

Department of Mental Health and Developmental Disabilities  
Notice of Rulemaking Hearing  
Office of Licensure

There will be a hearing before the Tennessee Department of Mental Health and Developmental Disabilities, Office of Licensure to consider the promulgation of new rules and repeal of rules pursuant to T.C.A. §§ 4-4-103, 4-5-202, and 204, and 33-1-302, 305, and 309, 33-2-301 and 302, and 33-2-404. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Tennessee-B Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 1:00 p.m., Central Daylight Time on the 20th day of September, 2005.

Individuals with disabilities who wish to participate in these proceedings or review these filings should contact the Tennessee Department of Mental Health and Developmental Disabilities, to discuss any auxiliary aids or services needed to facilitate such participation or review. Such contact may be in person, by writing, telephone, or other means, and should be made no less than ten (10) days prior to the scheduled meeting date or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Mental Health and Developmental Disabilities ADA Coordinator, Joe Swinford, 3<sup>rd</sup> Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37243. Mr. Swinford's telephone number is (615) 532-6700; the department's TDD is (615) 532-6612. Copies of the notice are available from the Tennessee Department of Mental Health and Developmental Disabilities in alternative format upon request.

For a copy of the entire text of this notice of rulemaking hearing contact:

Glenda Rogers, Office of Licensure, Department of Mental Health and Developmental Disabilities, 425 Fifth Avenue North, Fifth Floor, Cordell Hull Building, Nashville, TN 37243-1010, (615) 532-6590.

Substance of Proposed Rules

New Rules

Chapter 0940-5-20

Minimum Program Requirements for Mental Retardation Day Services and Facilities

Table of Contents

- 0940-5-20-.01 Definition
- 0940-5-20-.02 Application of Rules
- 0940-5-20-.03 Health, Safety and Welfare Safeguards in Day Services and Facilities
- 0940-5-20-.04 Personnel and Staffing Requirements for Day Services and Facilities
- 0940-5-20-.05 Record Requirements for Day Services and Facilities
- 0940-5-20-.06 Medication Administration in Day Services and Facilities

- 0940-5-20-.07 Vocational Services in Day Services and Facilities
- 0940-5-20-.08 Supports and Services in Day Services and Facilities
- 0940-5-20-.09 Personal Care Provisions in Day Services and Facilities
- 0940-5-20-.10 Assessment Requirements for Day Services and Facilities
- 0940-5-20-.11 Individual Support Plan Requirements for Day Services and Facilities
- 0940-5-20-.12 Individual Support Plan Monitoring in Day Services and Facilities
- 0940-5-20-.13 Requirements for the Use of Restricted Behavior Interventions in Day Services and Facilities
- 0940-5-20-.14 Use of Psychotropic Medications in Day Services and Facilities

0940-5-20-.01 Definition. Mental Retardation Day Services and Facilities - A non-residential service which provides supervision, assistance with the activities of daily living, or training to improve, maintain or prevent the loss of independence, skills and functions. Included are services that enable service recipients to sustain supported or competitive employment, participate in community activities and utilize community resources, participate in retirement activities, and training to acquire skills as specified in the plan of care. Services occur on a job site, in community locations, in the service recipient's home or in a facility for day services for individuals with disabilities.

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

0940-5-20-.02 Application of Rules.

- (1) The licensee of day services and facilities must comply with the following rules:
  - (a) Applicable life safety rules for Health Care Occupancy Classification when services occur in a facility serving four (4) or more persons who are not capable of self-preservation;
  - (b) Applicable life safety rules for industrial, or business, or day care, or educational occupancy classifications depending on the services provided or the use of the facility;
  - (c) Adequacy of Program Environment and Ancillary Services Rules;
  - (d) Minimum Program Requirements for All Program Rules;
  - (e) Minimum Program Requirements for Mental Retardation Day Services and Facilities; and
  - (f) Applicable rules for services provided to one (1) or more mobile non-ambulatory person(s).

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

0940-5-20-.03 Health, Safety and Welfare Safeguards in Day Services and Facilities.

- (1) The licensee must provide assistance to service recipients in receiving qualified dental, medical, nursing, medications prescribed by a physician, and care for emergencies, during day services hours.
- (2) The licensee must ensure that each service recipient receives an annual physical examination (unless less often is indicated by the service recipient's physician) which includes routine screenings (such as vision and hearing) and laboratory examinations (such as Pap smear, mammogram, prostate screening, and blood work) as determined necessary by the physician and special studies where the index of suspicion is high.
- (3) The licensee must require that a service recipient receive immunizations as required by the Tennessee Department of Health unless contraindicated by a doctor's written orders.
- (4) The licensee must ensure that the service recipient has had a physical examination within the twelve (12) months prior to admission or within thirty (30) days after admission.
- (5) The licensee must ensure that employees practice infection control procedures that will protect service recipients from infectious diseases.
- (6) The licensee must assist the service recipient/legal representative with planning for qualified dental, medical, nursing, medications prescribed by a physician, and care for emergencies, during day services hours.
- (7) The licensee must ensure that appropriate corrective actions have been taken in response to substantiated abuse or neglect.

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

0940-5-20-.04 Personnel and Staffing Requirements for Day Services and Facilities.

- (1) The licensee must provide one (1) direct services staff member for the first one (1) to ten (10) service recipients supported. One (1) additional direct services staff member must be provided for the next increment of (11) to fifteen (15) service recipients. When more than twenty (20) service recipients are served, one (1) additional direct services staff member must be provided for each additional increment of one (1) to twenty (20) service recipients present.

- (2) All employees must be screened for tuberculosis according to the procedures of the Tennessee Department of Health, or receive a tuberculosis skin test or chest X-ray before working directly with service recipients. Documentation must be maintained in the employee's personnel file.
- (3) The licensee must document that the Hepatitis B vaccine is made available to direct service employees.
- (4) Employees must be provided with a basic orientation in the specific needs of a service recipient prior to being assigned to work with him/her.
- (5) The licensee must provide at all times at least one (1) staff member who is certified in First Aid, Cardiopulmonary Resuscitation (CPR), and the Heimlich maneuver.
- (6) All staff must receive training in detection, reporting and prevention of abuse. This training must be documented in the staff record.
- (7) All professional services must be provided by persons duly licensed or certified to practice their profession in the State of Tennessee.
- (8) Service recipients must never be left unattended unless otherwise specified in the individual support plan. Approval by appropriate staff must be documented in the service recipient's record.

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

0940-5-20-.05 Record Requirements for Day Services and Facilities. The licensee must ensure that each individual's record contains the following information:

- (1) A recent photograph and a description of the service recipient;
- (2) The service recipient's social security number;
- (3) The service recipient's legal competency status, including the name of the guardian/conservator, if applicable;
- (4) The service recipient's source of financial support, including social security, veteran's benefit and insurance;
- (5) The source of coverage for medical care cost;
- (6) The name, address and telephone number of the physician or health agency providing medical services;
- (7) Documentation of significant behavior incidents and of actions taken while the service recipient is in the care of the licensee;

- (8) Documentation of the use of restrictive behavior support techniques while the service recipient is in the care of the licensee;
- (9) Written accounts of all monies received and disbursed on behalf of the service recipient; and
- (10) Documentation of all drugs prescribed or administered by the licensee which indicates date prescribed, type, dosage, frequency, amount, reason and side effects;
- (11) Documentation of medical problems, accidents, seizures and illnesses and treatments rendered for such medical problems, accidents, seizures and illnesses while the service recipient is in the care of the licensee;
- (12) A discharge summary which states the date of discharge, reasons for discharge, and referral for other services, if appropriate.

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

0940-5-20-.06 Medication Administration in Day Services and Facilities.

- (1) The level of supervision during the administration of medication is commensurate with the service recipient's capability.
- (2) When medications are administered by support staff, the licensee must:
  - (a) Ensure that if service recipients are not capable of self-administration of medication, the medication is only administered by personnel who are licensed or certified to administer medication in the State of Tennessee;
  - (b) Ensure that prescription medications are taken only by service recipients for whom they are prescribed;
  - (c) Provide storage for medications in a locked container that ensures proper conditions of security and sanitation and prevents accessibility by any unauthorized person;
  - (d) Assure the disposal of discontinued and outdated medications and containers with worn, illegible or missing labels;
  - (e) Report all medication errors, reactions or suspected overmedication to the practitioner who prescribed the medication; and

- (f) Maintain documentation of all prescription medications taken by service recipients, including the name of the medication, name of prescribing physician, date prescribed, purpose, dosage, frequency and side effects.

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

0940-5-20-.07 Vocational Services in Day Services and Facilities. When vocational services are provided, the licensee must ensure that work is provided is dignified and not demeaning or degrading to the service recipient. Work activities must be challenging to the capabilities of the service recipient and result in a sense of accomplishment and productivity.

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

0940-5-20-.08 Supports and Services in Day Services and Facilities.

- (1) There is ongoing documentation which includes the type of service, the activities in which a service recipient is involved while participating, the purpose of the activities, and how they relate to the service recipient's individualized plan.
- (2) Each Day Services program has the appropriate work center (sheltered workshop) certificate issued by the US Department of Labor when applicable.
- (3) Service recipients engage in activities throughout the day that are based on each service recipient's preferences and interests.
- (4) The physical and nutritional needs of service recipients are addressed as needed.
- (5) Service recipients who have eating/swallowing problems are identified and supported.
- (6) Special diets and mealtime practices as recommended by practitioners are implemented.
- (7) Service recipients have access to prescribed adapted equipment and/or assistive technology to facilitate proper seating and alignment, body control and functional participation in home, leisure and community activities.
- (8) Equipment is monitored to determine proper fit, working order, and need for repair.

- (9) Equipment storage is available.

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

0940-5-20-.09 Personal Care Provisions in Day Services and Facilities.

- (1) The licensee provides service recipients with assistance and support, as needed, with health, hygiene and grooming practices in a private and dignified manner.
- (2) The licensee provides service recipients with assistance and support in the use of dental appliances, eyeglasses and hearing aids, and other therapeutic equipment.
- (3) Staff must be responsible for the implementation of the orders of a physician including recuperative procedures subsequent to a service recipient's illness or injury.

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

0940-5-20-.10 Assessment Requirements for Day Services and Facilities. The following assessments must be completed prior to developing the individual support plan:

- (1) An assessment of current functioning in such areas as adaptive behavior and independent living skills;
- (2) A basic medical history and information and determination of the necessity of a medical evaluation and a copy, where applicable, of the results of the medical evaluation;
- (3) A six-month history of prescription, and non-prescription drugs, and alcohol and substance abuse history; and
- (4) An existing psychological assessment on file which is updated as recommended.

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

0940-5-20-.11 Individual Support Plan Requirements for Day Services and Facilities. The licensee must ensure that a written individual support plan (ISP) is provided and implemented for each service recipient within thirty (30) day of enrollment. The ISP must include the following:

- (1) The service recipient's name;

- (2) The date of plan development;
- (3) Goals and objectives which are related to the specific needs and preferences which are to be addressed;
- (4) Interventions that address specific goals and objectives, identify staff responsible for interventions and planned frequency of contacts;
- (5) The licensee must maintain documentation that supports the implementation and results of the service recipient's plan;
- (6) Signature(s) of staff who attend planning meetings and the names of the primary staff responsible for its implementation, and
- (7) Signature of the service recipient (and/or conservator, legal custodian, or attorney in-fact) or documentation of reasons for refusal to sign and/or inability to participate in ISP development.

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

0940-5-20-.12 Individual Support Plan Monitoring in Day Services and Facilities.

- (1) A review of the service recipient's response to the plan in achieving goals and meeting his/her needs must be documented monthly.
- (2) The individual support plan must be reviewed annually and revised as indicated.

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

0940-5-20-.13 Requirements for the Use of Restricted Behavior Interventions in Day Services and Facilities.

- (1) The licensee ensures that restricted behavior interventions are not provided until unrestricted interventions have been systematically tried or considered and have been determined to be inappropriate or otherwise contraindicated.
- (2) The licensee ensures that restricted behavior interventions are only provided through an approved written intervention plan.
- (3) If restricted interventions are provided, the written intervention plan must:



- (a) be based upon a functional assessment;
  - (b) utilize the least intrusive effective intervention that supports the service recipient in developing alternative behaviors;
  - (c) include procedures to reinforce the service recipient for interacting in more adaptive, effective ways so that the need for the challenging behavior is reduced;
  - (d) include information on the functional assessment, treatment rationale, procedures, generalization and maintenance strategies, data collection, and schedule for progress review;
  - (e) include measurable criteria for fading or removing the restricted intervention based on progress;
  - (f) clearly define all responsibilities for implementing components of the plan;
  - (g) clearly describe for staff: the description of the behavior, situations in which the behavior is likely to occur, signs and signals that occur prior to the behavior and what staff should do to reduce the likelihood of the behavior occurring, how staff should respond when the behavior occurs, what staff should do to encourage appropriate responses, what information staff should document, and crisis intervention or emergency procedures, as applicable.
- (4) The licensee ensures that the written intervention plan is reviewed and approved by appropriately constituted Behavior Support and Human Rights Committees prior to its implementation.
  - (5) The licensee ensures that staff who implement the written intervention plan are trained to competency on implementing the plan.
  - (6) The licensee ensures that staff implementation of the plan is monitored regularly and reported as part of progress notes.
  - (7) The licensee ensures that in the provision of behavior services, restraint or protective equipment is used only to protect the service recipient or others from harm and when other less intrusive methods have been ineffective or are contraindicated.
  - (8) The licensee ensures that in the provision of behavior services, the programmatic restraint or protective equipment is used only as part of any approved intervention plan for which consent has been obtained.

- (9) The licensee does not employ the following devices or practices in the provision of behavior services:
- (a) restraint vests, camisoles, body wraps;
  - (b) devices that are used to tie or secure a wrist or ankle to prevent movement;
  - (c) restraint chairs or chairs with devices that prevent movement;
  - (d) removal of a service recipient's mobility aids such as a wheelchair or walker;
  - (e) protective equipment that restricts or prevents movement or the normal use/functioning of the body or body part to which it is applied;
  - (f) protective equipment that impairs or inhibits visual or auditory capabilities or prevents or impairs speech or other communication modalities;
  - (g) any actions, including isolation or restraints imposed as a means of coercion, discipline, convenience or retaliation;
  - (h) corporal punishment, denial of a nutritionally balanced diet or any other procedures that may result in physical or emotional harm to the service recipient; and
  - (i) time out rooms.

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

0940-5-20-.14 Use of Psychotropic Medications in Day Services and Facilities.

- (1) The licensee obtains the following when psychotropic medications are used:
- (a) a diagnosis that is based on a comprehensive psychiatric assessment;
  - (b) reasons for prescribing medications and specific index behaviors (target behaviors, signs, symptoms) and quality of life outcomes that will be tracked and measured to assess impact of the treatment;
  - (c) a schedule of monitoring for side effect and adverse reactions;

- (d) a schedule of periodic review by the prescribing practitioner, including the changes in index behavior or quality of life outcomes that should prompt in-depth review by the psychiatrist.
- (2) The licensee ensures that there is informed consent from the service recipient and/or the guardian/conservator prior to utilizing psychotropic medications.

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

#### Repeals

Rule 0940-5-20-.01 is repealed.  
Rule 0940-5-20-.02 is repealed.  
Rule 0940-5-20-.03 is repealed.  
Rule 0940-5-20-.04 is repealed.  
Rule 0940-5-20-.05 is repealed.  
Rule 0940-5-20-.06 is repealed.  
Rule 0940-5-20-.07 is repealed.  
Rule 0940-5-20-.08 is repealed.  
Rule 0940-5-20-.09 is repealed.  
Rule 0940-5-20-.10 is repealed.  
Rule 0940-5-20-.11 is repealed.

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

This space left blank intentionally.

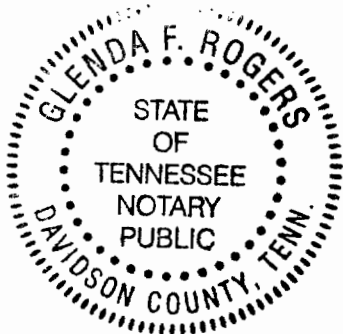
Contact who can answer questions concerning this notice of rulemaking hearing, technical contact for disk acquisition, and person who will approve final copy for publication: Glenda Rogers, Office of Licensure, Department of Mental Health and Developmental Disabilities, 425 Fifth Avenue North, Fifth Floor, Cordell Hull Building, Nashville, TN 37243-1010, (615) 532-6590.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Department of Mental Health and Developmental Disabilities, Office of Licensure.

*Virginia J. Betts*

Virginia Trotter Betts, MSN, JD, RN, FAAN, Commissioner  
Department of Mental Health and Developmental Disabilities

Subscribed and sworn to before me this the 22<sup>nd</sup> day of July, 2005.



*Glenda F. Rogers*  
Notary Public

My Commission Expires JULY 19, 2008

My commission expires on the 19th day of July, 2008.

The notice of rulemaking set out herein was properly filed in the Department of State on the 26 day of July, 2005.

RECEIVED  
2005 JUL 26 PM 1:55  
SECRETARY OF STATE  
PUBLICATIONS

*Riley C. Darnell*  
Riley C. Darnell  
Secretary of State

By: *M. Darnell*