I. **AUTHORITY:** Tennessee Code Annotated (TCA) 4-3-2701, TCA 4-3-2708, TCA 4-4-103, TCA 33-1-201, TCA 33-1-303, and the Provider Agreement.

II. **PURPOSE:** To provide a structured process for submission and approval of requests for exemptions to Department of Intellectual and Developmental Disabilities (Hereinafter “Department” or “DIDD”) policies, procedures, instruments and other written documents.

III. **APPLICATION:** This policy applies to all approved providers.

IV. **DEFINITIONS:**

A. **Approved provider or approved waiver services provider** shall mean a provider who has been approved by DIDD to provide one or more HCBS waiver services, and may include state funded services.

B. **Circle of Support (COS)** shall mean a group of people who meet together on a regular basis to help a person supported plan for and accomplish his or her personal outcomes and actions. The person supported is the focus or the center of the COS. At a minimum, this includes the person supported, his or her family member(s) and or conservator(s), case manager, and the providers of any supports and services that the person receives. Friends, advocates, and other non-paid supports are included at the invitation of the person.

C. **Commissioner's Executive Team** shall mean the group of designated executive level staff that includes the Commissioner, Deputy Commissioner of Program Operations, Deputy Commissioner of Fiscal & Administration, Deputy Commissioner of Health Services, Assistant Commissioner of Policy & Innovation, Assistant Commissioner & General Counsel, Assistant Commissioner of Quality Management, Assistant Commissioner of Accreditation & Person Centered Practice, Director of Risk Management & Licensure, Director of Communications, Director of Internal Compliance, and the Executive Director of Human Resources.

D. **Direct contact with** shall mean the administration or performance of personal care duties or assistance with activities of daily living of the person supported.
E. **Direct Responsibility for** shall mean supervisory authority or responsibility for either the person served or staff providing direct care for, or having direct contact with, a person supported.

F. **Home and Community Based Services (HCBS) Waiver or Waiver** shall mean a waiver program approved for Tennessee by the Centers for Medicare and Medicaid Services to provide services to a specified number of Medicaid eligible individuals who have an intellectual disability and who meet criteria for Medicaid reimbursement of care in an Intermediate Care Facility for Individuals with Intellectual Disabilities. The 1915(c) waivers for people with intellectual disabilities in Tennessee are operated by the Department of Intellectual and Developmental Disabilities with oversight from TennCare, the state Medicaid agency.

G. **Policy Committee** shall mean the group of DIDD staff appointed by the Deputy and Assistant Commissioners to review and make recommendations to the Commissioner regarding approval of DIDD policies.

H. **Policy Exemption Review Committee (PERC)** shall mean a committee comprised of DIDD employees as described below, who are vested with the authority from the Commissioner to review exemption requests and make decisions to approve, deny, or deem the request unnecessary.

I. **Provider Agreement** shall mean a signed agreement between DIDD, the Division of TennCare and an approved provider that specifies the terms and conditions a provider must meet to receive reimbursement for services provided.

J. **Regional Office Director** shall mean the person appointed by the Commissioner who has oversight over the operations of the DIDD Regional Office.

V. **POLICY**: To establish a process for approved and prospective providers to submit requests for exemptions from departmental policies, procedures, instruments and other written documents. The department cannot grant exemptions to state and federal statutory or waiver requirements, including the HCBS Settings Final Rule. The department's Policy Division shall prepare a semi-annual summary and analysis of exemption requests and submit them to the Commissioner, Director of Risk Management and Licensure, Director of Internal Compliance, the PERC, and the Policy Committee.

VI. **PROCEDURES:**

A. **Policy Exemption Review Committee Members**

    The committee’s membership shall consist of five (5) persons appointed by the Commissioner, representing the following DIDD offices or areas of operation:

    1. Deputy Commissioner of Program Operations or designee
Subject: EXEMPTION PROCESS

2. Assistant Commissioner & General Counsel or designee

3. Assistant Commissioner of Policy & Innovation or designee

4. Assistant Commissioner of Quality Management or designee

5. Executive Director of Human Resources or designee

The designee shall only serve as the appointee's proxy when the appointee is unable to attend the meeting.

B. The Assistant Commissioner of Policy & Innovation or designee shall serve as the chairperson. The chairperson shall present the exemption request(s) and supporting documentation to the Policy Exemption Review Committee (PERC). The chairperson is a voting member of the committee. The Commissioner shall have the final authority on the disposition of any exemption request in the event of a tie or if the committee's recommendation is different than that of the Regional Director.

Committee meetings:

1. The PERC shall meet weekly or as needed to conduct the business before it. The chairperson or designee shall set the meeting date and time and provide reasonable advance notice to the members. If there is no business to conduct, then the chairperson will notify the members of such, and the PERC will not meet.

2. A quorum shall consist of three (3) committee members present at the meeting. Members shall be present in person or electronically for their votes to count.

3. Committee members or designees shall indicate their decisions, and sign the exemption request form. If a member participates remotely, he/she shall orally cast his/her vote, which shall be recorded and initialed on the Exemption Request Form DIDD-0598 by the Assistant Commissioner of Policy & Innovation or, if not present, another PERC member.

4. A summary of exemption request(s) to be reviewed and supporting documentation shall be provided to committee members.

5. In the event that the decision on an exemption request merits the expertise of a member of the Commissioner's Executive Team or departmental subject matter expert who is not a standing member of the PERC, that member may be asked to provide a recommendation and/or to attend the PERC meeting,
and to indicate that recommendation in writing to the Policy Coordinator prior to the next scheduled meeting of the PERC.

C. Prohibited Exemptions

Exemptions shall not be granted for or under the following circumstances, including but not limited to:

1. Waiver requirements for Home and Community Based Services (HCBS).

2. Requirements applicable to the Centers for Medicare and Medicaid Services 1915(c) Home and Community Based Services (HCBS) Settings Final Rule.

3. Blanket policies or practices for proposed implementation across a provider agency which eliminates persons supported from having personal choice and giving informed consent.

4. When any state or federal law, or TennCare rule, policy or regulation is involved.

5. For exemptions that would violate any court orders or settlement agreements involving DIDD, TennCare or the state of Tennessee.

6. Department quality management standards for two, three, or four star agency status.

7. When alternatives to procedures exist: such as, hearings under the Uniform Administrative Procedures Practices Act or departmental complaint resolution process.

D. Background Checks with Prior Convictions

In accordance with the Provider Agreement, providers must request approval if they wish to employ, retain, hire, or contract with an individual as staff or volunteer, who would have direct contact with or direct responsibility for people supported and who has been convicted of any of the following:

1. Any felony;

2. A misdemeanor involving physical harm to a person, including but not limited to neglect or abuse or a misdemeanor involving financial harm/exploitation to a person, including but not limited to theft, misappropriation of funds, fraud, or breach of fiduciary duty; or

3. A misdemeanor involving illicit drugs, drug/alcohol misuse or sexual misbehavior (e.g. indecent exposure, voyeurism). Misdemeanor convictions
covered in this subparagraph, (D) (3), shall not have occurred during a period of less than seven (7) years prior to employment with the provider, unless the misdemeanor conviction is a first and only occurrence of a DUI (DUI 1), public intoxication, or simple possession of marijuana, then it shall not have occurred during a period of less than one (1) year prior to employment with the provider.

E. Policy Exemption Request Process

1. When the exemption request relates to a background check for the employment of staff, the agency shall ensure that the person in question does not have direct contact with or direct responsibility for people supported while the exemption request is being reviewed by DIDD and until approval is obtained. Supporting documentation for all background check exemption requests must include, but not be limited to:
   a. Current (no more than 30 days prior to the date of the request) Background Check performed by the Tennessee Bureau of Investigations (TBI) or an investigative entity licensed by the state of Tennessee.
   b. Dispositions on all charges (either on background check or other supporting documentation).
   c. Written statement from prospective employee regarding the circumstances surrounding all convictions.

2. Exemption requests shall be submitted electronically using the Exemption Request Form DIDD-0598.

3. Providers shall submit exemption requests and supporting documentation (if applicable) electronically to the Regional Office Director of the region in which the provider operates by noon Central Standard Time (CST) on Thursday prior to the next weekly meeting of the PERC.

4. Providers operating in multiple regions shall submit an exemption request to each Regional Office Director if they desire the exemption to apply in all regions.

5. The Regional Office Director or designee shall review the exemption request packet, including Exemption Request Form DIDD-0598, and advise the provider to submit additional information, if needed. The provider shall have three (3) business days to provide the supporting documentation. If the request is received after business hours then it will be reviewed the next business day. If the supporting documentation is not provided, the exemption request shall be retired as incomplete.
6. The Regional Office Director or designee shall recommend approval, denial, or request is unnecessary on the Exemption Request Form DIDD-0598 and submit the completed form and supporting documentation to the department's Policy Division email DIDD.Policy@tn.gov.

7. The exemption request shall be reviewed during the next regularly scheduled meeting of the PERC.

8. Factors that will be considered by the PERC include, but are not limited to the following:
   a. The nature and gravity of the offense or conduct (e.g. felony v. misdemeanor, assault v. theft under $500).
   b. Amount of time passed since conviction(s) or completion of sentence.
   c. Nature of the position held or sought, as it may be relevant to the conviction(s).
   d. Written statement from the prospective employee regarding circumstances of conviction(s).

9. The PERC may request, in writing, additional information from the provider via the Regional Office Director prior to rendering a final decision on the exemption request. In this instance, the Regional Office Director shall follow the procedures described in section VI.E.5 of this policy. If additional information is requested, the timeframe for review of the background check is halted.

10. The Policy Division shall inform the provider of the disposition in writing within five (5) business days of receiving the final disposition on the exemption request from the PERC or the Commissioner. The letter shall cite the provider's specific request, the decision, and any rationale or stipulations around the decision.

11. The Policy Division shall provide a copy of the completed exemption request packet to the PERC, the appropriate Regional Quality Assurance Administrator, and the appropriate Regional Office Director.

F. Dispositions
1. The PERC reserves the right to establish conditions or modify exemption requests.
2. Except as addressed in VI.F.3, approved exemptions for program requirements shall only be effective for the time period listed in the exemption approval and shall automatically expire. The provider is
responsible for requesting a new exemption, if applicable. The provider shall follow the process outlined above to request an exemption.

3. Approved exemptions for staff background checks shall be effective for the employee’s duration of employment with the requesting provider. A new background check must be performed when any new convictions are discovered by a provider after an exemption is approved. The new exemption request; a background check performed no more than 30 days prior to the date of the exemption request, which includes final disposition(s); and a written statement from the prospective employee regarding the circumstances surrounding the conviction(s) must be resubmitted to DIDD for review immediately upon discovery. Results of staff background checks must be available for inspection by any department review team (e.g., quality surveyors and protection from harm investigators).

4. If an exemption is approved with conditions, it is the responsibility of the requesting provider to ensure that the conditions continue to be met.

5. Approved exemptions shall automatically expire upon a change to a standard (e.g., policy, rule, regulation) that substantively alters the expectations related to that exemption. It is the responsibility of the provider to submit a new policy exemption request.

6. The provider is responsible for ensuring that a copy of the disposition letter is available for inspection by any department review team (e.g., quality surveyors or internal or external auditors).

7. The Commissioner has final authority on the disposition of exemption requests. The provider shall be notified in writing of the disposition, according to the specifications in section VI.E.10.

8. The Commissioner has the right to revoke any exemption at any time for any reason.

VII. **CQL STANDARDS:** None

VIII. **REVISION HISTORY:** January 4, 2012; May 5, 2012; January 15, 2014; November 10, 2015; November 11, 2016; May 24, 2018; June 14, 2018

IX. **TENNCARE APPROVAL:** N/A

X. **ATTACHMENTS:**

A. Exemption Request Form DIDD-0598