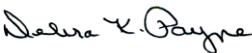


 <p style="text-align: center;"><b>POLICIES AND PROCEDURES</b></p> <p style="text-align: center;">State of Tennessee Department of Intellectual and Developmental Disabilities</p>	Policy #: 30.1.6	Page 1 of 5
	Effective Date: January 1, 2016	
	Distribution: A	
Policy Type: Administrative	Supersedes: 30.1.6 (1/15/14, 5/5/12), 300 (1/4/12)	
Approved by:  Debra K. Payne, Commissioner	Last Review or Revision: November 10, 2015	
Subject: EXEMPTION PROCESS		

- 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.
- 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 and contracted entities.
- 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, Assistant Commissioner of Policy & Innovation, Assistant Commissioner & General Counsel, Assistant Commissioner of Quality Management, Director of Risk Management & Licensure, Director of Human Resources, and Deputy Commissioner of Health Services.
  - D. **Direct contact with** shall mean the administration or performance of personal care duties or assistance with activities of daily living.

Effective: January 1, 2016	Policy #: 30.1.6	Page 2 of 5
Subject: EXEMPTION PROCESS		

- 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 served.
  
- 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 (e.g., mental retardation), and who meet criteria for Medicaid reimbursement of care in an Intermediate Care Facility for Individuals with Intellectual Disabilities. The 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.
  
- V. **POLICY:** To establish a process for approved providers and other contracted entities to submit requests for exemptions from department policies and procedures. 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 conduct an annual analysis of exemption requests to determine whether revisions to policies, procedures, instruments and other written documents are indicated.
  
- VI. **PROCEDURES:**
  - A. Exemptions shall not be granted for or under the following circumstances:
    - 1. Protection from harm requirements that increases risk of harm to the person supported.
    - 2. Waiver requirements for Home and Community Based Services (HCBS).
    - 3. Requirements applicable to the Centers for Medicare and Medicaid Services 1915(c) Home and Community Based Services (HCBS) Settings Final Rule. DIDD will not approve requests to implement blanket policies or practices across a provider that eliminates people receiving services from having personal choice and without informed consent. Requests submitted must be individualized for each person supported and detail the involvement by the person, their legal representative and the Circle of Support in the decision to request an exemption for a departmental policy or procedure.
    - 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.

<b>Effective: January 1, 2016</b>	<b>Policy #: 30.1.6</b>	<b>Page 3 of 5</b>
<b>Subject: EXEMPTION PROCESS</b>		

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.
- B. Exemption Request
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 persons supported while the exemption request is being reviewed by DIDD and until approval is obtained.
  2. Exemption requests shall be submitted electronically using the approved form.
  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.
  4. The exemption request shall be completed in its entirety. Incomplete forms shall be denied and returned to the provider.
  5. 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.
  6. The Regional Office Director shall review the exemption request and advise the provider to submit additional information, if needed, within five (5) business days. The provider shall have three (3) business days to provide any requested supporting documentation. If the supporting documentation is not provided, the exemption request shall be denied.
  7. Within five (5) business days of receipt of the exemption request and all supporting documentation, the Regional Office Director shall recommend approval or denial and route the exemption request and supporting documentation, along with the recommendation, to the department's Policy Division email [DIDD.Policy@tn.gov](mailto:DIDD.Policy@tn.gov).
  9. The exemption request shall be reviewed during the next regularly scheduled meeting of the Commissioner's Executive Team or on an ad hoc basis. The Assistant Commissioner of Policy and Innovation or designee shall present the exemption request and supporting documentation to the Commissioner's Executive Team.
  10. The Commissioner's Executive Team may request, in writing, additional information from the Regional Office Director prior to rendering a final

<b>Effective: January 1, 2016</b>	<b>Policy #: 30.1.6</b>	<b>Page 4 of 5</b>
<b>Subject: EXEMPTION PROCESS</b>		

decision on the exemption request (i.e., approval or denial). In this instance, the Regional Office Director shall follow the procedures described in section VI.B.6 of this policy.

11. If there is disagreement between Regional Office Directors or between members of the Commissioner's Executive Team regarding the disposition of an exemption request then the Commissioner shall have final authority.
12. Within five (5) business days of receiving the final disposition on the exemption request, the Policy Division shall inform the provider of the disposition in writing (i.e., approved or denied). The letter shall include reference to the standard from which the provider sought an exemption. The Policy Division shall copy all members of the Commissioner's Executive Team and appropriate Regional Office Director on the letter.
13. Once a determination has been made, the Policy Division shall provide a copy of the completed exemption request to the Assistant Commissioner of Quality Management and Regional Quality Assurance Director, the appropriate Regional Office Director and the Commissioner's Executive Team.

C. Approved Exemptions

1. Except as addressed in VI.C.2., approved exemptions for program requirements shall only be effective for the time period listed in the exemption approval, not to exceed one (1) year maximum from the approval date, and shall automatically expire. The provider is responsible for requesting a new exemption. The provider shall follow the process outlined in VI.B to request an exemption.
2. Approved exemptions for staff background checks shall be effective for the employee's duration of employment with the requesting provider. When an exemption is approved, the provider must conduct subsequent background checks at a minimum of every three (3) years for the duration of the person's employment and the results shall be made available for inspection by any department review team (i.e., quality surveyors). Any new offenses identified on the employee's background check after an exemption is approved must be resubmitted to DIDD for review immediately upon discovery.
3. 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.
4. The provider is responsible for ensuring that a copy of the approved exemption request and approval letter is available for inspection by any department review team (i.e., quality surveyors).

Effective: January 1, 2016	Policy #: 30.1.6	Page 5 of 5
Subject: EXEMPTION PROCESS		

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

D. Denied Exemptions

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.B.12.

E. The Policy Division shall prepare an annual report summarizing policy exemptions and present it to the department's policy committee.

VII. **CQL STANDARDS:** None

VIII. **REVISION HISTORY:** January 4, 2012; May 5, 2012; January 15, 2014; November 10, 2015

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

X. **ATTACHMENTS:**

A. Exemption Request Form - DIDD-0598