

**Department of State  
Division of Publications**

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**For Department of State Use Only**

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File Date: 02/26/2009  
Effective Date: 06/26/2009

# Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to T.C.A. §4-5-205 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.*

**Agency/Board/Commission:** Tennessee Department of Mental Health and Developmental Disabilities  
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**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only ONE Rule Number/RuleTitle per row)**

Chapter Number	Chapter Title
0940-02-01	Determination of Average Daily Cost
Rule Number	Rule Title
0940-02-01-.01	Definitions
0940-02-01-.02	Computation of Average Daily Cost
0940-02-01-.03	Computation of Cost Increase Factor
0940-02-01-.04	Repealed
0940-02-01-.05	Repealed
0940-02-01-.06	Repealed
0940-02-01-.07	Determination of Tentative Average Daily Cost
0940-02-01-.08	Notice and Comment
0940-02-01-.09	Average Daily Cost Effective Date, Filing

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Paragraph (1) of Rule 0940-02-01-.01 Definitions is amended by deleting the words "mental health and mental retardation" and adding the words "the Tennessee Department of Mental Health and Developmental Disabilities" after the words "Commissioner of" so that, as amended, the paragraph will read:

- (1) "Commissioner" means the Commissioner of the Tennessee Department of Mental Health and Developmental Disabilities.

Paragraph (2) of Rule 0940-02-01-.01 Definitions is amended by deleting the words "mental health and mental retardation" and adding the words "the Tennessee Department of Mental Health and Developmental Disabilities" after the word "means" so that, as amended, the paragraph will read:

- (2) "Department" means the Tennessee Department of Mental Health and Developmental Disabilities.

Paragraph (3) of Rule 0940-02-01-.01 Definitions is amended by deleting the paragraph in its entirety and substituting the following language, so that, as amended, the paragraph will read:

- (3) "Institution" means Lakeshore Mental Health Institute, Memphis Mental Health Institute, Middle Tennessee Mental Health Institute, Moccasin Bend Mental Health Institute, or Western Mental Health Institute, regardless of name known as and any combination of mental health institutes providing the same type of service.

The authority for Rule 0940-02-01-.01 Definitions is amended by deleting the citation in its entirety and substituting instead "T.C.A. §§ 4-4-103, 33-1-305 and 33-2-1101" so that, as amended, the citation will read:

Authority: T.C.A. §§ 4-4-103, 33-1-305 and 33-2-1101.

The title of Rule 0940-02-01-.02 Computation of Computed Average Daily Cost is amended by deleting the word, "Computed" after the word "of" and before the word "Average". The first sentence of Rule 0940-02-01-.02 Computation of Average Daily Cost is amended by deleting the word "computed" after the word "the" and before the word "average." The second sentence is amended by deleting the word "computed" before the word "average" and after the words "calculation of". The third sentence is amended by adding the words "current edition of the" after the words "as found in the" and before the words "Medicare Principles"; adding the word "of" after the word "Principles" and before the word "Reimbursement"; and deleting the words "as of June 30, 1977, or the intermediate care reimbursable cost apportionment and accounting principles". As amended the rule will read:

Rule 0940-02-01-.02 Computation of Average Daily Cost.

The department, using cost report forms prescribed by the department, shall calculate the average daily cost. The cost report shall include the costs of operations of the institutions, statistical and other data, adjustments and reclassifications to trial balance expenditures, allocation of costs, statistical basis of allocation of costs, calculation of average daily cost for each type of service, and certification by a responsible institution official. The department shall complete the cost report in accordance with the Medicare and Medicaid principles of reimbursement as found in the current edition of the Medicare Principles of Reimbursement Manual, except as otherwise provided for in the instructions for the preparation of the cost report.

The authority for Rule 0940-02-01-.02 Computation of Average Daily Cost is amended by deleting the citation in its entirety and substituting instead "T.C.A. §§ 4-4-103, 33-1-305 and 33-2-1101" so that, as amended the citation will read:

Authority: T.C.A. §§ 4-4-103, 33-1-305 and 33-2-1101.

Rule 0940-02-01-.03 Computation of Cost Increase Factor is amended as follows: The second sentence is amended by deleting the word "computed" before the words "average daily cost" and after the words "decrease in"; by placing a period after the words "prior two (2) years"; and deleting the rest of the sentence. The fourth sentence is amended by deleting the word "90<sup>th</sup>" and substituting the word "100<sup>th</sup>"; placing a period after the words "mental health institutes"; and deleting the words "or developmental centers". The fifth sentence is amended by deleting the words "90<sup>th</sup>" and substituting, instead, "100<sup>th</sup>" after the words "determining the" and before the words

"percentile shall". The fifth sentence is further amended by deleting the words "institutions for the" and the words "or developmental centers". As amended, the paragraph shall read as follows:

Rule 0940-02-01-.03 Computation of Cost Increase Factor.

The department shall compute a cost increase factor in the following manner. For an institution that has completed three (3) full years of rendering a certain type of service, this factor shall be the average of the institution's increase or decrease in average daily cost for that type of service over the prior two (2) years. Negative averages shall be considered as zero. For an institution that has not completed three (3) full years of rendering a certain type of service, the factor shall not exceed the 100<sup>th</sup> percentile value for the factor for mental health institutes. The cost-increase amounts used in determining the 100<sup>th</sup> percentile shall be the latest values calculated for at least 50 percent of the mental health institutes that have rendered like type services three (3) full years.

Paragraph (2) of Rule 0940-02-01-.03 is further amended by deleting the paragraph in its entirety.

The authority for Rule 0940-02-01-.03 Computation of Cost Increase Factor is amended by deleting the citation in its entirety and substituting instead "T.C.A. §§ 4-4-103, 33-1-305 and 33-2-1101" so that, as amended the citation will read:

Authority: T.C.A. §§ 4-4-103, 33-1-305 and 33-2-1101.

Rule 0940-02-01-.07 Determination of Tentative Average Daily Cost is amended by deleting the rule in its entirety and substituting the following so that, as amended, the rule will read:

0940-02-01-.07 Determination of Tentative Average Daily Cost. The commissioner shall determine a tentative average daily cost using a cost analysis procedure by:

- (1) Computing the average daily cost under Rule 0940-02-01-.02 Computation of Average Daily Cost and
- (2) Adding to the computed average daily cost an amount utilizing the cost increase factor prescribed in Rule 0940-02-01-.03 Computation of Cost Increase Factor.

The authority for Rule 0940-02-01-.07 Determination of Tentative Average Daily Cost is amended by deleting the citation in its entirety and substituting instead "T.C.A. §§ 4-4-103, 33-1-305 and 33-2-1101" so that, as amended the citation will read:

Authority: T.C.A. §§ 4-4-103, 33-1-305 and 33-2-1101.

The authority for Rule 0940-02-01-.08 Notice and Comment is amended by deleting the citation in its entirety and substituting instead "T.C.A. §§ 4-4-103, 33-1-305 and 33-2-1101" so that, as amended the citation will read:

Authority: T.C.A. §§ 4-4-103, 33-1-305 and 33-2-1101.

The authority for Rule 0940-02-01-.09 Average Daily Cost Effective Date, Filing is amended by deleting the citation in its entirety and substituting instead "T.C.A. §§ 4-4-103, 33-1-305 and 33-2-1101" so that, as amended the citation will read:

Authority: T.C.A. §§ 4-4-103, 33-1-305 and 33-2-1101.

Authority: T.C.A. §§ 4-4-103, 33-1-305 and 33-2-1101

Repeals

Rules 0940-02-01-.04 Computation of Adjustment for Occupancy or Usage, 0940-02-01-.05 Computation of Growth and Development Amount, and 0940-02-01-.06 Computation of Direct Pass-Through Amount are repealed in their entirety.

Authority: T.C.A. §§ 4-4-103, 33-1-305 and 33-2-1101

\* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

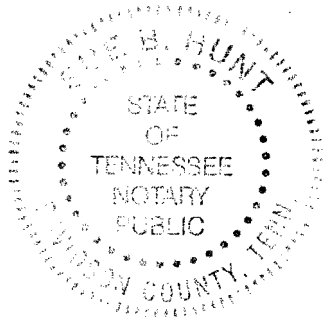
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Department of Mental Health and Developmental Disabilities on \_\_\_\_\_ (date as mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of thirty (30) days after the publication date of the issue of the Tennessee Administrative Register in which these proposed rules are published.

Date: 2/9/09

Signature: *Virginia Trotter Betts*

Name of Officer: Virginia Trotter Betts, MSN, JD, RN, FAAN

Title of Officer: Commissioner



Subscribed and sworn to before me on: February 9, 2009

Notary Public Signature: *Edge B. Hunt*

My commission expires on: July 25, 2009

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

*Robert E. Cooper, Jr.*  
Robert E. Cooper, Jr.  
Attorney General and Reporter  
2-22-09  
Date

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Filed with the Department of State on: 2/20/09

Effective on: 6/20/09

*Tre Hargett*  
Tre Hargett  
Secretary of State

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