

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
CHILD SUPPORT DIVISION**

**CHAPTER 1240-02-05
LIENS FOR CHILD SUPPORT**

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1240-02-05-.01 PURPOSE AND SCOPE.

- (1) Section 368 of the Personal Responsibility and Work Opportunity Reconciliation (Welfare Reform) Act of 1996 (Public Law 104-193) codified at 42 United States Code Annotated 666(a)(4) requires that all states have laws in effect that cause liens to arise by operation of law against all real and personal property owned by a child support obligor who has overdue support payments, and 42 United States Code Annotated §654a(g) and (h) and §666(c)(1)(G) require that automated systems be utilized in the process of enforcing those liens.
- (2) Federal law at 42 USC §666 (c)(1)(G) requires that where there is a support arrearage, the states have in effect provisions to satisfy both current support obligations and arrearages by allowing the State to intercept or seize from State or local agencies or any other person or entity holding any assets of an obligor including periodic or lump-sum payments such as, but not limited to, unemployment compensation, workers' compensation, and other benefits, and judgments, settlements and lottery winnings, by attaching and seizing assets of the obligor held in financial institutions, by attaching public and private retirement funds, by imposing liens on the property of an obligor by operation of law and by enforcing the liens against child support obligors by the sale of property and distribution of the proceeds.
- (3) Tennessee Code Annotated, §36-5-901(b)(1) and (3) permit the Department to file notices of a lien arising under paragraphs (1) and (2) on the real and personal property in the appropriate place for the filing of such liens or security interests in the property of a child support obligor, and allows for the filing of such liens by automated processes where feasible.
- (4) The purpose of this Chapter is to establish procedures for the establishment of liens in favor of the Department of Human Services for the collection of current support and overdue support pursuant to the Title IV-D child support program and to establish procedures for the enforcement of those liens.

Authority: T.C.A. §§4-5-202; 36-5-901 et seq.; 36-5-912; 36-5-1001 et seq.; 45-19-101; 71-1-132; 42 USC §§ 654a (a), (g) and (h), and 666(c)(1)(G). **Administrative History:** Original rule filed December 18, 2001; effective March 3, 2002.

(Rule 1240-02-05-.02, continued)

1240-02-05-.02 DEFINITIONS.

For purposes of this Chapter the following terms shall have the following meanings:

- (1) "Administrative action" means procedures undertaken by the Department or its contractors by administrative order pursuant to law or regulations.
- (2) "Arrears" or "Arrearage" means any occasion on which the full amount of support ordered for or on behalf of a minor child, or for a spouse or former spouse of the obligor with whom the child is living to the extent the spousal support would be included for the purposes of 42 USC 654A(4), is not paid by the due date which causes the support to become "in arrears" as defined in T.C.A. §36-5-101(a)(5), unless an income assignment is in effect and the payer of income is paying pursuant to subsection § 36-5-101(g).
 - (a) Tennessee Code Annotated, Section 36-5-101(a)(5) defines "in arrears" as the circumstances existing when the full amount of child support is not paid by the date upon which the ordered support is due. The unpaid amount at that time is "in arrears," and shall become a judgment for the unpaid amounts.
 - (b) Arrears or arrearage may also be known as and referred to in these rules as "overdue" support or "past-due" support.
 - (c) Arrears shall include the totals of all amounts of support that are not paid and that remain unpaid by the obligor at the time a lien is perfected, or which become due as arrears subsequent to the perfection of the lien.
- (3) "Child support" or "support" for purposes of this Chapter means a judgment, decree, or order, whether temporary, final or subject to modification issued by a court of competent jurisdiction or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the state which issued the order, and shall include the support of a parent with whom the child is living, and which, judgment, decree or order provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest, penalties, income withholding, attorneys fees and other relief.
- (4) "Current support obligation" means the amount of support due each month pursuant to a judicial or administrative order.
- (5) "Department" means the Tennessee Department of Human Services, or its contractors who provide child support services to the Department in the courts of Tennessee, or by way of administrative processes and accompanying due process procedures, as part of the Department's responsibilities under Title IV-D of the Social Security Act. The Department is the single state child support agency pursuant to Title IV-D of the Social Security Act, 42 USC 651 et seq.
- (6) "Final Order" means for purposes of this Chapter, an order, whether administrative or judicial, for seizure or sale of an obligor's property shall be final when the obligor either fails to appeal the order in a timely way as provided by this Chapter or when the administrative or judicial remedies provided by this Chapter or by Tennessee Code Annotated, §§ 36-5-901 et seq. and §§ 36-5-1001 et seq. have been exhausted.
- (7) "Financial institution" means for purposes of this Chapter:
 - (a) A depository institution, as defined in Section 3(c) of the Federal Deposit Insurance Act (12 USC §1813(c));

(Rule 1240-02-05-.02, continued)

- (b) An institution-affiliated party, as defined in Section 3(u) of such Act (12 USC §1813 (u));
 - (c) Any Federal credit union or State credit union as defined in Section 101 of the Federal Credit Union Act (12 USC §1752), including for the purposes of this Chapter an institution-affiliated party of such a credit union, as defined in Section 206 of such Act (12 USC §1786);
 - (d) Any benefit association, insurance company, safe deposit company, money-market mutual fund, securities broker/dealer or similar entity authorized to conduct business in this State.
- (8) “Levy” means the imposition of a claim of the Department upon the property of the obligor and shall include an administrative order issued by the Department for seizure or encumbrance of any assets or property of the obligor.
 - (9) “Lien” means a claim or charge on property for payment of a debt, obligation or duty, and in particular, the duty of child support.
 - (10) “Lien obligation” means that once a lien has been perfected by automated means or by notice of lien or by other methods, the amount of the lien will reflect the amount due by an obligor on the date of seizure, or if by automated means, the amount shown on the TACSLR lien screen.
 - (11) “Obligee” means the person or agency to which a duty of child or spousal support is owed by an obligor.
 - (12) “Obligor” means the person who owes a duty of support to a child or the child’s parent or caretaker.
 - (13) (a) “Overdue support” means for purposes of this Chapter, any occasion on which the full amount of ordered support for or on behalf of a minor child, or for a spouse or former spouse of the obligor with whom the child is living to the extent spousal support would be included for the purposes of 42 U.S.C. § 654(4), is not paid by the due date for arrears as defined in § 36-5-101(a)(5) unless an income assignment is in effect and the payer of income is paying pursuant to § 36-5-101(g).
 - (b) “Overdue support” shall include all amounts of support that are in arrears as defined in § 36-5-101(a)(5) and 1240-02-05-.02(b) and that remain unpaid by the obligor at the time the lien is perfected or which become due as arrears subsequent to the perfection of the lien.
 - (c) The term “overdue support” may be used interchangeably with “arrears” or “past due support as described in 1240-02-05-.02(b).
- (14) “Past-due” support shall have the same meaning as “arrears” or “overdue support” as defined in 1240-02-05-.02(b).
 - (15) “Qualified domestic relations order” means a domestic relations order, as defined in 29 USC §1056(d), which creates or recognizes the existence of an alternate payee’s right, or assigns to an alternate payee the right, to receive all or a portion of the benefits payable with respect to a participant under a pension plan and which meets the requirements of 29 USC §1056(d).
 - (16) “Register” or “Register of Deeds” means the county official whose office is responsible for the recording of documents and other information relative to real property transactions, liens on property, and other documents as required by law.

(Rule 1240-02-05-.02, continued)

- (17) "Secretary of State's Division of Business Services" means the Division of the Department of State which, among other responsibilities, files and maintains records of financing statements on secured transactions under the Uniform Commercial Code (UCC), as well as amendments, releases, assignments, continuations and terminations, and maintains information about, and copies of, filed documents.
- (18) "TACSLR" means the Tennessee Automated Child Support Lien Registry which is to be established and operated in the future by the Department of Human Services containing data and functions through an internet based application for the recording by that application, or, if determined appropriate, in the offices of the Registers of Deeds, the Office of the Secretary of State, and other appropriate locations, of any information to establish and perfect liens on the real and personal property of support obligors.
- (19) "TCSES" means the Tennessee Child Support Enforcement System operated by the Department of Human Services containing data and functions for the recording of child or spousal support data and for collection, distribution, and disbursement of child and spousal support payments.
- (20) (a) "Title IV-D" means Title IV-D of the Social Security Act codified at 42 United States Code Annotated § 651 et seq. Title IV-D establishes the joint Federal/State child support enforcement program in effect in all States and Territories of the United States.
- (b) The Department of Human Services is the Title IV-D support enforcement agency for the State of Tennessee and through that program provides legal services for establishment, modification and enforcement in Title IV-D support cases.
- (c) Title IV-D support cases include both the obligations which are owed to the State of Tennessee through the assignment of rights of Families First or Aid to Families with Dependent Children (AFDC), also "welfare" recipients, and services provided to obligees who are not, or may never have been recipients of Families First or AFDC, and who have applied for support services through the Department or its contractors.
- (d) In addition, the Department is required by Federal regulations to provide services through the offer of Title IV-D services to obligors who seek modifications of their support obligation or who may seek establishment of paternity.

Authority: T.C.A. §§4-5-202; 36-5-901 et seq.; 36-5-912; 36-5-1001; 71-1-132; 29 USC §1056(d); 42 USC §§654a (a), (g) and (h); 659(i), and 666(c)(1)(G) and (c)(3). **Administrative History:** Original rule filed December 18, 2001; effective March 3, 2002. Amendment to rules 1240-02-05(2), (2)(a). and (13)(a), (b) and (c) filed October 29, 2009; to be effective January 27, 2010; however on January 26, 2010, the Department of Human Services stayed the rules; new effective date February 26, 2010.

1240-02-05-.03 LIENS FOR CHILD SUPPORT ARREARAGES.

- (1) Scope of the Lien.
- (a) In any case of child or spousal support enforced by the Department or its contractors under Title IV-D of the Social Security Act in which arrears are owed by an obligor who resides or owns property in this state, a lien shall arise by operation of law against all real and personal property, tangible or intangible, then owned or subsequently acquired by the obligor against whom the lien arises for the amounts of overdue support owed and the amount of penalties, costs or fees as provided in this Chapter.
- (b) The personal or real property, tangible or intangible, of the obligor that is subjected to the lien required by this part shall include all existing property at the time of the lien's

(Rule 1240-02-05-.03, continued)

perfection, or acquired thereafter, even if a prior order for overdue support or arrears only specifies a certain amount of overdue support or arrears that was owed by the obligor at the time of such order.

- (c) The notice of lien required to be filed or recorded under this Chapter and T.C.A. §36-5-901(b), or any renewal of the lien, shall be effective until the duty of child or spousal support is completely paid.
- (2) The Department may file its notice of lien, which shall be effective and perfected upon filing against all real and personal property of the child support obligor:
- (a) Directly with the person or entity holding the assets of the obligor;
 - 1. The receipt of such notice by that person or entity shall be adequate notice of the Department's lien upon the obligor's assets of any kind which are held by the person or entity or which may come into that person's or entity's possession or control.
 - 2. Subject to the priorities of 1240-02-05-.05, or the subordination of these liens to orders or judgments pursuant to T.C.A. §36-5-905(c)(1)(A) and (c)(1)(B), and subject to any exemptions allowed by T.C.A. §36-5-906, payment or transfer to the obligor or other persons or entities of the funds, property, or other assets of any kind which are encumbered by the lien subsequent to the receipt of such notice, the person or entity receiving such notice shall be liable to the Department for any assets transferred after notice of the lien to the extent of the overdue support, penalties, costs or fees as allowed by this chapter or by law, up to the value of the transferred assets, in an action in the appropriate court of the county in which the order of support is being enforced.
 - 3. The Department may choose, in its sole discretion, to enforce the overdue obligation against either the obligor, the transferee, or both; or
 - (b) Through exclusive use the establishment of an internet application maintained by the Department on the Department of Human Services' Tennessee Child Support Enforcement System (TSCES) system, or in combination with other methods provided by this Chapter or by law; or
 - (c) With the register of deeds office in the appropriate county by any means provided by existing law; or
 - (d) By means of a computer terminal arrangement in the office of the register of deeds, or other state or local office where information regarding the existence of a lien on real or personal property is maintained; or
 - (e) By any combination of the above, or by any other means provided by law for the filing and perfecting of liens.
- (3) The notice, or other evidence of the lien, shall show the existence, amount and date of the lien or security interest involving an obligor for persons researching the title to real or personal property or who may be seeking the status of any security interests or liens affecting any real or personal property possessed or controlled by, or titled to, an obligor.
- (4) When necessary to perfect the lien with third parties when perfection has not occurred by automated means or where the notice or order of seizure, encumbrance or sale is inappropriate, the Department may use the Notice of Lien form issued by the United States Department of Health and Human Services' Office of Child Support Enforcement on April 4,

(Rule 1240-02-05-.03, continued)

2001 in Action Transmittal 01-06, or any subsequently modified forms, for the filing of notice of any administratively issued liens pursuant to this Chapter. Rule 1240-02-05-.16 contains the Notice of Lien. Modification of any existing Federal forms shall not invalidate any form used pursuant to these rules.

- (5) Nothing herein shall require the Department to file a notice of lien for the seizure of, encumbrance, or levy on an obligor's assets held by a state or local agency, by a court or administrative tribunal, by a lottery, by a financial institution or by a public or private retirement fund pursuant to T.C.A. §36-5-904(a)(1)-(3) and Rule 1240-02-05-.03(2)(a)-(e), or to obtain any income withholding from any employer or other payer of income as otherwise permitted under Tennessee Code Annotated, Title 36, Chapter 5, Part 5.
- (6) Nothing herein shall limit the Department's authority to file or enforce its liens for support by any method otherwise provided by law for the establishment or enforcement of liens.

Authority: T.C.A. §§4-5-202; 36-5-901(a)(1); 36-5-904; 36-5-912; 36-5-1001; 45-19-101; 50-6-223; 71-1-132; 29 USC §1056(d), 42 USC §§ 654a (a), (g) and (h); 659(i) and 666(c)(1)(G) and (c)(3); U.S. Department of Health and Human Services, Office of Child Support Enforcement, Action Transmittal, 01-06, April 4, 2001. **Administrative History:** Original rule filed December 18, 2001; effective March 3, 2002.

1240-02-05-.04 FULL FAITH AND CREDIT TO LIENS OF OTHER STATE CHILD SUPPORT AGENCIES.

- (1) Full faith and credit shall be accorded to liens arising in any other State or territory for cases of child or spousal support enforced by the Title IV-D child support enforcement agency of the other State or territory as a result of the circumstances described in T.C.A. §36-5-901(a) for all overdue support, as defined in the other State or territory, when that other State or territory agency or other entity complies with the Federal or Tennessee procedural rules relative to the recording or filing of liens that arise within this State.
- (2) The Department of Human Services may enforce the liens arising pursuant to this section by any means available for enforcement of its liens.

Authority: T.C.A. §§ 4-5-202; 36-5-901 et seq., 36-5-902; 36-5-912; 36-5-1001; 71-1-132, 42 USC §§ 654a (a), (g) and (h); 659(i), and 666(c)(1)(G) and (c)(3). **Administrative History:** Original rule filed December 18, 2001; effective March 3, 2002.

1240-02-05-.05 LIEN PRIORITIES.

The lien of the Department for child support arrearages shall be superior to all liens and security interests created under Tennessee law except:

- (1) County and municipal ad valorem taxes and special assessments upon real estate by county and municipal governments;
- (2) Deeds of trust which are recorded prior to the recordation of notice of the Department's lien;
- (3) Security interests created pursuant to Article 9 of the Uniform Commercial Code, compiled in Tennessee Code Annotated, Title 47, Chapter 9, which require filing for perfection and which are properly filed prior to recordation of the notice of the Department's lien;
- (4) Security interests perfected under the Uniform Commercial Code without filing, as provided in Title 47, Chapter 9 of the Tennessee Code Annotated, which are properly perfected prior to recordation of the notice of the Department's lien;

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- (5) The lien or security interest of a financial institution against an obligor's interest in a deposit account at that institution for any indebtedness to the institution, including but not limited to, that institution's security interest in accounts pledged for loans, its rights under the Uniform Commercial Code or by contract to charge back uncollected deposits, revoke settlements or take other action against said account, its right to recover overdrafts and fees, and its right of offset for mature indebtedness;
- (6) Other security interests in deposit accounts at a financial institution when such interests are reflected in the records of that financial institution prior to the receipt of an administrative order of seizure;
- (7) Other liens recorded prior to the recordation of the Department's lien, or concerning which a judicial proceeding was initiated prior to recordation of the Department's lien.
- (8) Vendors' liens on real estate provided for in Tennessee Code Annotated, Title 66, Chapter 10 which are recorded prior to the recordation of notice of the Department's lien;
- (9) The tax liens of the Department of Revenue filed pursuant to Tennessee Code Annotated, Title 67 prior to the Department's child support lien;
- (10) Any deed of trust or any security interest perfected under the Uniform Commercial Code prior to the filing of the notice of Department's child support lien, irrespective of when such child support lien arises. "Filing" for purposes of this subparagraph shall mean that the Department has recorded its notice of lien pursuant to the provisions of Rule 1240-02-05-.03 by filing a document to record its notice of lien in the appropriate office for such recordation or that it has effectively recorded its lien pursuant to the automated recordation method permitted by T.C.A. §36-5-901(b)(3) or other provisions of the law;
- (11) A lien on a motor vehicle unless such lien is physically noted on the certificate of title of such motor vehicle; and
- (12) Any possessory lien including, but not limited to mechanics' and materialmen's liens pursuant to Tennessee Code Annotated, Title 66, Chapter 11, Part 1; artisans' liens pursuant to Tennessee Code Annotated, Title 66, Chapter 14, Part 1; or garagekeepers' and towing firm liens pursuant to Tennessee Code Annotated, Title 66, Chapter 19, Part 1.

Authority: T.C.A. §§4-5-202; 36-5-901(c) and (d); 36-5-912; 36-5-1001; 71-1-132; 42 USC §§654a (a), (g) and (h); 659(i), and 666(c)(1)(G) and (c)(3). **Administrative History:** Original rule filed December 18, 2001; effective March 3, 2002.

1240-02-05-.06 ENFORCEMENT OF LIENS BY ADMINISTRATIVE SEIZURE OR SALE ORDER.

- (1) In cases where there is an arrearage of child or spousal support in a Title IV-D child support case or in which a lien arises pursuant to T.C.A. §36-5-901, the Department may, without further order of a court, secure the assets of the obligor to satisfy the current obligation and the arrearage by:
 - (a) Intercepting or seizing periodic or lump-sum payments or benefits due the obligor:
 1. From a state or local agency;
 2. From judgments of any judicial or administrative tribunal, settlements approved by any judicial or administrative tribunal, and lottery winnings;

(Rule 1240-02-05-.06, continued)

- (b) Attaching or seizing assets of the obligor or the assets in which the obligor has an interest that are in the possession of any other person or entity, or that are held in any financial institution as defined in 1240-02-05-.02;
 - (c) Attaching public and private retirement funds; and
 - (d) Imposing liens in accordance with this Chapter and §36-5-901 et seq. and, in appropriate cases by forcing the sale of the obligor's legal or equitable interest in the property and distributing the proceeds of such sale.
- (2) Enforcement of Lien.
- (a) The Department may enforce the provisions of Rule 1240-02-05-.03 and T.C.A. §36-5-901 et seq. by issuance of an administrative order to any person or entity directing the seizure, encumbrance or sale of any assets of an obligor.
 - (b) The order shall direct the person or entity to hold or encumber, subject to any due process procedures provided to the obligor, all assets of any kind of the obligor who is subject to the order, pending the outcome of the administrative due process procedures provided by this Chapter.
 - (c) The order shall be based upon and issued pursuant to an existing judicial or administrative order, which has previously established support under which an arrearage, due to overdue support, as defined in T.C.A. §36-5-901, has occurred.
- (3) The administrative order for seizure or sale of assets may be issued upon determination by the Department, as shown by records of the support obligation, that arrears involving the obligor's support obligations exist.
- (4) Notice to the Obligor.
- (a) There shall be no requirement of advance judicial or administrative notice or hearing prior to the seizure or encumbrance of the obligor's property by administrative order, but the Department will not permit the final disposition of any property seized or encumbered under the lien enforcement procedures until the exhaustion of administrative and judicial remedies as provided in this Chapter at 1240-02-05-.13.
 - (b) Process and Form of Notice .
 - 1. A notice to the obligor against whom the administrative order for seizure or sale of assets is directed shall be sent by mail to the last address of record possessed by the Department as shown on TCSES.
 - 2. The notice shall be sent within five (5) days of the issuance of the administrative seizure order.
 - 3. The notice shall inform the obligor of the fact that the obligor's assets have been the subject of an administrative order and that they have been seized or are subject to sale and are being held, may be conveyed to the Department or may be sold, subject to the right to an administrative hearing to contest the seizure or sale of such assets.
 - 4. The notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property actually seized and, in the case of real property, a description with reasonable certainty of the property seized. In the case of assets in a financial institution, it shall be sufficient to notify the

(Rule 1240-02-05-.06, continued)

obligor of the seizure of any assets of the obligor that may be held by any institution to which the order is directed.

- (5) All administrative orders for seizure or sale shall be subject to and subordinate to:
 - (a) Any order or automatic stay by the United States Bankruptcy Court affecting an asset of the obligor;
 - (b) An attachment or execution under any judicial process in effect at the time of the administrative seizure order, pending modification of such court's orders;
 - (c) A priority under Rule 1240-02-05-.05; or
 - (d) A claim for reasonable attorneys fees, subject to the limitations on such fees by the rules of the Tennessee Supreme Court, whether evidenced by a court order, a statutory provision, or a contract.
- (6) An administrative order for the seizure of pension and retirement funds shall comply with the provisions for a qualified domestic relations order pursuant to 29 USC §1056(d), if applicable.
- (7) If the assets of the obligor are known by the person or entity which received such administrative order to be subject to any orders of the United States Bankruptcy Court, or to any attachment, execution or existing lien, that person or entity shall notify the Department at the address contained in the order within ten (10) days after receipt of the administrative order. With respect to deposit accounts of the obligor, the depository financial institution shall inform the Department of the unencumbered balances of such accounts.
- (8) Method of Issuance of Administrative Order of Seizure or Sale.
 - (a) Form of Issuance and Effectiveness.
 1. The order may be issued, and shall be effective, if issued to the holder of property or to the person or entity in possession of, or obligated with respect to property, or rights to, property of the obligor.
 2. The order may be issued electronically or magnetically, or manually by a paper document approved by the Department.
 3. The administrative order of seizure may also be issued, and shall be effective, if issued to the holder of the property of the obligor or to the person or entity in possession of, or obligated with respect to property or rights to, property of the obligor, if the order is transmitted electronically or magnetically by use of any computer data match process that is based upon any information available to the Department showing that the person whose property is to be seized or encumbered is a child support obligor owing overdue support as defined in this Chapter.
 4. The order shall be based upon any information showing to the Department or its contractors or other agents that the person whose property is to be seized is an obligor owing overdue support as defined in this Chapter.
 - (b) Seizure Orders for Less Than the Full Amount.
 1. When an administrative order is issued by the Department pursuant to any provisions of law or regulations or pursuant to agreements entered pursuant to T.C.A. §45-19-101(a) or (b) directing the encumbrance, escrow, seizure or

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- surrender of assets of an obligor consisting of a demand deposit account, or an account accessible by a check or negotiable order of withdrawal for the purpose of satisfying a lien for past-due child support, the Department may direct that only a portion of such accounts, up to the amount necessary to satisfy the existing lien for past-due child support, be encumbered, escrowed, seized or surrendered.
2. If less than the whole amount of the account is sought, the Department's order shall direct the financial institution to withhold a specific percentage or a specific dollar amount of those types of accounts.
- (9) To satisfy overdue support, an order of seizure or sale may be issued to the obligor if the obligor is in physical possession of property sought to be sold, and the order shall direct that the obligor hold property subject to the provisions of this Chapter.
 - (10) Duty of Recipient of Administrative Order of Seizure.
 - (a) Upon receipt of the administrative order of seizure, whether received electronically, magnetically or otherwise, the person or entity which has possession of the assets of the obligor shall immediately seize, hold, and encumber such assets, as directed by the Department, pending further direction from the Department as to the disposition of the assets or pending any further orders of any court of competent jurisdiction.
 - (b) The person or entity must secure in an escrow account for such purpose, or by such other reasonable means, such assets of the obligor in its possession, and must take any other steps deemed reasonable to preserve any real or personal property.
 - (c) Upon receipt of directions from the Department that all due process procedures have been completed or were waived in any manner, and subject to the provisions of paragraph (5) and subject to the priority for the Department's liens as described in Rule 1240-02-05-.05, the person or entity to whom or to which the order was directed shall pay or deliver to the Department, pursuant to its direction, the assets of the obligor that are held or that come into the possession or control of the person or entity and that are necessary to comply with the terms of the Department's administrative order.
 - (11) Sale of property that has been seized from an obligor in physical or constructive possession of the property may proceed following exhaustion of administrative or judicial processes provided in this Chapter, applicable provisions of T.C.A. §36-5-1001 et seq. and the procedures for sale provided by these rules.
 - (12) Pursuant to T.C.A. §36-5-905(g), all persons or entities complying with any administrative order issued pursuant to this section shall be absolutely immune from any liability, civil or criminal, for compliance with the terms of such order or attempted compliance in good faith with such order.

Authority: T.C.A. §§4-5-202; 36-5-901 et seq.; 36-5-912; 45-19-101; 42 USC §654a(h), and 42 USC §666(a)(14), (17)(C). **Administrative History:** Original rule filed December 18, 2001; effective March 3, 2002.

1240-02-05-.07 REBUTTABLE PRESUMPTION REGARDING OWNERSHIP.

- (1) There shall be a rebuttable presumption concerning property which is subject to the provisions of this Chapter, except where otherwise clearly noted by the evidence of title or otherwise, or where legal ownership of property is otherwise clearly stated, that at least one-half of all real or tangible personal property that is titled to or in the possession of the obligor is owned by the obligor who is subject to the lien provisions of this Chapter.

- (2) All jointly held accounts in any financial institution shall be rebuttably presumed to be available in whole to the obligor.

Authority: T.C.A. §§4-5-202; 36-5-901 et seq.; 36-5-903, and 36-5-912. **Administrative History:** Original rule filed December 18, 2001; effective March 3, 2002.

1240-02-05-.08 EXEMPTIONS FROM SALE/ENUMERATION OF EXEMPTIONS.

- (1) There shall be exempt from sale of personal property subject to lien pursuant to this Chapter:
- (a) Wearing apparel and school books. Such items of wearing apparel and such school books as are necessary for the obligor or for members of the obligor's family and the family bible or other book containing the family's religious beliefs;
 - (b) Fuels, Provisions, Furniture, And Personal Effects. If the obligor is the head of the family, so much of the fuel, provisions, furniture, and personal effects in the obligor's household, and of the arms for personal use, livestock, and poultry of the obligor, as does not exceed five thousand dollars (\$5,000) in value; and,
 - (c) Books And Tools Of A Trade, Business, Or Profession. So many of the books and tools necessary for the trade, business or profession of the obligor as do not exceed in the aggregate two thousand five hundred dollars (\$2,500) in value.
- (2) Appraisal.
- (a) The agent of the Department seizing property of the type described in paragraph (1) shall appraise and set aside to the owner the amount of such property declared to be exempt.
 - (b) If the obligor objects at the time of the seizure to the valuation fixed by the agent making the seizure, the Commissioner or the Commissioner's agent shall summon three (3) disinterested individuals who shall make the valuation. These individuals shall consist of any persons aged eighteen (18) years of age and above deemed by the Commissioner or the Commissioner's agent to have sufficient ability to understand the reasons for the valuation and to possess objectivity in the process who are not related to the person and who are not otherwise employed or under contract with the Department or related to an employee or contractor of the Department, and who have demonstrated some experience in the valuation of property.
- (3) No Other Property Exempt. No property or rights to property shall be exempt from levy or seizure other than the property specifically made exempt by paragraph (1).

Authority: T.C.A. §§4-5-202; 36-5-901 et seq.; 36-5-906, and 36-5-912. **Administrative History:** Original rule filed December 18, 2001; effective March 3, 2002.

1240-02-05-.09 PROCEDURES FOR SALE OF PROPERTY.

- (1) Property Located in the State of Tennessee.

The procedures in this Chapter will be utilized for the sale of real or personal tangible property located within the State of Tennessee which has been subject to an administrative seizure and sale order issued by the Department of Human Services after such order has become final.

(Rule 1240-02-05-.09, continued)

- (a) The Department of Human Services may utilize the same methods and rules for the seizure and sale of property as are established by the Department of Revenue pursuant to the provisions of Tennessee Code Annotated, Title 67, Chapter 1, Part 14 for the collection of taxes and those rules adopted by the Tennessee Department of Revenue to the extent that the rights and duties set forth therein are consistent with the provisions of state and federal laws administering the child support program established pursuant to Title IV-D of the Social Security Act. All references therein to taxes and taxpayers and collection of taxes shall be interpreted by the Department of Human Services in applying those procedures to relate to the collection of child support and payment of such collections to the state and/or to the obligee of the child support obligation.
 - (b) The Department of Human Services may contract with the Department of Revenue or any other state agency or private contractor to provide services related to the seizure or disposition of property subject to the liens established by Tennessee Code Annotated, Title 36, Chapter 1, Part 9, or this Chapter.
- (2) Property Located in a State Other Than Tennessee.

If an administrative seizure and sale order of the Department of Human Services pertains to real or personal tangible property located in a state other than Tennessee, the laws of that other state will apply to the seizure and sale of that property.

Authority: T.C.A. §§4-5-202, 36-5-901 et seq., 36-5-905, 36-5-912, and 36-5-1006. **Administrative History:** Original rule filed December 18, 2001; effective March 3, 2002. Amendment filed August 17, 2005; effective October 31, 2005.

1240-02-05-.10 EFFECT OF FINAL ORDER/CONVEYANCE OF TITLE.

- (1) A final order of seizure or a sale of the obligor's property pursuant to this Chapter shall be effective to convey and vest title of all assets subject to the order in the Department or in the purchaser that are not inferior to any interest described in 1240-02-05-.05 or subject to the provisions of 1240-02-05-.06(5).
- (2) Following the expiration of time for any appeals of the final order of seizure or sale, the Commissioner or the Commissioner's agent may convey title to personal property by a final order of disposition of assets or by executing a certificate of title or may execute a quitclaim deed conveying title to real property to the purchaser. The purchaser shall be responsible for all costs of recording title to the property conveyed by the Commissioner.
- (3) Until real estate is sold, the Commissioner or his or her delegate may, in the exercise of his or her discretion and if such action is deemed to be in the best interest of the Department or the obligee, lease such property to the obligor or any other person considered to be an acceptable lessee by the Commissioner or his or her delegate.
- (4) In cases where real estate has or may become the property of the Department in payment of or security for a support obligation and such obligation shall have been paid, together with any interest, penalties and costs thereon, to the Department at any time from the date of the acquisition of such real estate to the date of sale of such to another person, the Commissioner or his or her delegate may release by deed, or otherwise convey, such real estate to the obligor from whom it was taken, or to his or her heirs or other legal representatives.
- (5) The Commissioner or his or her delegate shall account for the proceeds of all sales or leases, or releases of the property and for all expenses connected with the maintenance, sale, lease or release of the property, and the net proceeds shall be paid over by the

Commissioner or the delegate and distributed as required by law and by the support orders of the court.

Authority: T.C.A. §§4-5-202; 36-5-901et seq., 36-5-905(f), and 36-5-912. **Administrative History:** Original rule filed December 18, 2001; effective March 3, 2002.

1240-02-05-.11 AUTHORITY OVER SEIZED OR SOLD PROPERTY.

- (1) The Commissioner or the Commissioner's agent shall have charge of all real estate or personal property which is or shall become the property of the Department by seizure or judgment under any provision of this Chapter or any other Title of the Tennessee Code Annotated, or which has been or shall be assigned, set off, or conveyed by purchase or otherwise to the Department in payment of child support obligations, debts or penalties arising thereunder, or which has been or shall be vested in the Department by mortgage or other security for the payment for such obligations and of all trusts created for the use of the Department in payment of such obligations, debts or penalties due the Department.
- (2) Any assets of the obligor which are vested in the Department may be used as required or permitted under State and Federal law or regulations relative to the distribution and disbursement of support payments collected by a Title IV-D agency, to pay to the obligee for prior child support, medical support or spousal obligations which have remained unpaid or to repay the State of Tennessee or the Federal government for any cash assistance payments made on behalf of a child or the child's caretaker. Any amount collected on behalf of another State or Territory shall be paid by the Department to that State or Territory's child support receiving unit.

Authority: T.C.A. §§4-5-202; 36-5-901 et seq.; 36-5-908, and 36-5-912. **Administrative History:** Original rule filed December 18, 2001; effective March 3, 2002.

1240-02-05-.12 RELEASE OF LIEN.

- (1) At any time after the child support obligation has been paid, the person holding title to the property on which the lien is placed may request the Department to release the lien. If the Department does not release the lien within sixty (60) days of the request, it shall be liable for court costs in any action to remove the lien if the obligor is the prevailing party.
- (2) The Department may cause the issuance of releases of liens by:
 - (a) Filing the release with the register of deeds or any other appropriate state or local office as provided under any method authorized pursuant to law;
 - (b) Recording the release of the lien by electronic means as provided by T.C.A. §36-5-907 on the same internet application as the Department utilizes pursuant to T.C.A. § 36-5-901 for the establishment of liens; or
 - (c) Provision by the Department of copies of the release of liens to any person or entity requesting a release for filing or recording of the release by that person or entity or to release. The copies of the release may be conveyed by facsimile transmission, and may be in such form as Department may prescribe. If a facsimile transmission is utilized pursuant to this paragraph, it shall be supplemented by a copy of suitable quality if the facsimile's quality is not adequate for purposes of recording by the Register of Deeds or other appropriate official. The obligor is responsible for all costs to have the release filed if necessary.

Authority: T.C.A. §§4-5-202; 36-5-901 et seq.; 36-5-907, and 36-5-912. **Administrative History:** Original rule filed December 18, 2001; effective March 3, 2002.

1240-02-05-.13 DUE PROCESS PROCEDURES.

- (1) Administrative Review of the Notice of Lien.

(Rule 1240-02-05-.13, continued)

- (a) Once a lien has been imposed by the Department of Human Services on real or personal property of the obligor, wherever located, pursuant to the requirements of Rule 1240-02-05-.13, a party may administratively appeal the criteria in subparagraphs (3)(a) – (c) below, related to the underlying child support obligation and propriety of the lien, at such time as the existence of the lien has actually prevented or is preventing a transaction related to the real or personal property, such as a transfer or sale of the property, referred to herein as an “adverse action.”
 - (b) The party seeking administrative review of the propriety of the lien shall file a written request for administrative review with the Department within fifteen (15) calendar days of the notice of the adverse action referenced in subparagraph (a) above.
 - (c) Notwithstanding the location of the real or personal property subject to the lien, all administrative reviews pursuant to this paragraph will be conducted by the Tennessee Department of Human Services according to the requirements of Tennessee law.
- (2) Administrative Review of Order and/or Notice of Seizure and Sale of Assets.
- (a) Administrative seizure, levy, or sale of real or personal property will be effected according to the laws of the State in which the real or personal property is located.
 - (b) Administrative review of the propriety of the seizure, levy, or sale of real or personal property will be conducted according to the laws of the State in which the real or personal property is located.
 - (c) Property Located Within the State of Tennessee.
 - 1. The person seeking administrative review of the Department’s administrative order of seizure, or levy, or sale upon the person’s assets located in the State of Tennessee shall file a written request with the office of the Department indicated in the notice given in Rule 1240-02-05-.06(4) within fifteen (15) calendar days of the date of the notice of seizure or sale.
 - 2. Any person or entity who or which is owner of a joint account in any financial institution, or whose or which property interest has been seized due to the presumption of joint ownership as provided in T.C.A. § 36-5-903, shall have standing to appeal any order or notice of seizure or sale of assets pursuant to this Chapter.
 - (d) Notwithstanding the requirements of subparagraphs (b) above, administrative review of issues related to the underlying child support obligation on which the seizure, levy, or sale is based will be conducted by the Department pursuant to the laws of the State of Tennessee.
- (3) Administrative Review Conducted in the State of Tennessee.
- (a) The issues available for administrative review under this Rule shall be limited to:
 - 1. Whether the identities of the persons or entities involved are correct;
 - 2. Whether there is a mistake of fact involving the action by the Department;
 - 3. Whether the amount of the obligation is correct;
 - 4. The extent of the obligor’s interest in the assets; and

(Rule 1240-02-05-.13, continued)

5. Whether good cause exists not to seize, sell, levy upon, distribute or otherwise dispose of all or a part of such assets.
 - (b) Upon review pursuant to the criteria of subparagraph (a), the hearing officer may direct that there is a mistake as to the identity or interest of the person whose assets have been seized or levied upon and dismiss the order, or may direct that all or only a portion of the assets be disposed of, or that there be some other order for the disposition of the assets of the obligor in order to satisfy the support arrearage.
 - (c) The Department's hearing officer or the reviewing court may grant any relief of a preliminary or temporary nature relative to the obligor's assets, as may be appropriate under the circumstances, pending the entry of the final order.
 - (d) The hearing officer may not forgive any support arrearages upon review of any administrative order.
 - (e) Use of Court and TCSES Records at Hearings.
 1. The record of support, as certified by the clerk of the court, or as shown by the Department's child support computer system (TCSES) shall be admissible in the hearing without further foundation testimony, and shall constitute a rebuttable presumption as to the amount of support which is in arrears and which is owed by the obligor in any review pursuant to this Chapter.
 2. The hearing officer shall have no authority to rule the information submitted pursuant to this paragraph is not sufficient for proof of the arrears unless clear evidence is presented by the obligor to overcome the rebuttable presumption established by the clerk's or the Department's records.
 - (f) Use of Affidavits.
 1. If submitted to the opposing party ten (10) days prior to the administrative hearing, the affidavit of a keeper or custodian of any other records, including, but not limited to, the records of any financial institution or the Department of Human Services or any other government or private entity, concerning any matter before the hearing officer, shall be admitted by the hearing officer unless an objection to its admission is submitted five (5) days prior to the hearing.
 2. If an objection to the admission of the affidavit is filed and is upheld by the hearing officer, the hearing officer shall continue the case to permit the production of records or the taking of any further testimony, which may be necessary to resolve the issues.
 - (g) In order to expedite the review of these matters, the hearing officer shall have discretion to take testimony of any party or witness by telephone or video or by other electronic technology, and documents may, in the hearing officer's discretion, be submitted by facsimile transmission or by any other electronic technology.
 - (h) Judicial review of the Department's administrative decision shall be conducted according to the provisions of T.C.A. §36-5-1003.

Authority: T.C.A. §§4-5-202; 24-7-121; 36-5-901 et seq., 36-5-905(c); 36-5-912; 36-5-1001 et seq., and 36-5-1001(a)(1)(E). **Administrative History:** Original rule filed December 18, 2001; effective March 3, 2002. Repeal and new rule filed August 17, 2005; effective October 31, 2005. Amendment to rule 1240-02-05-.13(3)(a)1. filed October 29, 2009; to be effective January 27, 2010; however on January 26, 2010, the Department of Human Services stayed the rule; new effective date February 26, 2010.

1240-02-05-.14 NON-INTERFERENCE WITH DEPARTMENT'S ACTIONS.

- (1) No person or entity who has been served with an administrative order, administrative subpoena, or request for information or records shall take any measures to defeat the administrative action of the Department during the pendency of the review of such action by the administrative hearing officer or by the reviewing court.
- (2) The Department or its contractor may seek injunctive relief to prevent any actions which would defeat its administrative actions.

Authority: T.C.A. §§4-5-202; 36-5-901 et seq.; 36-5-1004, and 36-5-1006. **Administrative History:** Original rule filed December 18, 2001; effective March 3, 2002.

1240-02-05-.15 LIABILITY FOR FEES AND COSTS.

The individual or entity to whom or to which the administrative order is issued pursuant to this Chapter and which is enforced by the reviewing court shall be liable for all costs of the court proceedings, and shall be liable to the Department for the cost of any private or contract or government attorney representing the state and for the time of any of its Title IV-D state office staff or contractor staff utilized in litigating the administrative lien, administrative seizure order, administrative order, administrative subpoena or request.

Authority: T.C.A. §§4-5-202, 36-5-901 et seq.; 36-5-1005, and 36-5-1006. **Administrative History:** Original rule filed December 18, 2001; effective March 3, 2002.

1240-02-05-.16 CHILD SUPPORT LIEN NOTICE AND INSTRUCTIONS.

- (1) Description.
 - (a) The Department or its contractors in the Title IV-D program may use the form in paragraph (2) as necessary to give notice of the existence of the lien in intrastate cases, or, in interstate cases as provided by Federal law. Following the form are instructions for its use.
 - (b) Forms reproduced for actual transmission to affected persons or entities may also contain highlighting or shading of areas of the forms for easier reading and emphasis of the contents or may contain state logos. Spaces for information indicated on the forms shall be utilized only to the extent applicable in the particular case.
- (2) Form.

(Rule 1240-02-05-.16, continued)



STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES

Fax

Type Name here
Address
City, State Zip

NOTICE OF LIEN

OBLIGOR:

OBLIGEE:

IV-D CASE #:

This lien results from a child support order, entered on ___ / ___ / ___ by _____ in _____ County, TN, Tribunal Number _____.

As of ___ / ___ / ___, the obligor owes unpaid support in the amount of \$ _____. This judgment may be subject to interest.

Prospective amounts of child support, not paid when due, are judgments that are added to the lien amount. This lien attaches to all non-exempt real and/or personal property of the above-named obligor which is located or existing within the State/county of filing, including any property specifically described below.

Specific description of property:

All aspects of this lien, including its priority and enforcement, are governed by the law of the State where the property is located. An obligor must follow the laws and procedures of the State where the property is located or recorded. An obligor may also contact the entity sending the lien. This lien remains in effect until released or withdrawn by the obligee or in accordance with the laws of the State where the property is located.

Note to Lien Recorder: Please provide the sender with a copy of the filed lien, containing the recording information, at the address provided above.

(Rule 1240-02-05-.16, continued)

Check either "A" or "B" below. The option that does not apply may be omitted from the form. If "B" is checked, the form must be notarized.

A. Submitted by a IV-D agency/office on behalf of the named obligee

As an authorized agent of a State or Tribal, or subdivision of a State or Tribal, agency responsible for implementing the child support enforcement program set forth in Title IV, Part D, of the Federal Social Security Act (42 U.S.C. 651 et seq.), I have authority to file this child support lien in any State, or U.S. Territory. For additional information regarding this lien, including the pay-off amount, please contact the authorized agency and reference its case number, both listed above.

Date

Authorized Agent

Print name, e-mail address, phone and fax number

B. Submitted by an obligee or a private (non-IV-D) attorney or entity on behalf of an obligee.

I am:

the obligee of the above referenced order [or]

an attorney or entity representing the above named obligee.

I certify, under penalty of perjury, that the information contained in this notice is true and accurate and that this lien is submitted in accordance with the laws of the State of Tennessee. For additional information regarding this lien, including the pay-off amount, please contact the obligee listed above.

Date

Signature

Print name, e-mail address, phone and fax number

(Rule 1240-02-05-.16, continued)

Notary State: _____

County: _____

I certify that _____ appeared before me and is known to me as the individual who signed the above.

Date: _____

Notary Public

My appointment expires _____

Notice: Respondents are not required to respond to this information collection unless it displays a valid OMB control number. The average burden for responding to this information collection is estimated at 30 minutes. If you believe this estimate is inaccurate, or if you have ideas to reduce this burden, please provide comment to the issuing agency.

OMB Control #: 0970-0153 Expiration Date: 01/31/2008

Instructions for the Notice of Lien

Purpose of This Form: 42 USC 654(9)(E) requires all IV-D programs to use the Notice of Lien form in interstate cases. IV-D programs may also use the form to impose liens in intrastate cases. This form may also be used for non-IV-D orders by an obligee or his or her private attorney. This form may be used to assert liens on assets discovered through the Financial Institution Data Match process. Please note that the expiration date on this form is the Office of Management and Budget expiration date, not the expiration date of the lien itself.

Whose Laws Apply?: All aspects of this lien, including its priority and enforcement, are governed by the law of the State where the property is located. Issue the lien to secure debts for past-due support upon identifying, in another State, nonexempt real or personal property belonging to the obligor. The laws and procedures of the State where the property is located or recorded determine which office or entity in that State is the appropriate one to receive the lien for filing. It is the responsibility of the agency/office or private attorney issuing the lien to file it with the appropriate entity.

Release of Lien: To release a previously-filed lien (e.g., upon receipt of full payment, or partial payment with an acceptable agreement to repay remaining balance, etc.) the original issuing State shall use its existing local release of lien form. A copy of the release of lien should be provided to the obligor. Identify the lien to be released by including the recording information provided by the office or entity that filed the lien (Lien Recorder). The laws and procedures of the State where the lien is filed control the release of the lien.

To complete this form:

1. At the top of the form, place the name, address, and fax number of the recorder (i.e., County Auditor, Clerk of Court, DMV, etc.) or asset holder (i.e., Financial Institution, Estate Executor, Trustee, etc.) to which you are sending the lien.

NOTE: The procedures of the State where the property is located determine which person or entity in that State is the appropriate one to receive the lien for filing. It is the responsibility of the person/entity/agency submitting the lien to file/serve it correctly.

(Rule 1240-02-05-.16, continued)

2. In the "OBLIGOR" field place the obligor's full name, address, date of birth (if known) and social security number (if known). Include known aliases or multiple social security numbers used by the obligor.
3. In the "OBLIGEE" field insert the obligee's full name. Note that the obligee may be the individual obligee, a public IV-D agency, or a private attorney, person or entity with a proper assignment from the individual obligee.
4. In the "IV-D Case #" field, enter the number/identifier identical to the one submitted on the Federal Case Registry, which is a left-justified 15-character alphanumeric field, allowing all characters except asterisk and backslash, and with all characters in uppercase.
5. In the space following "entered on", insert the date of entry of the order that is the basis for the lien.
6. In the space following "by", identify the tribunal that issued the support order that is being used to determine the amount of the lien. A tribunal is a court, administrative agency, or quasi-judicial entity that has the authority to establish, enforce, and modify child support obligations.
7. In the space following "in", identify the location (State/county) of the tribunal that issued the support order that is being used to determine the amount of the lien.
8. In the space following "tribunal number", identify the tribunal docket, jacket or file number of the support order that is used to determine the amount of the lien.
9. In the space following "As of", insert the date of the debt calculation that is used in determining the amount of the lien.
10. In the space following "amount of \$", insert the lien amount (the amount of the past-due support obligation owed when the lien is prepared). Interest may be included in the lien amount if permitted under the law of the State where the lien is filed.
11. In the space following "Specific description of property", identify any specific property that you want the lien to attach to. Use the legal description of real property and, when the target of the lien is personal property, always provide the most specific identifying information available, including the location of the property, if known. (For example, include the make/model/year/appropriate registration numbers (if known), as opposed to referring to such personal property as "farm equipment"). For Financial Institutions, list the account numbers.
12. Check "A" if the lien is submitted by a IV-D agency and check "B" if the lien is submitted by an obligee or his or her private attorney.
13. Provide the date the lien is signed on the line provided above "date".
14. If "A" is checked, the appropriate individual should sign the lien on the line above "Authorized Agent". Type or print the name of the agent signing the lien below their signature. Include the agent's name, e-mail address (if available) and phone and fax numbers. If "A" is checked, the form does not need to be notarized. Note that, in IV-D cases, the pay-off amount will be available only from the IV-D agency.
15. If "B" is checked, the appropriate individual should sign the lien on the line above the two check boxes and should check the appropriate box. Type or print the name of the person signing the lien below their signature. Include the person's name, e-mail address (if available) and phone and fax numbers.

(Rule 1240-02-05-.16, continued)

16. If "B" is checked, the signature of the party signing the lien must be notarized.

17. In the spaces following "Notary State" and "County", insert the name of the State and County (if applicable) where the notary is commissioned.

18. Send a copy of the lien to the obligor at his/her last known address.

Authority: T.C.A. §§4-5-202, 36-5-901 et seq., and 36-5-912; 42 U.S.C. §§ 652, 654(9)(E), and 666; and United States Department of Health and Human Services Office of Child Support Enforcement Action Transmittal 01-06 (April 4, 2001) and Action Transmittal 05-04 (January 4, 2005). **Administrative History:** Original rule filed December 18, 2001; effective March 3, 2002. Public necessity rule filed May 20, 2005; effective through November 11, 2005. Amendments filed August 17, 2005; effective October 31, 2005. Amendment to rule 1240-02-05-.16(2) filed October 29, 2009; to be effective January 27, 2010; however on January 26, 2010, the Department of Human Services stayed the rule; new effective date February 26, 2010.