

HOUSE BILL 1940

By Wirgau

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 8; Title 9 and Title 39, Chapter 16, relative to
the department of human services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 4-29-239(a), is amended by deleting subdivision (12).

SECTION 2. Tennessee Code Annotated, Section 4-29-238(a), is amended by adding the following language as a new, appropriately designated subdivision:

() Department of human services, created by §§ 4-3-101 and 4-3-1201;

SECTION 3. Tennessee Code Annotated, Title 4, Chapter 3, Part 12, is amended by adding the following language as a new section:

After the effective date of this act, the management and operations of financial accounting and reporting for the department of human services shall be transferred to the department of finance and administration. The department of finance and administration shall have exclusive control and jurisdiction over the department of human services' financial accounting and reporting function. The commissioner of finance and administration, with the assistance of the department of human resources, shall transfer to the department of finance and administration, any filled or unfilled positions of the department of human services financial accounting function.

SECTION 4. Tennessee Code Annotated, Title 4, Chapter 3, Part 12, is amended by adding the following language as a new section:

(a) As used in this section, unless the context otherwise requires:

(1) “Analytical procedures” mean a process consisting of evaluations of financial information made by a study of plausible relationships among both financial and nonfinancial data, and involving a comparison of recorded values with expectations developed by an auditor. “Analytical procedures” include, but are not limited to, data analysis to identify subrecipients who claim maximum reimbursement when fluctuations are expected, and the unreasonable or inconsistent relationships between the subrecipients’ ability to provide the level of services that the subrecipients claim for reimbursement;

(2) “Chairs” mean:

(A) The chair of the government operations committee of the house of representatives and the chair of the government operations committee of the senate;

(B) The chair of the health committee of the house of representatives and the chair of the health and welfare committee of the senate; and

(C) The chair of the finance, ways and means committee of the house of representatives and the chair of the finance, ways and means committee of the senate;

(3) “Commissioner” means the commissioner of human services;

(4) “Communication” means any communication between the department and a federal government agency involving issues of accounting, auditing, or compliance;

(5) “Department” means the department of human services;

(6) “Federal government agency” includes, but is not limited to, the division of food and nutrition service within the United States department of agriculture, the office of inspector general within the United States department of

health and human services, and the division of rehabilitation services administration within the United States department of education;

(7) "Speakers" mean the speaker of the house of representatives and the speaker of the senate; and

(8) "Subrecipient" means a nonfederal legal entity that receives an award from the department acting as a pass-through agency to carry out a federal program or grant. "Subrecipient" shall not include an individual that is a beneficiary of the program.

(b) No later than the thirtieth day of each month, the department shall submit to the chairs, the speakers, and the comptroller of the treasury, the following written reports:

(1) A report detailing the subrecipient monitoring process during the preceding month, which shall include the name and address of each subrecipient monitored by the department, the results of the monitoring process, and any corrective action recommended by the department to address deficiencies identified within subrecipient programs;

(2) A report outlining the remedial steps taken by the department to address deficiencies identified in the department's subrecipient monitoring process during the preceding month;

(3) A report detailing the training plans implemented during the preceding month for any staff involved in the subrecipient monitoring process and a description of the training plans that will be offered during the following month. The training plans shall be approved by the comptroller of the treasury;

(4) A report detailing each subrecipient food program monitored by the department, which shall include documentation to support budgeted salaries,

bonuses, allowable disbursements, and receipts for food purchases for the programs;

(5) A report describing the staffing activities of the department during the preceding month, which shall include the steps taken by the department to fill vacant positions in the internal audit function of the department and in the subrecipient monitoring process. The report shall also include a description of each change in job responsibilities of any department employee, or any transfer of a department employee within the department, together with an explanation and justification for the change or transfer;

(6) A report describing the internal audit function of the department, which shall include documentation of risk assessment, internal auditing standards, and internal controls utilized by the department in the preceding month, and which shall include documentation of the deficiencies identified in the internal audit function of the department, along with a proposed corrective action plan to address the deficiencies;

(7) A report containing the internal audit plans of the department, which shall include an explanation of progress made by the department in carrying out the plans;

(8) A report documenting each communication, both oral and written, of the department with a federal government agency during the preceding month. The report shall contain copies of all written communications between the department and the federal government agency, and call logs describing the content of the communications; and

(9) A report responding to any audit findings of the comptroller of the treasury, a federal government agency, or the federal office of inspector general,

which shall include the corrective action plan that will address the findings. If the department fails to take corrective action for any audit finding of the state or federal government agency, then the department shall provide an explanation and justification for the failure.

(c) The department's written reports under this section shall be treated as confidential. The reports shall not be subject to the open records law compiled in title 10, chapter 7.

(d) The department shall develop subrecipient monitoring plans utilizing analytical procedures. The subrecipient monitoring plans shall be completed not less than thirty (30) days from the effective date of this act, and shall be submitted by such date to the chairs, speakers, and comptroller of the treasury. Prior to implementation, the subrecipient monitoring plans shall be approved by the comptroller of the treasury.

(e) To the extent authorized by federal law, the department shall perform both announced and unannounced physical site visits to subrecipients. The department shall not provide any subrecipients with a description of the information sought by the department before physical site visits are conducted during the subrecipient monitoring process.

(f)

(1) The department shall not terminate or transfer any employee of the department, unless written notification is sent to the chairs, speakers, and comptroller of the treasury, together with an explanation summarizing the basis for the termination or transfer.

(2) The department shall not terminate an employee engaged in an internal audit function or in the subrecipient monitoring process of the department without the express written approval of the comptroller of the treasury.

(g) Employees of the department shall report any internal misconduct witnessed by the employee to the hotline established pursuant to Section 5 of this act.

SECTION 5. Tennessee Code Annotated, Title 4, Chapter 3, Part 12, is amended by adding the following language as a new section:

(a) The office of inspector general within the department of human services shall establish, maintain, and publicize an independent toll-free telephonic and web-based hotline for the purpose of receiving allegations of misconduct by department employees.

(b) The department of human services shall display in a prominent place and in a conspicuous manner, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:

NOTICE: THE DEPARTMENT OF HUMAN SERVICES IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE MISCONDUCT AS DEFINED IN TENNESSEE CODE ANNOTATED, TITLE 39, CHAPTER 16, PART 4, PLEASE CALL THE DEPARTMENT'S TOLL-FREE HOTLINE:

[insert phone number]

(c) The department shall distribute to the home address and work e-mail address of each department employee, a form that contains copies of Tennessee Code Annotated § 39-16-402. The form shall be posted electronically on the department's web site and shall be included in the department's employee handbook.

SECTION 6. The implementation of this act shall be conducted by the department of human services within existing resources and personnel and within the appropriation made for the department.

SECTION 7. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or

applications of the act that can be given effect without the provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 8. This act shall take effect upon becoming a law, the public welfare requiring it.