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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Health Facilities Commission
Division:	N/A
Contact Person:	Logan Grant
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Lisa Williams
Address:	665 Mainstream Drive, Nashville, TN 37243
Phone:	(615) 741-7221
Email:	lisa.l.williams@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	665 Mainstream Drive, Iris Conference Room		
Address 2:			
City:	Nashville, TN		
Zip:	37243		
Hearing Date:	01/22/2024		
Hearing Time:	1:00	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

Public Chapter 0432 of the 113th General Assembly, known as the "Temporary Healthcare Staffing Agency Registry," requires promulgation of rules to effectuate the requirements of the chapter. These proposed rules are intended to make the Emergency Rules permanent.

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0720-46	Standards for Temporary Healthcare Staffing Agencies
Rule Number	Rule Title
0720-46-.01	Definitions

0720-46-.02	Registration Fees and Procedures
0720-46-.03	Annual Renewal of Registration
0720-46-.04	Minimum Requirements and Record Retention
0720-46-.05	Prohibited Actions and Business Practices
0720-46-.06	Reporting
0720-46-.07	Disciplinary Procedures
0720-46-.08	Penalties

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 0720-46
Standards for Temporary Healthcare Staffing Agencies

0720-46-.01 Definitions

- (1) **Addresses.** For legal entities and individuals, the physical address from which the agency operates its Tennessee business and mailing address if different from the physical address.
- (2) **Agency.** A temporary healthcare staffing agency.
- (3) **Certified nurse aide (C.N.A.).** An individual who has successfully completed an approved nursing assistant training program and is registered with the Commission.
- (4) **Commission.** The Tennessee Health Facilities Commission.
- (5) **Controlling Person.** An individual, business entity, officer, program administrator, or director whose responsibilities include the direction of the management or policies of a temporary healthcare staffing agency. The term "controlling person" shall also mean an individual who, directly or indirectly, holds an ownership interest of five percent (5%) or more in a corporation, partnership, or other business association that is itself a controlling person.
- (6) **Digital website.** An online webpage operated by an agency that maintains applications from direct care staff submitted to the agency online, for referral to a healthcare facility.
- (7) **Digital smart phone application.** A computer program or software application operated by an agency that maintains applications from direct care staff submitted to the agency for referral to a health care facility that is designed to run on a mobile device such as a phone, tablet, or watch.
- (8) **Direct Care Staff.**
 - (a) An individual who is a medication aide, medication technician, certified nurse aide, licensed practical nurse, or registered nurse and contracts with or is employed by a temporary healthcare staffing agency to provide direct care services to residents or patients in a healthcare facility.
 - (b) A certified nurse practitioner or an advanced practice registered nurse certified or registered under title 63, chapter 7 and engaged in the practice of nursing is not a direct care staff.
- (9) **Executive director.** The executive director of the health facilities commission.
- (10) **Healthcare facility.** A nursing home or an assisted-care living facility as those terms are defined by T.C.A. § 68-11-201;
- (11) **Immediately available.** Immediately available means available to the Commission or its agent within one (1) business day following written requests made by means of email, fax, or in-person delivery, or within (1) hour of requests made during inspection visits.
- (12) **Medication Aide or medication technician.** An individual who administers medications under the general supervision of a licensed registered or practical nurse pursuant to T.C.A. § 63-7-127.
- (13) **Owner.** Any person with an ownership interest of five percent (5%) or more in the agency.
- (14) **Person.** An individual, firm, corporation, partnership, or association.
- (15) **Temporary healthcare staffing agency.**
 - (a) A person, or other business entity that is:

1. Engaged in whole or in part in the business of providing or procuring temporary employment in healthcare facilities for direct care staff; or
 2. That operates a digital website or digital smartphone application that facilitates the provision of the engagement of direct care staff and accepts requests from healthcare facilities for direct care staff through its digital website or digital smartphone application.
- (b) The term shall not include an individual who engages, only on the individual's own behalf, to provide the individual's services on a temporary basis to a healthcare facility without the use or involvement of a temporary healthcare staffing agency; or a staffing agency operated by a hospital, assisted-care living facility, or nursing home as those terms are defined by T.C.A. § 68-11-201, or an affiliate of a hospital, assisted-care living facility, or nursing home, if the purpose of the agency is solely procuring, furnishing, or referring temporary or permanent direct care staff for employment at that healthcare provider, or any affiliates under common ownership.

Authority: T.C.A. § 68-11-2201.

0720-46-.02 Registration Fees and Procedures

- (1) No person, partnership, association, corporation, or state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate, maintain, or advertise in the State of Tennessee any temporary healthcare staffing agency, or provide or procure temporary employment in healthcare facilities for direct care staff without first registering with the Commission.
- (2) An individual who engages, only on the individual's own behalf, to provide the individual's services on a temporary basis to a healthcare facility without the use or involvement of a temporary healthcare staffing agency is not required to register under these rules.
- (3) An agency operated by a hospital, assisted-care living facility, or nursing home as those terms are defined by T.C.A. § 68-11-201, or an affiliate of a hospital, assisted-care living facility, or nursing home, if the purpose of the agency is solely procuring, furnishing, or referring temporary or permanent direct care staff for employment at that healthcare provider, or any affiliates under common ownership, is not required to register under these rules.
- (4) In order to make application for a registration:
 - (a) The applicant shall submit an application on a form prepared by the Commission.
 - (b) Each healthcare staffing agency making application for registration under this chapter shall pay annually to the Registry administrative office, a fee based on the number of staff employed by the agency, as follows:

1.	Less than 25 staff	\$1,040.00
2.	25 to 49 staff	\$1,300.00
3.	50 to 74 staff	\$1,560.00
4.	75 to 99 staff	\$1,820.00
5.	100 to 124 staff	\$2,080.00
6.	125 to 149 staff	\$2,340.00
7.	150 to 174 staff	\$2,600.00
8.	175 to 199 staff	\$2,860.00
9.	200 staff or more	\$3,060.00

- (c) The fee shall be submitted with the application or renewal application and is not refundable.

- (d) Each agency shall submit to the Registry's administrative office an application fee of one hundred eighty dollars (\$180.00). The fee shall be submitted with the initial application or renewal application and is not refundable.
- (5) An agency seeking registration shall provide the Commission with all information requested in the application form, and any other relevant information the Commission determines is necessary to properly evaluate an application for registration, which shall include, but not be limited to:
 - (a) The names and addresses of any controlling person;
 - (b) The names and addresses of any owner who does not meet the definition of a controlling person. If the owner is a corporation, then the application must include copies of the corporation's articles of incorporation and current bylaws, and the names and addresses of its officers and directors;
 - (c) The names and addresses of the person or persons under whose management or supervision the temporary healthcare staffing agency will be operated; and
 - (d) A policy and procedure that describes how the agency's records will be immediately available to the Commission upon request.
- (6) In addition to the application form, each agency shall submit an affidavit, executed by a controlling person, attesting that the agency:
 - (a) Does not restrict the employment opportunities of its direct care staff in any way inconsistent with T.C.A. § 68-11-2203, or the rules promulgated by the Commission that apply to the agency;
 - (b) Ensures that each direct care staff contracted with or employed by the agency meets all licensing, certification, training, and continuing education standards for the position in which the direct care staff will be working, in compliance with any federal, state, or local requirements;
 - (c) Ensures that all direct care staff contracted with or employed by the agency comply with requirements related to background checks under federal and Tennessee law and regulations, or that are adopted by any healthcare facility with which the agency contracts;
 - (d) Maintains workers' compensation coverage as required by Tennessee law for all direct care staff, and
 - (e) Is familiar with the laws and regulations governing a temporary healthcare staffing agency and will maintain compliance with those requirements.
- (7) If an agency fails to provide sufficient registration fee(s) or a completed registration application, the Commission shall reject the application and return the fee(s). An agency may then resubmit an application.
- (8) A registration issued by the Commission to an agency is effective for a period of one (1) year from the date of its issuance unless the registration is revoked for noncompliance pursuant to these rules.
- (9) An agency's registration is valid only for the entity and/or person identified on the registration issued at the address shown thereon and is not subject to sale, assignment, or other transfer.
- (10) If a controlling person changes, the temporary healthcare staffing agency is sold, or management is transferred, then the registration of the agency is voided and the new controlling person, owner, or manager may apply for a new registration.
- (11) An agency which is a partnership, limited partnership, limited liability company, or corporation that undergoes any of the following changes, or whose operation is assumed by a new corporation, partnership, limited partnership, limited liability company, or other entity, whether by one (1) or by more than one (1) action, shall apply for a new registration:
 - (a) With respect to a partnership, a change in the majority interest of general partners;

- (b) With respect to a limited partnership, a change in the general partner or in the majority interest of limited partners;
- (c) With respect to a limited liability company, a change in any manager or in the majority interest of members; or
- (d) With respect to a corporation, a change in the persons who own, hold, or have the power to vote the majority of any class of securities issued by the corporation.

Authority: T.C.A. § 68-11-2204.

0720-46-.03 Annual Renewal of Registration

- (1) An agency's registration is valid for one (1) year and shall expire on the annual anniversary of the date the registration was originally issued.
- (2) An agency may renew its registration. An agency's renewal application must be received at least sixty (60) days prior to the expiration of the current registration.
- (3) If an agency fails to renew its registration prior to the date of its expiration but submits the renewal form and fee within sixty (60) days thereafter, the agency may renew late by paying, in addition to the renewal fee, a late penalty of one hundred dollars (\$100) per month for each month or fraction of a month that renewal is late; provided that the late penalty shall not exceed twice the renewal fee.
- (4) An agency must send a copy of its current registration to any member of the general public upon request.

Authority: T.C.A. § 68-11-2204.

0720-46-.04 Minimum Requirements and Record Retention

- (1) Corporate Documents. An agency shall retain current and legible copies and have immediately available during the agency's regular operating hours:
 - (a) The articles and bylaws for the registrant entity;
 - (b) Copies of records required by the United States Internal Revenue Services to be prepared by the agency for each direct care staff employee or independent contractor;
 - (c) Records documenting the work performed by each direct care staff including date of personnel referral by the agency and the dates and locations of each personnel placement. Copies of time records or invoices identifying the services provided are acceptable documentation for this requirement; and
 - (d) Evidence of current worker's compensation coverage as required by T.C.A § 50-6-406.
- (2) Direct Care Staff Records. An agency shall have immediately available during the agency's regular operating hours an individual file for each direct care staff. Each individual file shall contain current copies of the following information:
 - (a) The person's name and address, Social Security number, and date of birth;
 - (b) A copy and verification of the current license or certification, when licensure or certification is applicable for a particular job;
 - (c) Documentation to verify each person's employment eligibility in compliance with the immigration laws of the United States;
 - (d) Documentation of each personnel's employment history;
 - (e) Health and medical records sufficient to document adequate medical screenings have been

- performed of each employee to exclude communicable diseases, and to ensure required immunizations have been received;
- (f) Accurate information as to the education, training, experience and personnel background of the employee, including documentation that references were verified;
 - (g) Documentation that each direct care staff contracted with or employed by the agency meets all licensing, certification, training, and continuing education standards for the position in which the direct care staff will be working. Each direct care staff shall comply with any federal, state, or local requirements;
 - (h) Documentation the agency has, for any direct care staff assigned by the agency to provide services to a healthcare facility, determined that the individual is not currently nor has ever been included on the U.S. Department of Health and Human Services' Office of Inspector General's List of Excluded Individuals/Entities (located at <https://www.oig.hhs.gov>) or the System for Award Management's Exclusion List (located at <https://www.sam.gov>);
 - (i) Documentation the agency has conducted any name and/or registry checks required by federal or Tennessee law, including, but not limited to, the abuse and sex offender registry checks required by T.C.A. § 68-11-271 and T.C.A. § 68-11-1004; and verified that any individual assigned by the agency to provide services is not listed on any such registry; and
 - (j) The agency must send copies of direct care staff records required by this rule to any healthcare facility with which it contracts or refers direct care staff, upon the request of that healthcare facility.
- (3) **Healthcare Facility Specific Requirements.** If the healthcare facility to which the direct care staff has been assigned by the agency requires additional requirements or screening of its facility employees, the agency must perform such screenings of the direct care staff before referral by the agency. The agency shall maintain evidence that it has completed any such screenings of its direct care staff referred to the applicable healthcare facility.
- (4) **Direct Care Staff Agreements.** The agency must retain current and legible copies of any written employment contracts or other agreements entered into between the agency and each direct care staff. These copies must be immediately available during the agency's regular operating hours.
- (a) Any such contract or agreement shall specifically and clearly advise if the direct care staff is an employee of the agency or is an independent contractor referred by the agency.
 - (b) If the direct care staff is retained as an independent contractor, the contract or agreement shall specifically state that the independent contractor is responsible for paying federal income taxes.
 - (c) Prior to placement in a health care facility, the agency shall provide a document to each direct care staff, for his or her signature, which states that the individual understands his or her relationship with the agency, either as an employee or independent contractor. The signed acknowledgement shall be filed in each direct care staff's file.
- (5) **Healthcare Facility Agreements.** Current and legible copies of contracts, if any, between an agency and a health care facility setting forth terms and conditions under which the agency will provide specific health services staff to the facility must be retained by the agency and be immediately available during the agency's regular operating hours. Such contracts shall state whether the staff provided by the agency are referred as employees of the agency or as independent contractors.
- (6) **Record Retention and Availability.** Each agency shall retain legible copies of the records and reports required by this rule for five (5) years. The agency shall make such records and reports immediately available to the Commission upon request.
- (7) **Response to Investigations.** Each agency shall provide any records in its possession, unless otherwise privileged, that are pertinent to an investigation conducted by any of the following:
- (a) A representative of adult protective services actively involved in the conduct of an investigation

pursuant to title 71, chapter 6;

- (b) The department of health or its representatives, designees, or employees under T.C.A. § 63-1-117, in the same manner that a healthcare provider must make records available;
 - (c) The Commission, if related to a violation of these rules or any law or regulation of the board for licensing healthcare facilities relating to a healthcare facility with which the agency contracts;
 - (d) Any law enforcement agency conducting a criminal investigation of the agency, staff, or contractors, including, but not limited to, the Medicaid Fraud Control Unit; and
 - (e) Such records must be provided within five (5) business days, unless required to be provided in a shorter period by court order, law, or regulation.
- (8) No Retaliation for Complaints. No agency shall retaliate against or, in any manner, discriminate against any person because of a complaint made in good faith and without malice to the Commission, the Tennessee Department of Health (TDH), the Department of Human Services Adult Protective Services, the long-term care ombudsman, or any government agency. An agency shall neither retaliate, nor discriminate, because of information lawfully provided to these authorities, because of a person's cooperation with them, or because a person is subpoenaed to testify at a hearing involving one of these authorities.

Authority: T.C.A. §§ 68-11-2202 and 68-11-2205.

0720-46-.05 Prohibited Actions and Business Practices

A temporary healthcare staffing agency shall not:

- (1) Restrict in any manner the employment opportunities of any direct care staff that is contracted with or employed by the agency, including, but not limited to, using contract buy-out provisions or contract non-compete clauses.
- (2) Require the payment of liquidated damages, employment fees, or other compensation in any contract with direct care staff or a healthcare facility, if the direct care staff is hired as a permanent employee of the healthcare facility.
- (3) Solicit or recruit the current staff of a healthcare facility, or require, as a condition of employment, assignment, or referral, that the agency direct care staff recruit new employees for the agency from among the current employees of the healthcare facility to which the agency direct care staff are employed, assigned, or referred.
- (4) Any of the provisions of a contract between a temporary healthcare staffing agency and either direct care staff or a healthcare facility that violate T.C.A. § 68-11-2203 are void and unenforceable in a court of law.
- (5) Any agency that repeatedly violates the provisions of this rule or that contracts repeatedly in violation of T.C.A. § 68-11-2203 may be subject to disciplinary action up to and including revocation of registration.

Authority: T.C.A. §§ 68-11-2203 and 2206.

0720-46-.06 Reporting

- (1) A temporary healthcare staffing agency shall submit biannual reports to the Commission.
- (2) Biannual reports required by this rule are considered proprietary information that is confidential and not subject to public inspection pursuant to title 10, chapter 7, part 5. However, the Commission shall annually prepare reports of aggregate data that does not identify any data specific to any temporary healthcare staffing agency.
- (3) Biannual reports must include:
 - (a) The name, professional licensure or certification, and assigned healthcare facility for each direct

care staff;

- (b) The length of time the direct care staff has been assigned to each healthcare facility and the total hours worked;
- (c) A detailed listing of the average amount charged during each reporting period to a healthcare facility for each category of direct care staff providing services to the healthcare facility. "Average amount charged" shall mean the average hourly rates or set pricing charged to a health care facility by an agency for each applicable individual direct care staff.
- (d) A detailed listing of the average amount paid during each reporting period to direct care staff for their services for each category of direct care staff providing services to the healthcare facility. "Average amount paid" shall mean the average hourly rates or set pricing paid by the agency to each applicable individual health care personnel;
- (e) The agency's certification that each direct care staff contracted to a healthcare facility during the reporting period had a current, unrestricted license or certification in good standing and met the training and continuing education standards for the position with the healthcare facility throughout the entirety of the reporting period; and
- (f) The agency's certification that each direct care staff contracted to a healthcare facility had successfully completed all background and abuse registry checks required by federal and state law and rule relating to the position and healthcare facility in which the direct care staff was placed or assigned during the reporting period.

Authority: T.C.A. § 68-11-2205.

0720-46-.07 Disciplinary Procedures

- (1) Upon a finding by the Commission that an agency has violated any provision of these rules, the Commission may impose any of the following actions separately or in any combination deemed appropriate to the offense:
 - (a) Probation - This is a formal disciplinary action which places an agency on close scrutiny for a fixed period of time determined by the Commission. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict the agency's registration during the probationary period.
 - (b) Registration Suspension - this is a formal disciplinary action which suspends an agency's right to operate for a fixed period of time. It contemplates the reentry of the agency into operation under the registration previously issued. When the Commission suspends a registration, the agency may not operate during the period of suspension.
 - (c) Revocation for cause. This is the most severe form of disciplinary action which terminates a registration and removes a registration from the registry. The Commission may allow reinstatement of a revoked registration upon conditions and after a period of time it deems appropriate. No petition for reinstatement and no new application for registration from an agency whose registration was revoked shall be considered prior to the expiration of at least five (5) years unless otherwise stated in the Commission's revocation order.
 - (d) Conditions - These include any action deemed appropriate by the Commission to be required of an agency disciplined during any period of probation or suspension or as a prerequisite to the lifting of probation or suspension or the reinstatement of a revoked registration.
 - (e) Civil penalty – A monetary disciplinary action assessed by the Commission.
- (2) Once ordered, probation, suspension, revocation, assessment of a civil penalty, or any other condition of any type of disciplinary action may not be lifted unless and until the agency petitions the Commission, after the period of initial probation, suspension, revocation, or other conditioning has run, and all conditions placed on the probation, suspension, revocation, have been met, and after any civil penalties assessed have been paid.

- (3) Order of Compliance - This procedure is a necessary adjunct to previously issued disciplinary orders and is available only when a petitioner has completely complied with the provisions of a previously issued disciplinary order, including an unregistered practice civil penalty order, and wishes or is required to obtain an order reflecting that compliance.
- (a) The Commission will entertain petitions for an Order of Compliance as a supplement to a previously issued Order upon strict compliance with the procedures set forth in the following three (3) circumstances:
1. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reflecting that compliance;
 2. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued lifting a previously ordered suspension or probation; or
 3. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reinstating a license previously revoked.
- (b) Procedures
1. The petitioner shall submit a Petition for Order of Compliance to the Commission's staff that shall contain all of the following:
 - (i) A copy of the previously issued order; and
 - (ii) A statement of which provision of subparagraph (a) the petitioner is relying upon as a basis for the requested order; and
 - (iii) A copy of all documents that prove compliance with all the terms or conditions of the previously issued order. If proof of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed statements from every individual the petitioner intends to rely upon attesting, under oath, to the compliance. The Commission and its staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.
 2. The Commission authorizes its staff to make an initial determination on the petition and take one of the following actions:
 - (i) Certify compliance and present the petition to the Commission as an uncontested matter; or
 - (ii) Deny the petition, after consultation with legal staff, if compliance with all of the provisions of the previous order is not proven and notify the petitioner of what provisions remain to be fulfilled and/or what proof of compliance was either not sufficient or not submitted.
 3. The petitioner may not submit any additional documentation or testimony other than that contained in its petition as submitted to the Commission and its staff.
 4. If the Commission finds that the petitioner has complied with all the terms of the previous order the Commission shall issue an Order of Compliance.
 5. If the petition is denied either initially by the Commission's staff or after review by the Commission, and the petitioner believes compliance with the order has been sufficiently proven, the petitioner may, as authorized by law, file a request for a hearing with the Commission's staff and a Notice of Hearing will be filed to be heard by an Administrative Law Judge sitting alone.

(c) Form Petition

Petition for Order of Compliance
Temporary Healthcare Staffing Registry

Petitioner's Name: _____
Petitioner's Mailing Address: _____

Petitioner's E-Mail Address: _____
Telephone Number: _____

Attorney for Petitioner: _____
Attorney's Mailing Address: _____
Attorney's E-Mail Address: _____
Attorney's Telephone Number: _____

The petitioner respectfully represents, as substantiated by the attached documentation, that all provisions of the attached disciplinary order have been complied with and is respectfully requesting: (circle one)

1. An order issued reflecting that compliance; or
2. An order issued reflecting that compliance and lifting a previously ordered suspension or probation; or

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show compliance is the testimony of any individual, including yourself, you must enclose signed statements from every individual you intend to rely upon attesting, under oath, to the compliance. The Commission's staff, in its discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted the ____ day of _____, 20__.

By: _____
Name of Individual Signing on behalf of petitioner

Authority: T.C.A. §§ 68-11-207, 68-11-213, and 68-11-2206.

0720-46-.08 Penalties

(1) Civil Penalties

- (a) Purpose - The purpose of this rule is to set out a schedule designating the minimum and maximum civil penalties which may be assessed.
- (b) Schedule of Civil Penalties
 1. A Type A civil penalty may be imposed whenever the Commission finds the person who is required to be registered by the Commission is guilty of a willful and knowing violation of the Temporary Healthcare Staffing Registry Act, or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be an imminent substantial threat to the health, safety, and welfare of the public. For purposes of this section, a Type A penalty shall include, but not be limited to, a person who willfully and knowingly operates a staffing registry without registration from the Commission.

2. A Type B civil penalty may be imposed whenever the Commission finds the person required to be registered by the Commission is guilty of a violation of the Temporary Healthcare Staffing Registry Act or regulations promulgated pursuant thereto in such manner as to impact directly on the care of patients received in a licensed healthcare facility or the public.
3. A Type C civil penalty may be imposed whenever the Commission finds the person required to be registered by the Commission is guilty of a violation of the Temporary Healthcare Staffing Agency Registry or regulations promulgated thereto, which are neither directly detrimental to clients or the public, nor directly impact their care, but have only an indirect relationship to client care or the public.

(c) Amount of Civil Penalties

1. Type A civil penalties shall be assessed in the amount of not less than \$1000 nor more than \$5,000.
2. Type B civil penalties may be assessed in the amount of not less than \$500 and not more than \$1000.
3. Type C civil penalties may be assessed in the amount of not less than \$100 and not more than \$500.

(d) Procedures for Assessing Civil Penalties

1. The Commission's staff may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Commission's staff shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty and the basis for such penalty. The Commission's staff may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.
2. Civil Penalties may also be initiated and assessed by the Commission during consideration of any Notice of Charges. In addition, the Commission may, upon good cause shown, assess a type and amount of civil penalty which was not recommended by the Commission's staff.
3. In assessing the civil penalties pursuant to these rules the Commission may consider the following factors:
 - (i) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (ii) The circumstances leading to the violation;
 - (iii) The severity of the violation and the risk of harm to the public;
 - (iv) The economic benefits gained by the violator as a result of non-compliance; and
 - (v) The interest of the public.
4. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of T.C.A. Title 4, Chapter 5 and shall be heard by an Administrative Law Judge sitting alone.

Authority: T.C.A. §§ 68-11-2206 and 68-11-2207.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: November 30, 2023

Signature: *Logan Grant/SC*

Name of Officer: Logan Grant

Title of Officer: Executive Director

Department of State Use Only

Filed with the Department of State on: _____

Tre Hargett
Secretary of State