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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

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 to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0940-03-13	Admissions to a Regional Mental Health Institute (RMHI)
Rule Number	Rule Title
0940-03-13-.01	Definitions
0940-03-13-.02	General Admission Requirements
0940-03-13-.03	Determination of Bed Capacity
0940-03-13-.04	Determination of Geographic Catchment Areas
0940-03-13-.05	Verification of Available Suitable Accommodations
0940-03-13-.06	Policies and Procedures
0940-03-13-.07	Waiting Lists
0940-03-13-.08	Transportation to an RMHI
0940-03-13-.09	Reporting Requirements

0940-03-13-.01 Definitions.

- (1) "Available suitable accommodations" means that an RMHI has the capacity, as reasonably determined by the Commissioner in accordance with these rules, and the medical capability, equipment and staffing to provide an appropriate level of care, treatment and physical security to a service recipient in an unoccupied and unassigned bed.
- (2) "Certificate of need" means, for the purposes of this chapter, a certification of need for care and treatment for a service recipient with mental illness or serious emotional disturbance who meets the criteria for involuntary commitment under T.C.A. Title 33, Chapter 6, Part 4 or Part 5.
- (3) "Commissioner" means the Commissioner of the Department of Mental Health and Developmental Disabilities.
- (4) "Department" means the Tennessee Department of Mental Health and Developmental Disabilities.
- (5) "Forensic" means admission legal status resulting from a court order for admission under T.C.A. Title 33, Chapter 7, Part 3.
- (6) "Geographic Catchment Area" means those counties assigned to an RMHI by the Commissioner.
- (7) "Local RMHI" means the RMHI for a geographic catchment area.
- (8) "Mandatory Pre-screening Agent" means a person meeting criteria required by T.C.A. § 33-6-427 who is designated by the Commissioner to perform pre-screening of service recipients for emergency involuntary admission.
- (9) "Medical capability" means that an RMHI has the ability to treat a service recipient's medical needs onsite or that the service recipient's medical needs do not exceed the onsite capability of the RMHI to treat.
- (10) "Regional Mental Health Institute or RMHI" means a state owned or operated hospital for service recipients with mental illness or serious emotional disturbance.
- (11) "Service Recipient" means, for the purposes of this chapter, a person who is receiving service, has applied for service, or for whom someone has applied for or proposed service because the person has mental illness or a serious emotional disturbance.
- (12) "Transportation agent" means, for the purposes of this chapter:
 - (a) The sheriff in a county in which a service recipient with mental illness or serious emotional disturbance is detained;
 - (b) A secondary transportation agent under T.C.A. § 33-6-901;
 - (c) A municipal law enforcement agency that meets the requirements as a secondary transportation agent; or
 - (d) One or more friends, neighbors or other mental health professionals familiar with the service recipient, relatives of the service recipient, or a member of the clergy.
- (13) "Written Verification Statement" means a written statement verifying available suitable accommodations provided by a referral source who has contacted the RMHI about the availability of suitable accommodations. This statement shall include the name of the service recipient, the name of the RMHI with available suitable accommodations, a confirmation number from the RMHI, and the name and phone number of the referral source or the referral source's designated

contact person.

Authority: T.C.A. §§ 4-4-103, 33-1-101, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-6-105, and 33-6-108.

0940-03-13-.02 General Admission Requirements.

- (1) All admissions or transfers to an RMHI shall be subject to available suitable accommodations.
- (2) Verification of available suitable accommodations does not guarantee admission into an RMHI. Admissions for service recipients under T.C.A. Title 33, Chapter 6, Part 2 or 4 are dependent on the service recipient meeting admission criteria and being evaluated for admission by the receiving RMHI.
- (3) Priority for admission shall be given to persons referred for an emergency admission.
- (4) All admissions or transfers to an RMHI shall be subject to specific geographic catchment areas defined by the Commissioner or designee, unless the Commissioner or designee determines otherwise.
- (5) Before sending a service recipient to an RMHI, the referral source shall contact the RMHI's Admission Office to determine whether there are available suitable accommodations.
- (6) If the RMHI has available suitable accommodations, the RMHI shall provide a verification of available suitable accommodations with a confirmation number to the referral source or designee.
- (7) The RMHI shall provide written verification of available suitable accommodations with a confirmation number to the referral source or designee by fax or email when possible. When it is not possible to provide written verification of available suitable accommodations, the RMHI may provide verification with a confirmation number by telephone to the referral source or the referral source's designated contact person.
- (8) If a local RMHI does not have available suitable accommodations, the local RMHI shall offer to contact the other RMHIs to determine if there are available suitable accommodations in an alternate RMHI and to provide contact information for the RMHI with available suitable accommodations.
- (9) The referral source may decide to place a service recipient on a waiting list at a local RMHI if:
 - (a) The local RMHI has no available suitable accommodations and the referral source declines a referral to an alternate RMHI; or
 - (b) None of the RMHIs have available suitable accommodations.
- (10) If a service recipient is placed on a waiting list of a local RMHI, the RMHI shall check at least daily with other RMHIs until available suitable accommodations are located at either the local or other RMHIs, or the referral source requests that the service recipient be removed from the waiting list.
- (11) If a service recipient arrives at an RMHI without a written verification statement from the referral source or designee, including a confirmation number from the RMHI, a bed may not be available in the RMHI.
- (12) If during the evaluation for admission, it is determined that the service recipient has a physical disorder or medical condition that requires immediate medical care that the RMHI cannot appropriately provide, the service recipient shall be sent for treatment of the medical condition prior to being admitted to the RMHI. Any service recipient diverted for medical treatment with a valid confirmation number may be transported back to the RMHI for an evaluation for admission.
- (13) The RMHI may cancel a confirmation number when it is reasonable to do so. Prior to canceling a confirmation number, the RMHI shall contact the referral source or designee. When a service recipient's confirmation number is canceled, that service recipient may be placed on a waiting list

for possible future admission.

Authority: T.C.A. §§ 4-4-103, 33-1-101, 33-1-302, 33-1-305, 33-1-309, 33-2-301, and 33-6-108.

0940-03-13-.03 Determination of Bed Capacity.

- (1) The Commissioner or designee shall at least annually establish the bed capacity for each RMHI no later than 30 days after the beginning of the fiscal year.
- (2) The Commissioner or designee may consider bed utilization trends and the geographic distribution of admissions to determine bed capacity.
- (3) The Commissioner or designee may, at his or her discretion, change the bed capacity at any RMHI based on the following considerations:
 - (a) The need to provide an appropriate level of care, treatment and physical security;
 - (b) The need to reduce admission delays;
 - (c) The ability of facilities to meet the needs of special populations;
 - (d) The ability of facilities to respond to unusual events or disasters;
 - (e) Contractual relationships with health plans; and/or
 - (f) The need to respond to other factors that may arise.
- (4) The Department shall maintain information concerning the bed capacity of each RMHI that shall be available to the public.
- (5) The number of children and youth beds within an RMHI shall be calculated separately from the adult beds at the RMHI.
- (6) The number of beds at the Forensic Services Program at Middle Tennessee Mental Health Institute shall be calculated separately from other beds at the RMHI.
- (7) Forensic beds may be designated separately from the other adult beds at the RMHI.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301 and 33-6-108.

0940-03-13-.04 Determination of Geographic Catchment Areas.

- (1) The Commissioner or designee shall establish, at least annually, the geographic catchment area for each RMHI no later than thirty (30) days after the beginning of the fiscal year.
- (2) The Commissioner or designee may consider bed utilization trends and the geographic distribution of admissions to determine geographic catchment areas.
- (3) The Commissioner or designee may, at his or her discretion, change the geographic catchment area at any RMHI based on the following considerations:
 - (a) The need to provide an appropriate level of care, treatment and physical security;
 - (b) The need to reduce admission delays;
 - (c) The ability of facilities to meet the needs of special populations;
 - (d) The ability of facilities to respond to unusual events or disasters;
 - (e) Contractual relationships with health plans;

- (f) Proximity of the RMHI to a county seat; and/or
 - (g) The need to respond to other factors that may arise.
- (4) The Department shall inform courts, law enforcement and major referral sources such as crisis response providers, emergency departments of general hospitals, and mental health and substance abuse providers of changes in the geographic catchment areas.
 - (5) The Department shall maintain information concerning the geographic catchment area of each RMHI that will be available to the public.
 - (6) The geographic catchment area for children and youth beds within an RMHI may be determined separately from the adult beds at an RMHI.
 - (7) The geographic catchment area for the Forensic Services Program at Middle Tennessee Mental Health Institute shall be determined separately from the other beds at the RMHI.
 - (8) The geographic catchment area for forensic beds may be determined separately from the other beds at the RMHI.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, and 33-2-301.

0940-03-13-.05 Verification of Available Suitable Accommodations.

- (1) An RMHI shall provide verification of available suitable accommodations, including a confirmation number, if the following conditions occur:
 - (a) The RMHI can provide an appropriate level of care, treatment and physical security to an individual in an unoccupied and unassigned bed; and
 - (b) A referral for admission has been made through any of the following means:
 1. A certificate of need for emergency involuntary hospitalization for a service recipient under T.C.A. Title 33, Chapter 6, Part 4;
 2. An order from a court with proper jurisdiction under T.C.A. § 33-7-301(a);
 3. An order from a court with proper jurisdiction under T.C.A. § 33-7-301(b);
 4. An order from a court with proper jurisdiction under T.C.A. § 33-7-303(c);
 5. An order from a court with proper jurisdiction under T.C.A. § 37-1-128;
 6. An order from a court with proper jurisdiction under T.C.A. Title 33, Chapter 6, Part 5;
 7. An order from a court with proper jurisdiction for admission under T.C.A. § 33-3-607;
 8. An order from a court with proper jurisdiction for recommitment for failure or inability to comply with a treatment plan under T.C.A. §§ 33-6-610 or 33-6-611;
 9. A written statement from a qualified mental health professional that the service recipient meets the conditions for recommitment for failure or inability to comply with a treatment plan under T.C.A. § 33-6-615;
 10. A written report from a licensed physician or licensed psychologist designated as a health service provider that a service recipient in a youth development center meets the conditions for admission under T.C.A. §§ 33-3-401 or 33-3-412;

11. A written report from a licensed physician or licensed psychologist designated as a health service provider that a service recipient in an RMHI of the Department of Corrections meets the conditions for admission under T.C.A. §§ 33-3-402 or 33-3-403;
12. A letter from the Commissioner authorizing the transfer of the service recipient from another facility or from a state owned or operated developmental center under T.C.A. § 33-3-301;
13. A letter from the DMHDD Interstate Compact Coordinator indicating that the service recipient has been approved for interstate transfer under T.C.A. § 33-9-201;
14. Approval by the RMHI chief executive officer or designee for the transfer of a service recipient from a private facility under T.C.A. § 33-3-301; or
15. Application for voluntary admission under T.C.A. § 33-6-201.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, and 33-2-301.

0940-03-13-.06 Policies and Procedures.

- (1) Each RMHI shall have written policies and procedures approved by the Department to govern the determination of available suitable accommodations at the RMHI including, but not limited to, the following:
 - (a) A policy stating that a bed assigned to a service recipient is not available until that service recipient has been discharged;
 - (b) Policies and procedures for maintaining waiting lists including, but not limited to, the following:
 1. Internal review and oversight of waiting lists at an RMHI; and
 2. Identifying available suitable accommodations at other facilities when a suitable accommodation is not available in the RMHI;
 - (c) Procedures for managing service recipients who arrive at the RMHI without written verification of available suitable accommodations; and
 - (d) Procedures for tracking and reporting data pertinent to this chapter.
- (2) The Department shall review RMHI policies and procedures governing the determination of available suitable accommodations to ensure that the policies are as uniform as possible.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309; and 33-2-301.

0940-03-13-.07 Waiting Lists.

- (1) Each RMHI shall establish waiting lists for service recipients referred for admission when:
 - (a) An RMHI has no available suitable accommodations and the referral source seeking a bed declines to accept a referral to an RMHI in another catchment area; or
 - (b) All RMHIs have no available suitable accommodations.
- (2) Each RMHI shall maintain waiting lists for service recipients referred from its catchment area and a service recipient shall not be placed on a waiting list for more than one RMHI unless approved by the Commissioner or designee.

- (3) Each RMHI shall work their waiting lists on a daily basis and continue to check for available suitable accommodations at the other RMHIs to minimize the length of time a service recipient waits for services.
- (4) Any referral source who decides to place a service recipient on a waiting list of a local RMHI shall provide the RMHI with:
 - (a) The service recipient's name; and
 - (b) The name and contact information for the referral source or designee.
- (5) The RMHI shall notify the referral source or designee as soon as a bed becomes available and provide verification of available suitable accommodations with a confirmation number.
- (6) As beds become available, they shall be offered to service recipients in the order in which they were placed on a waiting list based on the following priority order:
 - (a) Referrals for emergency involuntary admission;
 - (b) Referrals for non-emergency involuntary admission, including forensic admission; and
 - (c) Referrals for voluntary admission.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, and 33-2-301.

0940-03-13-.08 Transportation to an RMHI.

- (1) General Transportation Requirements. Transportation to an RMHI should only commence when the transporting person has been provided with:
 - (a) A written verification statement from the referral source or designee that that RMHI has been contacted and has verified available suitable accommodations with a confirmation number; and
 - (b) Evidence that the person in need of treatment meets criteria for referral. Evidence shall be one of the following:
 1. A certificate of need for emergency involuntary hospitalization for a service recipient under T.C.A. Title 33, Chapter 6, Part 4;
 2. An order from a court with proper jurisdiction under T.C.A. § 33-7-301(a);
 3. An order from a court with proper jurisdiction under T.C.A. § 33-7-301(b);
 4. An order from a court with proper jurisdiction under T.C.A. § 33-7-303(c);
 5. An order from a court with proper jurisdiction under T.C.A. § 37-1-128;
 6. An order from a court with proper jurisdiction under T.C.A. Title 33, Chapter 6, Part 5;
 7. An order from a court with proper jurisdiction for admission under T.C.A. § 33-3-607;
 8. An order from a court with proper jurisdiction for recommitment for failure or inability to comply with a treatment plan under T.C.A. §§ 33-6-610 or 33-6-611;
 9. A written statement from a qualified mental health professional that the service recipient meets the conditions for recommitment for failure or inability to comply

with a treatment plan under T.C.A. § 33-6-615;

10. A written report from a licensed physician or licensed psychologist designated as a health service provider that a service recipient in a youth development center meets the conditions for admission under T.C.A. §§ 33-3-401 or 33-3-412;
 11. A written report from a licensed physician or licensed psychologist designated as a health service provider that a service recipient in an RMHI of the Department of Corrections meets the conditions for admission under T.C.A. §§ 33-3-402 or 33-3-403;
 12. A letter from the Commissioner authorizing the transfer of the service recipient from another RMHI or from a state owned or operated developmental center under T.C.A. § 33-3-301;
 13. A letter from the Interstate Compact Coordinator of the Department of Mental Health and Developmental Disabilities indicating that the service recipient has been approved for interstate transfer under T.C.A. § 33-9-201; or
 14. Approval by the RMHI chief executive officer or designee for the transfer of a service recipient from a private facility under T.C.A. § 33-3-301.
- (2) Transportation to an RMHI by a Sheriff or Secondary Transportation Agent for Emergency Involuntary Hospitalization under T.C.A. Title 33, Chapter 6, Part 4.
- (a) If the certificate of need and the written statement verifying that the RMHI has available suitable accommodations is not provided, then the sheriff or secondary transportation agent is not required to take custody of the service recipient for transportation.
 - (b) Failure of the sheriff or secondary transportation agent to provide both a certificate of need and the written statement verifying that the RMHI has available suitable accommodations shall result in all costs of the service recipient's admission and treatment being assessed to the transporting county.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301 and 33-6-406(a).

0940-03-13-.09 Reporting Requirement.

- (1) The Department shall report quarterly to the House Health and Human Resources Committee, the Senate General Welfare, Health and Human Resources Committee, and the Finance, Ways and Means Committees of both the House and Senate the implementation and the impact of available suitable accommodations, including the number and length of any delayed admissions.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, and 33-6-109.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Mental Health and Developmental Disabilities on 12/21/09, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/03/2009

Rulemaking Hearing(s) Conducted on: (add more dates). 11/20/2009



Date: 12/21/09

Signature: [Handwritten Signature]

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

Title of Officer: Commissioner

Subscribed and sworn to before me on: December 21, 2009

Notary Public Signature: [Handwritten Signature]

My commission expires on: July 8, 2013

All rulemaking hearing 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.

[Handwritten Signature]

Robert E. Cooper, Jr.
Attorney General and Reporter

3-29-10

Date

Department of State Use Only



Filed with the Department of State on: 3/31/10

Effective on: 6/29/10

[Handwritten Signature]

Are Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Departmental responses to oral comments made at the Public Hearing held on November 20, 2009:

1. Dick Blackburn, Executive Director, Tennessee Association of Mental Health Organizations (Nashville) requested that the rules be reviewed again in six (6) months.

TDMHDD Response: The Department regularly reviews all Departmental rules and will review these rules as needed.

2. Mr. Blackburn made several recommendations about the Department's role in expeditiously finding a state-owned hospital or treatment resource until suitable accommodations become available including designating a person with the authority to act on matters involving the placement of individuals; providing the names of designees accessible at each shift at the RMHI to provide verification of available suitable accommodations; and requiring the Commissioner to be available twenty-four (24) hours a day, seven (7) days a week to assist referring sources in finding a placement;

TDMHDD Response: The Department is committed to ensuring that all emergency admissions are handled expeditiously at the local level by RMHI admissions staff who are available twenty-four (24) hours a day, seven (7) days a week. The Department does not believe that emergency admissions decisions should be handled at the Central Office. If the local RMHI has no available suitable accommodations, the local RMHI is responsible for contacting alternate RMHIs and for providing contact information for an RMHI with available suitable accommodations. If the referral source decides to place the service recipient on a waiting list, the local RMHI is responsible for checking at least daily for available suitable accommodations at the local or alternate RMHIs. The local RMHI only stops checking when available suitable accommodations are identified or the service recipient is removed from the waiting list by the referral source.

3. Mr. Blackburn recommended that the Department develop more specific and detailed procedures to address the role of private hospitals in providing care for people with mental illness while they wait for a bed at a regional mental health institute.

TDMHDD Response: These rules only apply to admissions to regional mental health institutes. The Federal Emergency Medical Treatment and Active Labor Act requires most hospitals to provide an examination and needed stabilizing treatment, without consideration of insurance coverage or ability to pay, when a patient presents to an emergency room for attention to an emergency medical condition.

4. Judge Dan Eisenstein (Nashville), Sita Diehl, Executive Director, National Alliance on Mental Illness in Tennessee (Nashville), and Mr. Blackburn urged the Department to identify safe places for persons with mental illness to wait when admission to a regional mental health institute is delayed.

The Department encourages referring professionals, local agencies, hospitals, law enforcement, and treatment resources to develop community strategies to protect service recipients and the community if there is a delay in admission to an RMHI. Referring professionals should make a decision about the best way to keep a service recipient and the community safe when there is a delay in admission to an RMHI.

Bob Barker, Sumner County Sheriff (Gallatin) represented the Tennessee Sheriff's Association at the hearing. He asked a number of questions which are listed below:

5. Sheriff Barker asked for clarification about Rule 0940-03-13-.02(12) General Admission Requirements:
 - (12) If during the evaluation for admission, it is determined that the service recipient has a physical disorder that requires immediate medical care that the RMHI cannot appropriately provide, the service recipient shall be sent for treatment of the medical condition prior to being admitted to the RMHI. Any service recipient diverted for medical treatment with a valid confirmation number may

be transported back to the RMHI for an evaluation for admission.

TDMHDD Response: The responsibility for transporting a service recipient to an RMHI for involuntary emergency mental health inpatient treatment has not changed. The sheriff or designated transportation agent is responsible for transporting service recipients referred for involuntary admission to an RMHI regardless of the location of the RMHI with an available bed. If, during the evaluation for admission, it is determined that the service recipient has a physical disorder or medical condition that requires immediate medical care that the RMHI cannot appropriately provide, the service recipient will not be admitted. Local sheriffs should work with local care providers to determine where to transport service recipients needing medical care. Any service recipient diverted for medical treatment with a valid confirmation number may be transported back to the RMHI for an evaluation for admission. Confirmation numbers will only be canceled in response to circumstances such as the service recipient is admitted to another facility or no longer needs inpatient hospitalization.

6. Sheriff Barker asked for clarification about Rule 0940-03-13-.02(13) General Admission Requirements:

- (13) The RMHI may cancel a confirmation number when it is reasonable to do so. Prior to canceling a confirmation number, the RMHI shall contact the referral source or designee. When a service recipient's confirmation number is canceled, that service recipient may be placed on a waiting list for possible future admission.

TDMHDD Response: Confirmation numbers may only be canceled in response to circumstances such as the service recipient is admitted to another facility or no longer needs inpatient hospitalization. The reason for canceling a confirmation number is to free reserved beds for other admissions. The RMHI notifies the referral source or designee if a confirmation number is going to be canceled. Confirmation numbers are not canceled when the facility is notified that a person is in route to an RMHI.

7. Sheriff Barker requested clarification about Rule 0940-03-13-.04(4) Determination of Geographic Catchment Areas. He wanted to know how a sheriff could appeal the assignment of a county to a geographic catchment area.

- (4) The Department shall inform courts, law enforcement and major referral sources such as crisis response providers, emergency departments of general hospitals, and mental health and substance abuse providers of changes in the geographic catchment areas.

TDMHDD Response: The rules require the Commissioner to review, at least annually, the geographic catchment area for each RMHI no later than thirty (30) days after the beginning of the fiscal year. Any person may send a letter to the Commissioner to request a change in the geographic catchment area for a county.

8. Sheriff Barker requested clarification about Rule 0940-03-13-.05 Verification of Available Suitable Accommodations. He expressed concern that service recipients may be held in jail while they are waiting for available suitable accommodations.

TDMHDD Response: The Department encourages referring professionals, local agencies, hospitals, law enforcement, and treatment resources to develop community strategies to protect service recipients and the community. Referring professionals should make a decision about the best way to keep a service recipient and the community safe when there is a delay in admission to an RMHI.

9. Sheriff Barker commented on Rule 0940-03-13-.07(5) Waiting Lists. He asked, "Who is responsible for holding a person until they have a confirmation number?"

- (5) The RMHI shall notify the referral source or designee as soon as a bed becomes available and provide verification of available suitable accommodations with a confirmation number.

TDMHDD Response: Sheriffs or other transportation agents are not required to take custody of persons for transportation to a regional mental health institute unless supplied with both the original certificate of need and written statement verifying available suitable accommodations. The Department encourages referring professionals, local agencies, hospitals, law enforcement, and treatment resources to develop community strategies to protect service recipients and the community. Referring professionals should make a decision about the best way to keep a service recipient and the community safe when there is a delay in admission to an RMHI.

10. Sheriff Barker commented on T.C.A. § 33-6-406 and § 33-6-407. If a person is picked up at a public location, to what location should they be returned?

TDMHDD Response: The responsibility for transporting a service recipient to an RMHI for involuntary emergency mental health inpatient treatment has not changed. The sheriff or designated transportation agent is responsible for transporting service recipients referred for involuntary admission to an RMHI regardless of the location of the RMHI with an available bed. If the person is not subject to admission and the sheriff or transportation agent is under a duty to remain at the hospital or treatment resource under T.C.A. § 33-6-406, the sheriff or transportation agent shall return the person to a place in the county determined by the sheriff.

11. Sheriff Barker commented on Rule 0940-03-13-.07(5) Waiting Lists. He asked, "Does the sheriff have to respond to a crisis team when the crisis team does not have a confirmation number?"

- (5) The RMHI shall notify the referral source or designee as soon as a bed becomes available and provide verification of available suitable accommodations with a confirmation number.

TDMHDD Response: The sheriff or designated transportation agent is not required to take custody for the purpose of transporting a service recipient to an RMHI unless both the original certificate of need and the written statement verifying available suitable accommodations are provided.

12. Sheriff Barker requested the Department to conduct an economic impact study of the cost of implementing the new law. The study should take into account the cost of gasoline and the cost of deploying officers for transporting people, as well as the cost to the county of diminished law enforcement.

TDMHDD Response: The fiscal impact of implementing the new law is estimated to be a savings in State recurring appropriations of \$11,811,700. The Department is unable to accurately estimate any additional costs to counties of implementing the new law without more experience. As of early December 2009 (and after eliminating 70% of the beds proposed for reduction in 2009-2010), only a small number of service recipients (74 of over 5,565 referrals) have been subject to the possibility of a delayed admission. Of those subject to delayed admission, 38% accepted the Department's offer of immediate placement at the nearest RMHI; and of those that requested instead to be placed on a waiting list at the current RMHI, 76% were resolved within the first 24 hours.

13. David Conner, Executive Director, Tennessee County Commissioners Association (Nashville), suggested amending Rule 0940-03-13-.04 (3) Determination of Geographic Catchment Areas to add the following consideration:

- () The ability of the transportation agent to transport as efficiently as possible.

TDMHDD Response: The proximity of the RMHI to a county seat should be one of factors taken into consideration when changing geographic catchment areas. A new subparagraph will be added to Rule 0940-03-13-.04 (3) to read:

- (f) The proximity of the RMHI to a county seat;

14. Mr. Conner recommended that the Department study the transportation system between RMHIs and counties and use geographic information to plot the most efficient routes possible to various RMHIs.

TDMHDD Response: The rules require the Commissioner to review, at least annually, the geographic catchment area for each RMHI no later than thirty (30) days after the beginning of the fiscal year. Any person may provide the Commissioner with information to be taken into consideration in determining the geographic catchment area for an RMHI.

Departmental responses to written comments received on November 20, 2009:

15. Carla Ponciroli Babb, LPC-MHSP, Director, Specialized Crisis Service, Youth Villages (Nashville) stated that TennCare MCOs (both Amerigroup and ValueOptions) have ended their contracts with Skyline and Rolling Hills. Value Options only has a contract with Vanderbilt. This change has resulted in more referrals from Youth Villages to MTMHI when Vanderbilt denies services.

TDMHDD Response: The impact of changes in managed care contracts on services to children and youth should be reported to the Bureau of TennCare.

16. Ms. Babb noted that Rule 03-13-.03(2)(e) states that contractual relationships with health plans need to be considered by the Commissioner when thinking about changing bed capacity at the RMHI. Ms. Babb requested that a monthly update of contracts be sent to the TDMHDD Commissioner so that she is fully aware of changes in bed availability at private hospitals.

TDMHDD Response: The responsibility for monitoring TennCare contracts with mental health providers has been transferred to the Bureau of TennCare. The rules, however, require the Commissioner or designee to at least annually establish the bed capacity for each RMHI no later than 30 days after the beginning of the fiscal year. The Department will, on an annual basis, determine bed capacity based on the factors detailed in Rule 03-13-.03 (13) including (c) the ability of facilities to meet the needs of special populations; (e) contractual relationships with health plans; and/or (f) The need to respond to other factors that may arise. Any person may provide the Commissioner with information to be taken into consideration in determining the bed capacity of an RMHI.

17. Judge Dan Eisenstein (Nashville); Sita Diehl, Executive Director, National Alliance for Mental Illness (Nashville); Dick Blackburn, Executive Director, Tennessee Association of Mental Health Organizations (Nashville); and Mr. Anthony Fox, Executive Director, Mental Health Consumers Association (Nashville) expressed concerned that the implementation of the law allowing admissions to mental health institutes to be subject to available suitable accommodations would impact the safety and emotional stability of Tennesseans with mental illness.

TDMHDD Response: Many of the comments made at the hearing did not directly address the rules to implement this law, but questioned the change in state law (Public Chapter 531 effective July 1, 2009) allowing RMHIs to admit only the number of service recipients who can be safely and effectively treated. The new law allows delays in admissions so the Department can maintain good standing with accrediting and regulatory entities, such as the Joint Commission and the Centers for Medicare and Medicaid Services, while reducing the number of staff (operating) beds from 832 to 686 by June 30, 2010.

TDMHDD is committed to providing high quality inpatient care and to investing in important community services to direct service recipients from hospitalization. TDMHDD encourages referring professionals to work with local agencies, hospitals, and law enforcement to develop strategies to protect both service recipients and the community if admission to an RMHI is delayed. Currently there are more than 2,000 inpatient psychiatric beds in hospitals other than RMHIs in Tennessee. Professionals should refer a service recipient needing inpatient treatment to a hospital providing psychiatric treatment before making a referral to an RMHI.

Regulatory Flexibility Addendum

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

Rules Chapter 0940-03-13 Admission to a Regional Mental Health Institute may have an effect on small businesses with the responsibility for referring service recipients for emergency involuntary treatment at a regional mental health institute (RMHI). These businesses will have to work with local agencies, hospitals, and law enforcement to develop strategies to protect both service recipients and the community if admission to an RMHI is delayed. All referral sources, regardless of size, will be required to follow these rules.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Rule 0940-03-13-.01 Definitions defines terms used in the chapter.
Rule 0940-03-13-.02 General Admission Requirements provides general rules governing the admission of service recipients to a regional mental health institute.
Rule 0940-03-13-.03 Determination of Bed Capacity sets forth the procedures and criteria the Department will use to determine bed capacity at the RMHIs.
Rule 0940-03-13-.04 Determination of Geographic Catchment Areas sets forth the procedures and criteria the Department will use to determine geographic catchment areas.
Rule 0940-03-13-.05 Verification of Available Suitable Accommodations describes the requirements that must be met to obtain confirmation of available suitable accommodations in an RMHI.
Rule 0940-03-13-.06 Policies and Procedures describes the specific policies and procedures required for individual RMHIs.
Rule 0940-03-13-.07 Waiting Lists describes the requirements for obtaining placement on a waiting list and the rules that govern admission of service recipients on the waiting list.
Rule 0940-03-13-.08 Transportation to an RMHI describes the documentation needed prior to transporting a service recipient to an RMHI.
Rule 0940-03-13-.09 Reporting Requirement describes quarterly reporting requirements for the RMHI.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 4-4-103: Empowers the Commissioner of each department to prescribe regulations.
T.C.A. § 33-1-302: Empowers the Department to make and enforce rules necessary for the efficient financial management and lawful operation of facilities and services.
T.C.A. § 33-1-305: Empowers the Commissioner of the Department of Mental Health and Developmental Disabilities to adopt rules to fulfill the Department's responsibilities.
T.C.A. § 33-1-309: Requires the Department to adopt all rules in accordance with the Uniform Administrative Procedures Act.
T.C.A. § 33-2-301: Requires the Department to set basic quality standards for services and supports.
T.C.A. § 33-6-101: Requires that services to persons with mental illness and serious emotional disturbance are governed by this title to regulate compliance with basic quality standards.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The justice system, advocates for the mentally ill including National Alliance for Mental Illness, Mental Health Consumers Association, and Disability Law and Advocacy Center of Tennessee, Tennessee Association of Mental Health Organizations, public and private psychiatric hospitals, and general hospitals. These various groups have neither urged adoption nor rejection of these rules; however, they have expressed concerns about the law creating the need for the rules.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There are no known opinions of the attorney general and reporter of any judicial ruling that directly relates to the rule.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The fiscal impact of implementing the new law is estimated to be a savings in State recurring appropriations of \$11,811,700. The Department is unable to accurately estimate any additional costs to counties of implementing the new law without more experience. As of early December 2009 and after eliminating 70% of the beds proposed for reduction in 2009-2010, only a small number of service recipients (74 of over 5,565 referrals) have been subject to the possibility of a delayed admission. Of those subject to delayed admission, 38% accepted the Department's offer of immediate placement at the nearest RMHI; and of those that requested instead to be placed on a waiting list at the current RMHI, 76% were resolved within the first 24 hours.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Zack Griffith, General Counsel

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Zack Griffith, General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

N/A