adult cabaret as prohibited under Chapter 1240-01-58; or

   (ii) any point of sale device located in any tobacco store as prohibited under Chapter 1240-01-58.]

(2) As a condition of eligibility for him/herself, the minor parent who is a dependent child in an AU must sign a PRP. Signing the PRP indicates the intent to comply with the requirements of the plan listed in subparagraph (b), parts 1-8 above. Subparagraph (b), part 9 above does not apply to a minor parent who is a dependent child in an AU.

(3) As a condition of eligibility for the entire AG/AU, the minor parent who is a caretaker of his/her own AG/AU must sign a Personal Responsibility Plan. Signing the PRP indicates the intent to comply with the requirements of the plan. The PRP requirements are the same as those listed in 1240-01-47-.16(1)(a) above.

(4) The Department or its designees will provide benefits such as child care and transportation necessary to assist the individual in complying with the requirements set out in the Personal Responsibility Plan.

(5) Failure, without good cause, to comply with the provisions of the PRP shall result in the following sanctions:

   (a) Failure to comply with the work requirement shall result in a mandatory period of case closure pursuant to rule 1240-01-49-.04.

   (b) Failure to comply with the prohibited uses of the electronic benefit transfer card as described under Chapter 1240-01-58 shall result in reimbursement of the illegally transferred funds to the Department and/or prohibition from receipt of temporary cash assistance benefits by means of direct cash payment or electronic benefit transfer card.

   (c) The following failures shall each result in a twenty percent (20%) reduction in temporary cash assistance, not to exceed forty percent (40%) for concurrent violations, until compliance is met:

      1. Failure of one or more of the children in the AU to comply with the school attendance requirement.

(Rule 1240-01-47-.16, continued)

2. Failure to meet the immunization and health check requirement for one or more children in the AU.

3. Failure to comply with the requirement to attend two (2) or more parent-teacher conferences if the Department determines that the need is identified for one or more child(ren) in the AU.

4. Failure to attend a minimum of eight (8) hours of parenting classes if the Department determines that the need is identified for one or more child(ren) in the AU.

5. Failure to participate in support services as provided in paragraph (1)(b)(8) if the Department determines that the need is identified for one or more child(ren) in the AU.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-103, 71-1-104, 71-1-105, 73-1-126, 71-3-192, 71-3-103, 71-3-104, 71-3-108(d)(2)(D), 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D);42 U.S.C. §§ 601 et seq., 42 U.S.C. § 603, 42 U.S.C. § 604(i); 42 U.S.C. § 607(c), (d) and (e); 42 U.S.C. § 608(a)(2), (3) and (12), 42 U.S.C. § 608(b)(3); 42 U.S.C. § 609(a)(14) and 42 U.S.C. §§ 654 and 657; 45 C.F.R. § 261.2, 45 C.F.R. § 261.12 and 45 C.F.R. § 261.14; and Public Acts of 1996, Chapter 950, §1115 of the Social Security Act; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007. Amendments filed April 2, 2014; effective July 1, 2014. Amendment filed April 2, 2015; effective July 1, 2015.*

**1240-01-47-.17 IMMUNIZATIONS AND HEALTH CHECKS FOR MINOR CHILDREN.**

(1) To be eligible for Families First a caretaker must meet the immunization schedule for all minor children in the AG, as defined by the Department of Health and must have all minor children in the AG screened according to the schedules in the Tennessee Checkups for Children and Teens program. Failure, without good cause, to meet these requirements will result in a 20 percent reduction in the Families First assistance payment until compliance.

(2) The penalty will be assessed whenever it is determined that the appropriate immunization or screening schedules have not been met for a child in the AG unless it is determined that there was good cause for failure to meet the schedule.

(3) Good Cause for failure to meet an immunization or health screening schedule includes a verified illness that resulted in inability to make or keep an appointment, or religious beliefs as a part of the caretaker's stated faith that prohibits such immunizations and/or health screenings.

(4) The immunization and health check requirement applies to all assistance groups, whether or not the caretaker is included in the AG.

(5) Compliance with the requirement following a period of non-compliance will result in the reinstatement of the 20 percent effective the next calendar month.

(6) The maximum penalty that can be assessed against an AG for failure to comply with this requirement is 20 percent, even if a scheduled immunization and/or health check for more than one child has been missed.

(Rule 1240-01-47-.17, continued)

(7) The worker shall advise all Families First applicants and recipients of the availability of standard childhood immunizations through the Health Department.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 71-1-105, and Public Acts of 1996, Chapter 950, §1115 of the Social Security Act.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997.*

**1240-01-47-.18 RELATIONSHIP REQUIREMENTS.**

(1) To be eligible for Families First, a child must live with a relative (or relatives) within the following degrees of relationship:

(a) Father, mother, brother, sister, uncle, aunt, first cousin, nephew, niece or first cousin once removed. This includes relationships to persons of the preceding generations as denoted by prefixes of grand, great or great-great and those of half-blood;

(b) Stepfather, stepmother, stepbrother and stepsister;

(c) Legally adoptive parents of the child or of the child's parents, the natural and other legally adopted children of such persons and the blood relatives of such persons as listed in this section at (1) (a) and (b) who is within the 5th degree of relationship to the child for whom Families First is requested. Termination of parental rights does not affect a child's blood relationship to his natural extended family. However, adoption of a child or his/her parent establishes a legal relationship to a new set of relatives-both immediate and extended families. The adopted relatives within specified degrees of relationship and the blood relatives within specified degrees of relationship qualify to receive Families First for an adopted child;

(d) Legal spouses of any of the persons named in the three above groups. This applies even though the marriage may have been terminated by death or divorce.

(2) In determining whether any of these relationships exist, for the purpose of either granting or denying assistance, only the necessary blood relationship must be established.

***Authority:*** *T.C.A. §§4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.90.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997.*

**1240-01-47-.19 EVIDENCE REGARDING RELATIONSHIP.**

(1) In order to receive Families First for a child, it must be established that the applicant/grantee relative is within one of the specified degrees of relationship to the child. Documentary evidence of relationship is required except as follows:

(2) In the absence of any documentary proof of relationship, the relative's statement as to the reason(s) there is no proof, plus his/her detailed statement as to how he/she is related to the child, plus at least one notarized statement from a person in a position to know the facts of the situation in which he/she describes the relationship and how he/she knows it to be true will be acceptable.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.90.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997.*

**1240-01-47-.20 LIVING IN THE RELATIVE'S HOME.**

(1) To be eligible for Families First a child must live in a place of residence maintained by the relative as his or her own home and the home of the child.

(Rule 1240-01-47-.20, continued)

(2) A home is considered to be a family setting maintained (or in the process of being established) by the relative who requests Families First for a child in his/her care and control. Usually the child continuously shares the same household with the applicant relative. A child is considered to be living in the relative's home as long as the applicant/relative continues to provide care and control of the child even though circumstances may require temporary absence of either the child or the relative from the customary family setting.

(3) A relative has care and control of a child if he/she is providing day to day care, support, supervision, and has major responsibility for these parental obligations.

(4) Temporary Absence.

(a) Temporary absence of the child or relative is one of short duration with specific intentions of returning on or about a specific date. Any absence of either the child or the grantee relative which will extend beyond a 3 month period will be reviewed to determine whether this relative does, in fact, retain the care, supervision, and control of this child for a major portion of each month.

(b) Assistance may be granted to a relative for a child who is temporarily out of the home when, for example, the child:

1. Goes away for a visit;

2. Is in a hospital temporarily for treatment;

3. Attends summer camp;

4. Attends an accredited or approved school away from home for the purpose of academic education or vocational or technical training because school facilities to meet this child's special needs are not available in his/her own community. It must be documented that the child does have special needs which cannot be met in his/her home community;

5. Attends college or university or other vocational or technical school on a scholarship or other grant that is not available in his/her own community and his/her parents or other relatives retain responsibility for his/her care and control;

6. Is in a psychiatric facility and has not been placed there by a court order and is only temporarily out of the home; or

7. Is in a maternity home.

(c) Assistance may continue to be paid to a relative who is temporarily out of the home when, for example, the relative:

1. Goes away for a visit;

2. Is providing some care for a spouse or child who is hospitalized;

3. Is attending a specialized training facility not available in his/her home community (as through the auspices of Services for the Blind or Vocational Rehabilitation);

4. Is hospitalized for acute illness or injury, is in a maternity home or convalescent care facility for the purpose of obtaining special care not available in the home;

(Rule 1240-01-47-.20, continued)

5. Is temporarily absent for the purpose of setting up a home to which he/she will move his/her children;

6. Enters a psychiatric facility and has not been placed there by Court Order and is only temporarily absent from the home for a period of time not to exceed three (3) months.

(d) When it cannot be established that the child lives in the home of the applicant/grantee relative or when the applicant/grantee relative states that the child is temporarily absent, it must be established that the applicant/grantee relative does, in fact, retain full responsibility for the child's care and control. This determination will be based on the following information:

1. The whereabouts of the child and the date of departure and the expected date of return to the home.

2. The reason for the child's absence and the person responsible for the plan.

3. The responsibility the applicant/grantee relative has for the child while he/she is away from home; and

4. Actual arrangements being made for the child's return to the home.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.90.*
***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997.*

**1240-01-47-.21 ELIGIBILITY OF MATERNITY HOME RESIDENTS.**

(1) Eligibility for a person residing in a maternity home is determined as though the person was currently living in her own home. A period of time spent in a maternity home is defined as a temporary absence from one's usual home and eligibility is established based on the circumstances which exist in that usual home.

(2) Applications from Maternity Home Residents.

(a) Applications from women who are entering (or plan to enter) a maternity home are accepted and processed in the county of usual residence, i.e., the person's "home county."

(b) Applications from women who are in a maternity home are accepted and processed in the county where the maternity home is located.

(3) Eligibility for Applicants in a Maternity Home.

(a) A maternity home resident must meet all technical and financial Families First eligibility requirements as any other Families First applicant.

(b) A pregnant woman with no other children may request Families First for herself only (as a pregnant woman), or a pregnant woman with children living with her may request assistance for herself and her dependent children in the home.

1. As a pregnant woman with no other children in the home:

(i) She must have reached her 6th month of pregnancy;

(Rule 1240-01-47-.21, continued)

(ii) She must meet all eligibility requirements as though the unborn child were born and living with her; and

(iii) The income of a spouse in the home must be considered and/or the income of a parent of a minor must be deemed to the minor pregnant woman. (See exception for SSI recipients.); and

(iv) The applicant must not be receiving Families First as a dependent child with her siblings in the home.

2. As the applicant relative of dependent children in the home:

(i) Pregnancy does not have to be verified (when an applicant relative has children for whom Families First is requested, her pregnancy is not an issue);

(ii) The dependent child(ren) in the home must meet all eligibility requirements and she must meet all requirements as caretaker relative;

(iii) The income of a spouse in the home will be considered and the income of a parent of a minor will be deemed to the minor applicant. (See exception for SSI recipients.);

(iv) The applicant must not be receiving Families First as a dependent child with her siblings in the home.

(c) If the home situation is being dissolved, the current home situation of the maternity home resident is considered in determining her eligibility.

(4) Eligibility for Recipients Residing in or Entering a Maternity Home.

(a) No change in a Families First grant or filing unit is made when a recipient is residing in or entering a maternity home.

(b) An alternate payee will be named to receive the grant if necessary.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.90.*
***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997.*

**1240-01-47-.22 INDIVIDUALS NOT ELIGIBLE TO RECEIVE FAMILIES FIRST.**

(1) Those persons who are inmates of any institution. An inmate is a person living in an institution who is not free to leave on his/her volition or has been committed by court order.

(2) Those persons who are in facilities owned and/or operated by the Department of Corrections.

(3) An A/R cannot receive Families First for a dependent child when the child is residing in a child caring facility (except day care). A child born to a mother who is herself in foster care may receive regular Families First payments if all eligibility requirements are met and the child is actually living in the home with the mother.

(4) A person for whom foster care board or adoption assistance payments are made from federal, state or local funds is not eligible for Families First, with the following exception: for a child for whom adoption assistance is paid, if the child's exclusion from the AG (along with the exclusion of his/her income) would reduce the amount of Families First benefits the adoptive

(Rule 1240-01-47-.23, continued)

family would receive, then the child is to be included in the AG and his/her income, including the adoption assistance payment must be counted.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.10.*
***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997.*

**1240-01-47-.23 DEPRIVATION OF PARENTAL SUPPORT/CARE.** A child who is otherwise eligible for Families First must be found to be in need by Families First standards and to be deprived of parental support and/or care. Deprivation must be due to any one of the following:

(1) Death of one or both parents;

(2) Incapacity of a parent;

(3) Absence/Continued Absence from the home in which the child lives of one or both parents, under the criterion described in 1240-01-47-.26(3)(a) of these rules. (The absent parent may have left only recently or some time previously and deprivation of parental support or care by reason of "Absence/Continued Absence" must be reviewed and substantiated at each determination/redetermination of eligibility as provided in 1240-01-47-.26(5) of these rules); or

(4) Unemployment of one or both parents.

(5) Exception: When the custodial parent marries during the period the caretaker is receiving Families First, the caretaker has the option to exclude the new spouse and the new spouse's income from the AG for the three months following the month of marriage.

(a) Reserved for future use.

(b) Reserved for future use.

(c) Reserved for future use.

(d) Reserved for future use.

(6) Exception: When the custodial and non-custodial parents share custody of their child(ren) on a 50/50 basis, whether deprivation of parental support or care by reason of Absence/Continued Absence from the home exists will be determined under criterion as described in 1240-01-47-.26(3)(a) of these rules.

(a) When parents state they share custody exactly 50/50, it must be determined what the parents are actually doing with regard to co-parenting. Though a court order may divide the children's living arrangements and parenting responsibilities 50/50, the parents may not, in fact, be following the court order. If the parents do co-parent exactly 50/50 and the parental functions of guidance and physical care are not interrupted, then we must look at the family as an intact family and consider the income of both parents to determine if the family is financially eligible under the Families First guidelines. If the family is under the GIS and CNS standards (reference Gross Income Standard (GIS) and Consolidated Need Standard (CNS) at State Rule 1240-01-50-.20), then the "applicant" parent would be able to receive Families First, if otherwise eligible.

(b) The "applicant" in true 50/50 co-parenting situations will be the parent who is the first to apply for Families First. If one parent is already receiving Families First for their children, and the second parent applies, the second parent's application will be denied if the parents are still co-parenting 50/50. If both parents come in together to apply, it will be the parents' responsibility to decide which one of them will receive benefits for the children.

(Rule 1240-01-47-.23, continued)

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq. and 42 U.S.C. 603; Public Acts of 1996, Chapter 950, and 45 CFR 233.90, 45 C.F.R. § 233.90(c)(1)(iii) and 233.100, §1115 of the Social Security Act; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007. Amendments filed January 20, 2009; effective April 5, 2009.*

**1240-01-47-.24 DEATH OF A PARENT.** A child may be found to be deprived of parental support/care by reason of the documented death of one or both parents.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.90.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997.*

**1240-01-47-.25 INCAPACITY OF A PARENT.**

(1) A child may be considered to be deprived of parental support/care when at least one of two parents living in the home is incapacitated. Incapacity is deemed to exist when one parent has a physical or mental defect, illness or impairment. The defect, illness or impairment must be:

(a) Supported by competent medical testimony;

(b) Of such a debilitating nature as to reduce substantially, or eliminate the parent's ability to support or care for the otherwise eligible child; and

(c) Expected to last for a period of at least 30 days.

Note: In making the determination of ability to support the Department of Human Services shall take into account the limited employment opportunities for handicapped individuals.

(2) Incapacity shall be determined as follows:

(a) Current receipt by the parent of RSDI or SSI benefits based upon disability or blindness is acceptable proof of incapacity for Families First purposes. However, eligibility for RSDI or SSI benefits is not necessary to prove incapacity. Incapacity for Families First purposes does not require that a defect, illness, or impairment be as severe, or last as long as required for establishing disability or blindness for RSDI or SSI purposes;

(b) Obvious incapacity can be approved in the county office for a period of up to 12 months;

(c) Receipt by the incapacitated person of VA 100% disability benefits based on his/her disability;

(d) Receipt by the incapacitated person of Black Lung benefits based on his/her own condition; or

(e) All other claims of incapacity must be forwarded to the Medical Evaluation Unit (MEU).

(3) Review/Redetermination of Incapacity-Six-month Review/Redetermination. The RSDI/SSI disability status must be reverified at each six month case review. When the parent's RSDI/SSI payment is terminated and the parent claims continued Families First eligibility

(Rule 1240-01-47-.25, continued)

based on incapacity, it will be necessary to establish incapacity through the Medical Evaluation Unit (MEU). Terminated RSDI/SSI individuals may continue eligible as incapacitated while the necessary information is being secured and submitted to the MEU. If the client fails to cooperate without good cause or refuses to cooperate, the case must be closed.

(4) Periods of Incapacity for Families First.

(a) The period of incapacity established by the Medical Evaluation Unit (MEU) is subsequent to the period of incapacity approved by the county. Verification of continued incapacity must be made at the end of the MEU approval period if continued incapacity is claimed.

(b) On applications/reapplications denied by the MEU but approved on the local level, the MEU's decision of nonapproval is effective at the end of the approval period made by the county. The case will then be closed by the county office without being resubmitted to the MEU unless additional new medical information is available.

(c) For an active incapacity case denied by the MEU, the case will be closed as soon as adverse notification procedures permit.

(d) If there is any indication the client is no longer incapacitated, the complete medical file will be resubmitted to MEU with current medical-social information including the facts which indicate that incapacity no longer exists.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.90, §1115 of the Social Security Act.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997.*

**1240-01-47-.26 ABSENCE OF A PARENT.**

(1) A child may be determined to be deprived of parental support or care by reason of the "Absence/Continued Absence" of one or both parents from the home in which the child lives under criterion as described in 1240-01-47-.26(3)(a) below.

(a) As a condition of eligibility for the entire assistance group for Families First, the remaining parent or other applicant/grantee relative must give required information about the absent parent(s) and cooperate with the IV-D child support agency as necessary.

(b) If the facts establish the allegedly absent parent has a separate living arrangement from the child(ren) for whom Families First is requested and is not providing financial maintenance, physical care or guidance sufficient to meet the child's needs, deprivation of parental support or care by reason of "Absence/Continued Absence" from the home under the criterion described in 1240-01-47-.26(3)(a) below may be determined to exist.

(2) Deprivation of parental support or care by reason of Absence/Continued Absence from the home under criterion as described in 1240-01-47-.26(3)(a) below may exist due to any of the following:

(a) Divorce of natural parents and only one or no parent remains in the home with the child(ren);

(b) Separation of parents;

(c) Desertion of one or both parents;

(Rule 1240-01-47-.26, continued)

(d) Imprisonment of one or both parents;

(e) Institutionalization of one or both parents;

(f) At least one parent is serving a court-imposed sentence of unpaid public service while residing at home;

(g) Single parent adoptions.

(3) Deprivation of parental support or care by reason of "Absence/Continued Absence" from the home exists when:

(a) At least one parent is absent from the home and the nature of the absence:

1. Interrupts or terminates the parent's functioning as a provider of financial maintenance, physical care or guidance for the child; and

2. The known or indefinite duration of the absence precludes counting on the parent to perform his/her function of planning for the present support or care of the child. If these conditions exist, the parent may be absent for any reason, and may have left only recently or some time previously. (Reference 1240-01-47-.26(3)(b) and (f) below for "Absence" due to court-imposed unpaid public service and active duty in the uniformed services of the U.S.).

(b) "Absence" Due to Court-Imposed Unpaid Public Service.

1. A child is to be considered deprived of parental support and/or care by reason of continued absence from the home when:

(i) A parent has been convicted of an offense and is under sentence of a court; and

(ii) The sentence requires, and the parent is performing, unpaid public work or community service during working hours which totally precludes gainful employment; and

(iii) The parent is permitted by the court to live at home while serving the sentence.

2. Real and personal property belonging to the convicted parent is to be treated in accordance with rule 1240-01-50-.07(2).

3. Any unearned income except SSI belonging to the convicted parent and excess above his/her own needs will be counted as available to the family.

4. The convicted offender living at home and performing unpaid work:

(i) Cannot be included in the aid group;

(ii) Cannot be the payee;

(iii) Is not a Families First applicant/recipient so is not required to participate in Families First Employment and Training;

(Rule 1240-01-47-.26, continued)

(iv) Must not be treated as an absent parent in relation to the child support requirements.

(c) Alleged Parent Defined. The natural father of a child born out of wedlock whose paternity has not been judicially established.

1. The mother or other relative applying for assistance for such a child is required to provide all the facts known to establish the identity of the alleged father and child unless good cause exists for not doing so. The relative is also advised of services available to assist in such identification process.

(d) In single parent adoptions, absence of one parent exists because there is only one parent. There are no child support requirements in these cases.

(e) Stepparent Cases. Deprivation on the basis of absence exists even though the parent who remains in the home has remarried and the stepparent is also in the home.

1. To determine whether such a child is in need according to Department standards, the income of the stepparent living in the home will be deemed to be available to the stepchildren. In addition, the income of a stepparent in the military service and outstationed will be deemed to the stepchildren.

(i) Exception: When a Families First custodial parent marries during receipt of assistance, exception at 1240-01-47-.23(5) applies.

(f) Active Duty in Uniformed Service of the US (Army, Navy, Air Force, Marine Corps, Coast Guard, Environmental Sciences Administration, and US Public Health Service). Absence does not exist when the parent is away from the home in which a child is living (for whom Families First is requested/received) solely by reason of the parent's performance of active duty in a uniformed service of the US. Likewise a stepparent in the uniformed service is considered as "in the home" for purposes of deeming income to the stepchildren (see Exception in paragraph (e) above). The A/R will be required to apply to have an allotment sent directly to him/her if a grant is approved.

(4) Duration of Absence. Where "Absence/Continued Absence" under the criterion described in 1240-01-47-.26(3)(a) above is determined to exist, the absent parent may have left only recently or some time previously. Deprivation of parental support or care by reason of "Absence/Continued Absence" must be reviewed and substantiated at each determination/redetermination of eligibility as provided in 1240-01-47-.26(5) below.

(5) Verification/Documentation. The fact of continued absence (when absence is the basis for deprivation of support/care) must be considered and substantiated at each determination/redetermination of eligibility.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq. and 42 U.S.C. 603; Public Acts of 1996, Chapter 950, and 45 CFR 233.90 and 45 C.F.R. § 233.90(c)(1)(iii), §1115 of the Social Security Act; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007. Amendments filed January 20, 2009; effective April 5, 2009.*

**1240-01-47-.27 UNEMPLOYMENT OF A PARENT.**

(Rule 1240-01-47-.27, continued)

(1) A child may be considered to be deprived of parental support/care based on the unemployment of a parent when the principal wage earner (PWE) parent in the home meets all the conditions set forth in this section.

(2) The principal wage earner is the parent (in a two parent home) who had the greater amount of earnings in the 24 month period ending with (and including) the month immediately preceding the application month. If both parents have the same amount of income, the family and the agency will designate the principal wage earner. The principal wage earner must meet the following conditions:

(a) Is not working and has not been employed for 30 days prior to receipt of assistance; or

(b) Is employed less than 100 hours per month; or

(c) Is employed 100 hours per month or more; but

1. The excess is of a temporary nature; and

2. The 100 hour rule was met in the 2 months prior to the current month and is expected to be met in the month following the current month; and

(d) Is not on strike; and

(e) Does not refuse to apply for or accept unemployment compensation to which he/she may be entitled; and

(f) Has not refused, without good cause, a bona fide offer of employment or training for employment within one (1) month prior to the effective month of eligibility or during the receipt of assistance; and

(g) Has a recent connection to the work force, which is established if:

1. The PWE parent is currently receiving unemployment compensation; or

2. Received at least one unemployment compensation payment during the 12 months immediately preceding the month of application for Families First; or

3. The PWE parent earned at least $50 in each of any 6 quarters within a 13 calendar quarter period ending within one (1) year prior to application for Families First.

(3) Once eligibility as an unemployed parent has been determined:

(a) The PWE must comply with the Families First work requirement on her/his Personal Responsibility Plan; and

(b) The second parent in the home must comply with the Families First work requirement on her/his Personal Responsibility Plan.

(4) Reserved for future use.

***Authority:*** *T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-153, 71-3-154, and 71-3-154(g); 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 604(i); 42 U.S.C. § 607(c), (d) and (e); 42 U.S.C. § 608(a)(2) and (3), 42 U.S.C. § 608(b)(3); 42 U.S.C. § 609(a)(14), 42 U.S.C. §§ 654 and 657 and 42 USC §1315(a), Public Acts of 1996, Chapter 950, and 45 C.F.R. § 233.90, 45 CFR 233.100, 45 C.F.R. § 261.2, 45 C.F.R. § 261.12 and 45 C.F.R. § 261.14 and §1115 of the Social Security Act; Deficit*

(Rule 1240-01-47-.27, continued)

*Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed July 5, 2002; effective September 18, 2002. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.*

# REDLINE VERSION
# CHAPTER 1240-01-58
# JULY 1, 2016

# RULES
# OF THE
# TENNESSEE DEPARTMENT OF HUMAN SERVICES
# FAMILY ASSISTANCE DIVISION

## 1240-01-58
## ELECTRONIC BENEFIT TRANSFER CARD - PROHIBITED USES

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### 1240-01-58-.01 PURPOSE.

~~The purpose of this Chapter is to prevent public assistance benefits, provided pursuant to the Families First/TANF program, from being used in any EBT transaction in any liquor store, casino, gambling casino, gaming establishment, or adult cabaret.~~ [The purpose of this Chapter is to prevent public assistance benefits, provided pursuant to the Families First/TANF program, from being used in any EBT transaction in any liquor store, casino, gambling casino, gaming establishment, adult cabaret, or tobacco store.]

***Authority:*** *T.C.A. §§ 4-5-201 et seq.; 57-2-101(1); 71-3-126; 42 U.S.C. § 603; 42 U.S.C. § 608(a)(12).*
***Administrative History:*** *Original rule filed April 2, 2014; effective July 1, 2014.*

**1240-01-58-.02 DEFINITIONS.** For purposes of this Chapter:

(1) "Adult cabaret" is an establishment that features, as a principal use of its business, entertainers, waiters, or bartenders who expose to public view of the patrons within such establishment, at any time, the bare female breast below a point immediately above the top of the areola, human genital, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material, including swim suits, lingerie, or latex covering. "Adult cabaret" includes a commercial establishment that features entertainment of an erotic nature, including exotic dancers, strippers, male or female impersonators, or similar entertainers.

(2) "Assistance Unit (AU)" means the "aid group (AG)" or group of people applying for or receiving Families First/TANF cash assistance benefits.

(3) "Automated teller machine (ATM)" is an electronic cash dispensing device from which an account holder may withdraw cash, including public assistance benefits, using an electronic benefit transfer card.

(4) "Casino," "gambling casino," or "gaming establishment," means an establishment with a primary purpose of accommodating the wagering or gambling of money. The term "casino," "gambling casino," or "gaming establishment" does not include either:

(a) A grocery store which sells groceries including staple foods and which also offers, or is located within the same building or complex as, casino, gambling, or gaming activities; or

(b) Any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.

(5) "Department" means the Department of Human Services.

(Rule 1240-01-58-.02, continued)

(6) "Electronic benefit transfer (EBT) card" is a debit card which allows the EBT card holder to access public assistance benefits through an ATM or point of sale device.

(7) "EBT transaction" means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.

(8) "Families First" refers to the temporary public assistance program administered by the Department and provided under the federal Temporary Assistance for Needy Families (TANF), pursuant to Title IV-A of the Social Security Act.

(9) "Gambling" means risking anything of value for a profit whose return is to any degree contingent on games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels and the like.

(10) "Intoxicating Liquor" means and includes alcohol, spirits, liquors, wines, and every liquid or solid, patented or not, containing alcohol, spirits, liquor or wine, and capable of being consumed by human beings.

(11) "Knowingly" means that an EBT card user, merchant, or business entity has actual knowledge that the EBT card contains public assistance benefits and the ATM or point of sale device used for the illegal transaction is located in a liquor store, casino, gambling casino, gaming establishment, or adult cabaret. The term "knowingly" may be established by direct or circumstantial evidence of knowledge that the EBT card contains public assistance benefits and the ATM or point of sale device is located in a liquor store, casino, gambling casino, gaming establishment, or adult cabaret. ["Knowingly" means that an EBT card user, merchant, or business entity has actual knowledge that the EBT card contains public assistance benefits and the ATM or point of sale device used for the illegal transaction is located in a liquor store, casino, gambling casino, gaming establishment, adult cabaret, or tobacco store (however, ATM use is permitted in tobacco stores). The term "knowingly" may be established by direct or circumstantial evidence of knowledge that the EBT card contains public assistance benefits and the ATM or point of sale device is located in a liquor store, casino, gambling casino, gaming establishment, adult cabaret, or tobacco store.]

(12) "Liquor store" is any retail establishment which sells exclusively or primarily intoxicating liquor. The term "liquor store" does not include a grocery store which sells both intoxicating liquor and groceries including staple foods.

(13) "Located in". An ATM, POS device, or other online system used for the withdrawal of funds or processing of payments is "located in" a liquor store, casino, gambling casino, gaming establishment, or adult cabaret, when the ATM, POS device, or other online system is located on any part of the merchant's business property, which is either owned or leased by the merchant. ["Located in". An ATM, POS device, or other online system used for the withdrawal of funds or processing of payments is "located in" a liquor store, casino, gambling casino, gaming establishment, adult cabaret, or tobacco store, when the ATM, POS device, or other online system is located on any part of the merchant's business property, which is either owned or leased by the merchant.]

(14) "Point of sale (POS) device" is any terminal at which a customer makes a payment to a merchant in exchange for goods or services, including any manual or electronic terminal where a Families First/TANF recipient may complete a retail transaction using an EBT card.

(15) "Protective payee" is a person, other than the caretaker or grantee relative who is disqualified from directly receiving public assistance benefits under this Chapter, to whom a Families First/TANF grant is made payable for the benefit of the qualified members of the AU. A protective payee has responsibility for administering the payment for the benefit of the AU.

(Rule 1240-01-58-.02, continued)

(16) "Public assistance benefits" means money, in cash or in other forms of exchange, provided directly or indirectly to a Families First/TANF recipient through the Families First/TANF program.

[(17) "Tobacco store" means a licensed retail store that derives its largest category of sales from the sale of loose tobacco, cigars, cigarettes, pipes, and other smoking accessories.]

***Authority:*** *T.C.A. §§ 4-5-201 et seq.; 4-51-102; 7-51-1102; 39-17-501; 57-3-101; 71-3-103; 71-3-126, 42 U.S.C. § 601 et seq.; 42 U.S.C. § 608(a)(12)(B).* ***Administrative History:*** *Original rule filed April 2, 2014; effective July 1, 2014.*

**1240-01-58-.03 PROHIBITED USES.**

(1) It is illegal for any Families First/TANF recipient to knowingly use an EBT card to purchase any goods or services through a POS device or any other online system used to process payments or access public assistance benefits through an ATM or other online system used for the withdrawal of funds located in any of the following businesses:

(a) liquor store;

(b) casino;

(c) gambling casino;

(d) gaming establishment; or

(e) adult cabaret.

[(2) It is illegal for any Families First/TANF recipient to knowingly use an EBT card to purchase any goods or services through a POS device or any other online system used to process payments located in any of the following businesses:

(a) tobacco store.]

(2[3)] It is illegal for any person or business entity, or any agent or employee of the person or business entity, to knowingly accept public assistance benefits from an EBT card for the purchase of any goods or services in the following locations:

(a) liquor store;

(b) casino;

(c) gambling casino;

(d) gaming establishment; or

(e) adult cabaret.

[(f) tobacco store.]

***Authority:*** *T.C.A. §§ 4-5-201 et seq.; 7-51-1102; 39-17-501; 57-3-101; 71-3-126, 42 U.S.C. § 608(a)(12)(B).* ***Administrative History:*** *Original rule filed April 2, 2014; effective July 1, 2014.*

**1240-01-58-.04 MONITORING AND PENALTIES.**

(Rule 1240-01-58-.04, continued)

~~(1) Any Families First/TANF caretaker must submit to the Department a signed Personal Responsibility Plan (PRP) acknowledging his/her understanding that it is illegal to knowingly use an EBT card containing public assistance benefits at any POS device, ATM, or other online system used for the processing of payments or withdrawal of funds located in any liquor store, casino, gambling casino, gaming establishment, or adult cabaret to purchase any goods or services as described in this Chapter.~~

[(1) Any Families First/TANF recipient or caretaker must submit to the Department a signed Personal Responsibility Plan (PRP) acknowledging his/her understanding that it is illegal to knowingly use an EBT card containing public assistance benefits at any POS device, ATM, or other online system used for the processing of payments or withdrawal of funds located in any liquor store, casino, gambling casino, gaming establishment, adult cabaret, or tobacco store (however, ATM use is permitted in tobacco stores) to purchase any goods or services as described in this Chapter.]

(2) The Department shall monitor EBT transactions on a quarterly basis to determine whether there is any illegal use of EBT cards under this Chapter.

(a) Any Families First/TANF recipient or caretaker who knowingly participates or knowingly allows another to use the recipient's EBT card in an EBT transaction at an ATM machine, POS device, or other online system used for processing of payments or withdrawal of funds in any prohibited business location shall be subject to the following penalties:

1. First or Second Violation. The Families First/TANF recipient or caretaker shall be required to reimburse the Department for the amount of the purchase at a POS machine or the amount of the cash withdrawn and used from an ATM.

2. Third or Subsequent Violation. The Families First/TANF recipient or caretaker shall be required to reimburse the Department for the amount of the purchase at the POS machine or the amount of cash withdrawn and used from an ATM, and:

(i) The Families First/TANF recipient or caretaker shall be permanently prohibited from accessing temporary public assistance benefits, to the extent permitted by federal law, by means of direct cash payment or an EBT card.

(ii) The Department shall afford the Families First/TANF recipient or caretaker an administrative hearing prior to taking any action to disqualify the individual from direct receipt of public assistance benefits.

(iii) The Department shall designate a protective payee to administer the temporary public assistance grant for the benefit of the AU in the event a Families First/TANF recipient or caretaker is prohibited from receipt of public assistance benefits by means of direct cash payment or an EBT card under this Chapter.

3. Any illegal EBT transaction under this Chapter shall be classified as an overpayment and the Department shall initiate collection proceedings pursuant to Chapter 1240-01-52.

(b) Any person or business entity, or any agent or employee of the person or business entity, which knowingly accepts EBT card purchases for any goods or services at any prohibited business location, shall be subject to the following penalties:

(Rule 1240-01-58-.04, continued)

1. First Violation. The first violation shall result in a civil penalty of one thousand dollars ($1,000).

2. Second Violation. The second violation within five (5) years of the first violation shall result in a civil penalty of twenty-five hundred dollars ($2,500).

3. Third or Subsequent Violation. The third or subsequent violation within five (5) years shall result in a civil penalty of five thousand dollars ($5,000).

4. The Department may refer any person or business entity that violates this Chapter to the district attorney for that district, who may bring an action to suspend the business license and permits of the person or business entity for one (1) year for any violation under this Chapter.

5. The Department may bring a civil action to enforce any civil penalties assessed to any person or business entity under this Chapter in a complaint filed in the chancery court of the county where the person or business entity is located.

(3) The Department may, at its discretion and to the extent permitted under federal law, take action to block POS devices, online systems used for the withdrawal of funds or processing of payments, and ATMs located in any prohibited location from accepting an EBT card transaction.

***Authority**: T.C.A. §§ 4-5-201 et seq.; 71-3-126; 42 U.S.C. § 608(a)(12).* ***Administrative History:*** *Original rule filed April 2, 2014; effective July 1, 2014.*

**1240-01-58-.05 APPEALS.**

Any Families First/TANF recipient, merchant, or business entity the Department determines has illegally used an EBT card or unlawfully engaged in an EBT transaction under this Chapter shall have the right to an appeal conducted according to appeal procedures set forth in Chapter 1240-5 and Title 4, Chapter 5, Part 3 of the Uniform Administrative Procedures Act.

***Authority:*** *T.C.A. §§ 4-5-201 et seq.; 4-5-301 et seq.; 71-3-126.* ***Administrative History:*** *Original rule filed April 2, 2014; effective July 1, 2014.*