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Sequence Number: 05-19-09  
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 File Date: 05/26/2009

# Notice of Rulemaking Hearing

*Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.*

<b>Agency/Board/Commission:</b>	Tennessee Department of Mental Health and Developmental Disabilities
<b>Division:</b>	Office of Licensure and Review
<b>Contact Person:</b>	Karen Edwards
<b>Address:</b>	425 Fifth Avenue North 5 <sup>th</sup> Floor, Cordell Hull Building Nashville, TN 37243
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*Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:*

<b>ADA Contact:</b>	Gwen Hamer
<b>Address:</b>	425 Fifth Avenue North 5 <sup>th</sup> Floor, Cordell Hull Building Nashville, TN 37243
<b>Phone:</b>	615-532-6510
<b>Email:</b>	<a href="mailto:Gwen.Hamer@tn.gov">Gwen.Hamer@tn.gov</a>

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	425 Fifth Avenue North		
Address 2:	3 <sup>rd</sup> Floor, Cordell Hull Building		
City:	Nashville		
Zip:	37243		
Hearing Date :	07/16/2009		
Hearing Time:	9:30 a.m.	<input checked="" type="checkbox"/> CST	<input type="checkbox"/> EST

**Additional Hearing Information:**

TDMHDD Large Conference Room

**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

**Rule(s)** (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
0940-05-06	Minimum Program Requirements for All Services and Facilities

<b>Rule Number</b>	<b>Rule Title</b>
0940-05-06-.01	Governance Requirements for All Services and Facilities
0940-05-06-.02	Policies and Procedures for All Services and Facilities
0940-05-06-.03	Financial Management for All Services and Facilities
0940-05-06-.04	Personnel Requirements for All Services and Facilities
0940-05-06-.05	Service Recipient Record Requirements for All Services and Facilities
0940-05-06-.06	Non-Modifiable Service Recipient Rights in All Services and Facilities
0940-05-06-.07	Modifiable Service Recipient Rights in All Services and Facilities
0940-05-06-.08	Modification or Limitation of Rights of All Service Recipients by Rules, Policies, or Procedures
0940-05-06-.09	Modification or Limitation of an Individual Service Recipient's Rights

(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>)

0940-05-06-.01 Governance Requirements for All Services and Facilities.

- (1) The governing body must:
  - (a) Ensure that the facility or service complies with all applicable federal, state, and local laws, ordinances, rules, and regulations;
  - (b) Ensure that the facility or service is administered and operated in accordance with written policies and procedures;
  - (c) Exercise general direction over and establish policies governing the operation of the facility or service and the welfare of the service recipients;
  - (d) Designate an individual responsible for the operation of the facility or service and a policy and procedure that ensures that someone is delegated the authority to act in his/her absence; and
  - (e) Ensure that the placement of service recipients in the licensed facility or service will not violate its licensed status, capacity based on the distinct licensure category, life safety occupancy classification, and the required staffing ratios, if any.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

0940-05-06-.02 Policies and Procedures for All Services and Facilities.

- (1) The governing body must ensure that current written policies and procedures are maintained and available to all staff, service recipients and members of the public. The following elements must be covered:
  - (a) A description of services provided by the licensee. The description must include:
    1. The hours of operation;
    2. A description of the intake, assessment and treatment/service process;
    3. Service recipient admission, re-admission criteria, and exclusion criteria;
    4. A description of referral and aftercare processes including, but not limited to, referrals to psychiatric and alcohol and/or drug abuse treatment services;
    5. Procedures for referring service recipients to medical and/or non-medical services outside the facility;
    6. Discharge criteria and process;
    7. Availability of staff, including medical staff;
    8. Procedures for receiving referrals;
    9. Rules for service recipients if any;
    10. Non-emergency transportation of service recipients, if applicable;
    11. Medication administration and/or medication assistance process; and
    12. An organizational chart which clearly shows the lines of authority between the governing body, the chief executive officer, and the staff.

- (b) Procedures regarding payment, including fee schedules and third party payments charged to service recipients for all services provided by the licensee. The schedule must include the refund policy.
- (c) Nondiscrimination policies, complaint procedures, programs and services in compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. including, but not limited to, posting legal notices of non-discrimination in conspicuous places, available to employees, applicants and service recipients.
- (d) Policies and procedures that ensure the confidentiality of information regarding service recipients that include the following provisions:
  - 1. The staff must comply with applicable state and federal confidentiality laws and rules including federal alcohol and drug regulations, 42 CFR, Part 2.
  - 2. Names and photographs of service recipients, information regarding the service recipient, or recordings of the service recipient must not be used in the service materials, advertisements, other publications, or news stories without the written and signed consent of an adult service recipient or the service recipient's guardian or conservator or attorney in fact, if applicable.
  - 3. Service recipients must not be required to perform in public gatherings.
  - 4. Service recipients must not be required to make public statements which acknowledge gratitude to the licensee or for the licensee's services.
- (e) The plans and procedures to be followed in the event of fire evacuation, other disasters or emergencies.
- (f) Policies and procedures that address methods for ensuring the safety of service recipients and on-duty staff when in and out of the facility under the following conditions:
  - 1. Situations that pose a potential danger;
  - 2. Situations that require use of law enforcement; and
  - 3. Situations when service recipients living in residential facilities are missing without authorization.
- (g) The plans and procedures to be followed in the event of an emergency involving service recipient care that provides for emergency transportation, emergency medical care, and staff coverage in such events.
- (h) A policy that prohibits service recipients, except those certified by the Department as peer or family specialists who are working at a facility in that capacity, from having any of the following responsibilities:
  - 1. Care of other service recipients;
  - 2. Supervision of other service recipients; and
  - 3. Access to confidential information about other service recipients.
- (i) Policies and procedures to be followed in the reporting and investigating of suspected or alleged abuse, mistreatment, or neglect of service recipients, or other critical incidents, including severe injury and death that occur while under the licensee's supervision. Provisions for the corrective action, if any, to be taken as a result of such incidents and investigations must be included. The procedures must also include provisions for reporting incidents or allegations to the Tennessee Department of Mental Health and Developmental Disabilities' Office of Licensure and Review and other appropriate state agencies and local law enforcement agencies when necessary.

- (j) Policies and procedures that ensure that volunteers, if used by the program, are in a supportive capacity and are under the supervision of designated staff members.
- (k) If the facility or service is involved in research, policy and procedures for the involvement of human subjects in research that must include the following:
  1. Identification of subjects, activities, and participating staff;
  2. Risks to subjects are minimized and reasonable in relation to anticipated benefits;
  3. Provisions to protect the personal and civil rights of the subjects, including confidentiality and the right to withdraw from the research at any point in the study;
  4. Obtaining the informed consent of the subjects or subjects' legally authorized representative;
  5. If consent is given by a legally authorized representative, a court document proving the relationship of the representative to the subject must accompany the consent form and appropriate provisions to ensure capacity to give informed consent is present at the time consent is sought from each subject;
  6. Assurance that all research projects are conducted under the direction and supervision of professional staff qualified by education and experience to conduct research;
  7. Emergency guidelines for problems that may develop during research activities;
  8. Appointment of a facility or service representative to act as coordinator of the research activities; and
  9. Provisions to ensure that all research conforms to confidentiality policies outlined in 45 Code of Federal Regulations (CFR), Part 46, Protection of Human Subjects; the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule; Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR §§2.1 et seq.); 42 CFR §2.12; and Title 33.
- (l) Policies and procedures for ensuring that employees and volunteers comply with procedures for detection, prevention, and reporting of infectious and communicable diseases to the Tennessee Department of Health.
- (m) A policy ensuring that employees and volunteers practice infection control procedures and standard precautions to protect the service recipient from infectious diseases as defined by the Centers for Disease Control (CDC).
- (n) Drug testing procedures, if any, used by the facility.
- (o) Policies and procedures regarding coordination of care with the service recipient's other health, mental health, social, educational, and residential service providers.
- (p) A requirement that the licensee provide to the service recipient, upon admission for services, a written statement outlining in non-technical language all rights of service recipients under Title 33.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

0940-05-06-.03 Financial Management of All Services and Facilities.

- (1) The licensee holding or receiving funds or property for the service recipient as trustee or

representative payee will adhere to all laws, state and federal, that govern his position and relation to the service recipient.

- (2) The licensee must prohibit staff and proprietors from borrowing money from service recipients.
- (3) The licensee must prohibit staff and proprietors from exploiting service recipients through the sale of goods and services.
- (4) The licensee must ensure that all money held and disbursed on the service recipient's behalf is for the strict, personal benefit of the service recipient and not for the licensee's own use or gain.
- (5) The licensee must not mix its funds with those of the service recipient.
- (6) The licensee must not take property of the service recipient for the facility's own use or gain.
- (7) The licensee must maintain a written account of all monies received or disbursed on behalf of the service recipient. The licensee must provide an annual report to the service recipient, or the adult service recipient's conservator, or a child's parent, legal custodian or guardian of the service recipient's funds being held and disbursed by the licensee unless ongoing documentation of transactions is provided to the service recipient, parent, guardian, legal custodian, conservator, or attorney-in-fact.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

0940-05-06-.04 Personnel Requirements for All Services and Facilities.

- (1) The licensee must ensure that all staff providing services have the necessary skills, qualifications, training and supervision to provide services.
  - (a) Each staff member must be provided with initial orientation and training. Training activities must provide staff with the knowledge and skills necessary to support the service recipients being served. The provision of staff training must be evidenced by documentation in the facility's records.
  - (b) Each staff member must receive annual training appropriate to their assigned duties documented in the licensee's records.
  - (c) Direct services staff members must be competent persons aged eighteen (18) years of age or older.
  - (d) Volunteers must be provided with initial and on-going training which are appropriate to their assigned duties; such training must be documented in the licensee's records.
  - (e) A personnel file must be maintained for each staff member that includes:
    1. A job description including the employment requirements and job responsibilities for each staff position held;
    2. Verification that the employee meets the respective employment requirements for each position held;
    3. Evidence of the following inquiries prior to or within ten (10) days of employment or within ten (10) days of a change of responsibilities if the employee's responsibilities include direct contact with or direct responsibility for service recipients:
      - i. A criminal background check as specified in T.C.A. § 33-2-1202;
      - ii. Status on the Tennessee Elderly and Vulnerable Abuse Registry maintained by the Department of Health;

- iii. Status on the Tennessee Sexual Offender Registry;
4. The employee's date of birth;
5. The employee's Social Security Number; and
6. Performance evaluation reports.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

0940-05-06-.05 Service Recipient Record Requirements for All Services and Facilities.

- (1) Documentation must be legibly recorded. In addition, the licensee must ensure that a service recipient record or an administrative record linked to the service recipient is maintained for each service recipient that minimally includes the following information:
  - (a) The name of the service recipient;
  - (b) The social security number of each service recipient;
  - (c) The address of the service recipient or, for residential treatment programs, a permanent or previous address;
  - (d) The telephone number of the service recipient;
  - (e) The gender of the service recipient;
  - (f) The service recipient's date of birth;
  - (g) If applicable, legal documentation affirming that the service recipient has a conservator, guardian, legal custodian, and/or attorney-in-fact;
  - (h) The name, address and telephone number of a family representative and, if applicable, conservator, guardian, legal custodian, and/or attorney-in-fact under a Durable Power of Attorney for Health Care;
  - (i) The name, address, and telephone number of an emergency contact person;
  - (j) The date of the service recipient's first day of service at the facility or service;
  - (k) The source of the service recipient's referral to the facility or service, if known;
  - (l) If fees are charged for service, a written fee agreement dated and signed by the service recipient (or the service recipient's legal representative) completed prior to provision of any services other than emergency services. Any changes in the amount of fees, services to be covered or additional charges require the completion of a new agreement. This agreement must minimally include at least the following information:
    1. The fee or fees to be paid by the service recipient;
    2. The services covered by such fees;
    3. Any additional charges for services not covered by the basic service fee; and
    4. The date of the agreement.
  - (m) When appropriate, authorization form(s) for releasing and obtaining information about the service recipient. These form(s) must be in compliance with state and federal confidentiality laws, including Title 33 of the Tennessee Code and federal alcohol and drug regulations and must include:

1. The name and the title of the person or organization to or from which disclosure is to be made;
  2. The signature of the service recipient or the signature of the person legally authorized to sign in lieu of the service recipient;
  3. The purpose of the disclosure;
  4. The extent and nature of information to be disclosed;
  5. A statement that the content is subject to revocation at any time except to the extent that action has already been taken in reliance thereon and a specification of the date, event or condition which the consent will expire without express revocation; and
  6. The date on which consent is signed;
- (n) Documentation that the service recipient and, if applicable, conservator, guardian, legal custodian, or attorney-in-fact has been informed of the following:
1. The specific rights guaranteed the service recipient;
  2. The facility or service grievance procedure;
  3. Available protective services including the means for contacting them. The list must minimally include the Disability Law & Advocacy Center of Tennessee; Department of Human Services (Adult Protective Services); Department of Children's Services (Child Protective Services); and the Tennessee Department of Mental Health and Developmental Disabilities' Office of Licensure and Review;
  4. All general facility or service rules and regulations for service recipients served; and
  5. Conflict resolution procedures;
- (o) Documentation of allergies, medical problems, accidents, seizures and illnesses and treatment for such;
- (p) Documentation of serious behavioral and/or medical events such as self-injury or death;
- (q) Documentation of the involvement of the service recipient, and, if applicable, a legal representative (parent of a child, legal custodian, guardian, conservator, or attorney-in-fact) in the development of the individualized program plan; refusal and/or inability to participate in the development of the plan must be documented;
- (r) Name of primary care physician, if known;
- (s) Signed, dated and legible progress notes; and
- (t) Any referrals made on behalf of the service recipient.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

0940-05-06-.06 Non-Modifiable Service Recipient's Rights in All Services and Facilities.

- (1) The following rights must be afforded to all service recipients. These rights may not be modified,
- (a) Service recipients have the right to be fully informed before or upon admission about their rights and responsibilities and about any limitation on these rights imposed by rules of the facility. Oral and written information regarding service recipient rights and responsibilities must be presented to service recipients in a manner that promotes understanding, in



accordance with T.C.A. § 33-4-105. A service recipient must be given an opportunity to ask questions about the information. If a service recipient lacks capacity to understand this information, the licensee must promptly attempt to provide the required information to a conservator, parent, guardian, or other appropriate person or agency involved with the individual. The information must then be presented to the service recipient when the service recipient can understand this information.

- (b) Service recipients have the right to be provided with information before or upon admission about services, rules of the service, and complaint, grievance and conflict resolution procedures.
- (c) Service recipients have the right to utilize complaint and grievance procedures. Service recipients may voice complaints and grievances to staff of the facility or services to the licensee, and to outside representatives of their choice with freedom from limitations, interference, coercion, discrimination, or reprisal.
- (d) Service recipients have the right to be treated with consideration, respect, and recognition of their dignity and individuality.
- (e) Service recipients have the right to be protected by the licensee from neglect; from physical, verbal, and emotional abuse (including corporal punishment); and from all forms of exploitation.
- (f) Service recipients have the right to be assisted by the facility or service in the exercise of their civil rights.
- (g) Service recipients have the right to be free of any requirement by the facility or service that they perform services that are ordinarily performed by facility or service staff.
- (h) Service recipients have the right to privacy while receiving services.
- (i) Service recipients have the right to have facts about them and facts in their records kept confidential in accordance with state and federal confidentiality laws.
- (j) Service recipients who are sixteen (16) years of age or older have the right to see their records if they request to see the record in writing.
- (k) Service recipients have the right to ask the service provider to change information in their records. If the service provider refuses, service recipients may file a brief statement in their record of the reasons they disagree.
- (l) Service recipients have the right to be free from discrimination because of disability, race, color, national origin, gender, age and/or religion.
- (m) Service recipients have the right to be informed about their care in a language they understand.
- (n) Service recipients have the right to vote, make contracts, buy or sell real estate or personal property, or sign documents, unless the law or court says they cannot.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

0940-05-06-.07 Modifiable Service Recipient's Rights in All Services and Facilities.

- (1) The following rights must be afforded to all service recipients by all licensed facilities or services unless modified in accordance with rules 0940-05-06-.08 and 0940-05-06-.09.
  - (a) Service recipients and, if applicable, a legal representative (conservators, parents of a child, guardians, or legal custodians) have the right to participate in the development of an individualized program plan and to receive sufficient information about proposed and alternative interventions and service goals to enable them to participate effectively.

- (b) Service recipients have the right to participate fully, or to refuse to participate, in community activities including cultural, educational, religious, community services, vocational, and recreational activities.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

0940-05-06-.08 Modification or Limitation of Rights of All Service Recipients by Rules, Policies or Procedures.

- (1) The rights of all service recipients in a facility or service may only be modified or limited under the following conditions:
  - (a) It is demonstrated and documented that the purpose of the service cannot reasonably be achieved without such modification or limitation; and
  - (b) No modification or limitation may be made solely for the convenience of staff or be more stringent than necessary.
- (2) If a licensee chooses to limit or modify the rights of all service recipients, the service recipients and/or legal representatives of service recipients, as appropriate, must:
  - (a) Be fully informed and provided with oral and written information of the proposed facility or service rules, policies or procedures modifying or limiting service recipient rights, and of the reasons for modification;
  - (b) Be given an opportunity to object and to propose alternatives; and
  - (c) Be allowed to consult with family, friends, and/or advocacy agencies prior to the implementation of proposed facility or service rules, policies or procedures.
- (3) Rules, policies, or procedures that modify or limit the rights of all service recipients must be in writing and posted in a conspicuous place. If the individuals receive services in their homes, they must be provided with a written copy of the proposed rules, policies or procedures.

Authority: T.C.A. §§ 4-4-103; 4-5-020 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

0940-05-06-.09 Modification or Limitation of an Individual Service Recipient's Rights.

- (1) The rights of an individual service recipient may only be modified or limited under the following conditions:
  - (a) It is demonstrated and documented that such modification or limitation is necessary because of the service recipient's physical/mental condition or inappropriate behavior;
  - (b) Any modifications or limitations and the reasons must be documented in the service recipient's record;
  - (c) No modification or limitation may be made solely for the convenience of staff or be more stringent than necessary; and
  - (d) The service recipient or a representative of the service recipient as appropriate must be given an opportunity to object, to propose alternatives, and to consult with family, friends, and/or advocacy agencies prior to implementation of the modifications or limitations.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

Repeals

Chapter 0940-05-06 Minimum Program Requirements for All Facilities is repealed in its entirety.

Authority: T.C.A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 5/21/09

Signature: [Handwritten Signature]

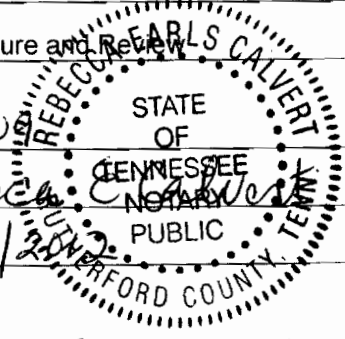
Name of Officer: Cynthia C. Tyler

Title of Officer: Director, Office of Licensure and Review

Subscribed and sworn to before me on: 5/21/09

Notary Public Signature: Rebecca Calvert

My commission expires on: 06/03/2012



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Filed with the Department of State on: 5/26/09 My Commission Expires

[Handwritten Signature]  
Tre Hargett  
Secretary of State

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