

**RULES
OF
TENNESSEE DEPARTMENT OF MENTAL HEALTH
AND MENTAL RETARDATION
ADMINISTRATIVE SERVICES DIVISION**

**CHAPTER 0940—2—2
PATIENT/RESIDENT WORK PROGRAMS**

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0940—2—2—.01 ASSIGNMENT TO WORK PROGRAM. No patient/resident shall be assigned to work program unless the work to be done is part of a closely supervised work therapy program.

Authority: T.C.A. §§33—1—203 and 33—1—205. *Administrative History:* Original rule filed October 17, 1978; effective December 1, 1978. Repealed by Public Chapter 969; effective July 1, 1984. New rule filed July 11, 1984; effective August 10, 1984.

0940—2—2—.02 RESPONSIBILITY FOR WORK PROGRAM. Repealed.

Authority: T.C.A. §§33—1—203 and 33—1—205. *Administrative History:* Original rule filed October 17, 1978; effective December 1, 1978. Repealed by Public Chapter 969; effective July 1, 1984.

0940—2—2—.03 REFERRAL. No patient/resident may be accepted for a work assignment without the completion of a referral form by a member of the treatment or training team responsible for the individual's care. In mental health institutes this referral form shall be signed by a licensed physician who is responsible for the total treatment plan; in developmental centers, this referral form shall be signed by qualified mental retardation professional and co-signed by a licensed physician who is responsible for the total habilitation plan. The referral form should indicate the physician's approval, along with any limitations as to the type of work in which the patient/resident may participate.

Authority: T.C.A. §§33—1—203 and 33—1—205. *Administrative History:* Original rule filed October 17, 1978; effective December 1, 1978. Amendment filed July 11, 1984; effective August 10, 1984.

0940—2—2—.04 PATIENT/RESIDENT PARTICIPATION IN TREATMENT OR HABILITATION PLANS. Those patients/residents capable of involvement in the development of their own treatment or habilitation plans should participate and be counseled as to the work program. Coercion into working or punishment for refusing to participate in the work program is patient abuse.

Authority: T.C.A. §§33—1—203 and 33—1—205. *Administrative History:* Original rule filed October 17, 1978; effective December 1, 1978.

0940—2—2—.05 REASSESSMENT. A reassessment of the work assignment of each patient/resident shall be made not less than every ninety (90) days. A review of the work performance of each patient/resident shall be made every ninety (90) days. A copy of the reassessment shall be placed in the individual's record.

Authority: T.C.A. §§33—1—203 and 33—1—205. *Administrative History:* Original rule filed October 17, 1978; effective December 1, 1978.

0940—2—2—.06 LIMITATIONS. No patient/resident shall be permitted to engage in work that is unsupervised or is supervisory in nature. No patient/resident may participate in the care of training of other patients or residents unless he or she has undergone prior formalized training. Based on the degree of handicap, no patient/resident under the legal working age, as defined by applicable Federal and State Child labor Laws, may engage in work.

Authority: T.C.A. §§33—1—203 and 33—1—205. *Administrative History:* Original rule filed October 17, 1978; effective December 1, 1978.

0940—2—2—.07 GUIDELINES-CERTIFICATION PROCEDURES.

- (1) If an assignment constitutes work and the patient/resident has an unimpaired productive capacity, the patient/resident is entitled to not less than the statutory minimum wage.
- (2) Handicapped individuals with impaired productive capacity shall be reimbursed under the following guidelines:
 - (a) During the first year of the employment relationship, a patient/resident will be considered to be in evaluating and training, to the extent that competent instruction and supervision are provided to determine one's potential and teach adjustment to a work environment or the skills needed to perform one or more types of work, and will receive at least commensurate pay based on his actual productivity as compared with similar work performed by non-handicapped persons.
 - (b) After the first year of the employment relationship, the patient/resident will be subjected to a group minimum wage of not less than 50% of the minimum statutory wage or commensurate pay, whichever is higher.
 - (c) A minimum wage or commensurate pay less than the group minimum wage, but not less than 25% of the minimum statutory wage, may be authorized for a severely handicapped individual.
 - (d) For those patient/resident workers with a productive capacity less than 25% of the minimum statutory wage, commensurate pay need only be paid and no minimum wage shall be required if a work activity center is designed to provide therapeutic activities and if so certified by a non-profit, non-governmental advocacy agency.
 - (e) Under no circumstances may a patient/resident worker, other than those in a work activity center, be paid less than 25% of the minimum statutory wage after the first year of the employment relationship.

Authority: T.C.A. §§33—1—203 and 33—1—205. *Administrative History:* Original rule filed October 17, 1978; effective December 1, 1978. Amendment by public chapter 969; effective July 1, 1984. Amendment filed July 11, 1984; effective August 10, 1984.

0940—2—2—.08. DEDUCTIONS FROM WAGES. No deductions will be made from the wages paid to working patients/residents for the cost of maintenance, hospitalization, burial funds or other nonstandard provisions. However, on the basis of ability-to-pay criteria, the institution may negotiate with the patient/resident or his responsible relative or guardian concerning an increase in payment for care and treatment rendered as a result of an individual's increased income.

Authority: T.C.A. §§33—1—203 and 33—1—205. *Administrative History:* Original rule filed October 17, 1978; effective December 1, 1978.

0940—2—2—.09 SELF-CARE AND DOMICILIARY TASKS. All self-care and domiciliary activities which are routine tasks that an individual would be expected to perform at his or her own home are not to be considered as work. Those tasks that a patient/resident may do at the conclusion of an instructional activity session where the individual assists with the cleanup of the immediate work or play area shall not be considered as work.

(Rule 0940-2-2-.09, continued)

Authority: T.C.A. §§33—1—203 and 33—1—205. **Administrative History:** Original rule filed October 17, 1978; effective December 1, 1978.

0940—2—2—.10 RECORDS AND REPORTS. Each developmental center and mental health institute will establish appropriate time and attendance reports upon which to base remuneration. In addition, records showing which patient/resident workers are in each certified program under Rule 0940—2—2—.07, the disability and productivity of each worker, and the prevailing wage for similar work performed by non-handicapped workers must be preserved for two years. Records that are required for non-patient/resident employees under 29 CFR, Part 516, are required for all patient/resident workers.

Authority: T.C.A. §§33—1—203 and 33—1—205. **Administrative History:** Original rule filed October 17, 1978; effective December 1, 1978. Repealed by Public Chapter 969; effective July 1, 1984. New rule filed July 11, 1984; effective August 10, 1984.