

Department of State
Division of Publications
 312 Rosa L. Parks, 8th Floor Snodgrass/TN Tower
 Nashville, TN 37243
 Phone: 615.741.2850
 Fax: 615.741.5133
 Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 09-21-11
 Notice ID(s): 1668
 File Date: 09/23/2011

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.

Agency/Board/Commission:	Tennessee Department of Mental Health
Division:	Administrative Services
Contact Person:	Kurt Hippel
Address:	425 Fifth Avenue North 3 rd Floor, Cordell Hull Building Nashville, TN 37243
Phone:	615-532-9439
Email:	Kurt.Hippel@tn.gov

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:

ADA Contact:	Gwen Hamer
Address:	425 Fifth Avenue North 5 th Floor, Cordell Hull Building Nashville, TN 37243
Phone:	615-532-6510
Email:	Gwen.Hamer@tn.gov

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

Address 1:	425 Fifth Avenue North		
Address 2:	3 rd Floor, Cordell Hull Building		
City:	Nashville		
Zip:	37243		
Hearing Date :	11/14/2011		
Hearing Time:	9:30 a.m.	<input checked="" type="checkbox"/> CST	<input type="checkbox"/> EST

Additional Hearing Information:

TDMH 3rd Floor, CHB, Large Conference Room

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
----------------	---------------

0940-02-05	Regional Mental Health (RMHI) Care at the Expense of the State and Periodic Payments
Rule Number	Rule Title
0940-02-05-.01	Purpose
0940-02-05-.02	Definitions
0940-02-05-.03	RMHI Care at the Expense of the State for Indigent Service Recipients
0940-02-05-.04	Periodic Payments by Non-Indigent Service Recipients or Responsible Relatives

(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>)

0940-02-05-.01 Purpose.

- (1) The purpose of these rules is to describe the Department's policy for determining:
 - (a) Indigence such that a service recipient may receive care from a Regional Mental Health Institute (RMHI) at the expense of the state; and
 - (b) The periodic payments to be made by non-indigent service recipients or responsible relatives for care by a RMHI.
- (2) These rules do not apply to a person subject to evaluation, diagnosis or treatment under Title 33, Chapter 5; or Chapter 7, Part 3.
- (3) These rules only apply to Tennessee residents who are legally in the United States of America. Services recipients who are not Tennessee residents or are not legally in the United States of America shall be liable for the total charge for services provided and shall not be eligible for a periodic payment plan under this chapter.
- (4) Pursuant to T.C.A. § 33-1-204, these rules shall not create an entitlement to services from the state.

Authority: T.C.A. §§ 4-4-103, 33-1-204, 33-1-302, 33-1-305, 33-1-309, 33-2-1102; and 33-2-1108.

0940-02-05-.02 Definitions.

- (1) "Assets" means, excluding income, the total value of an individual's equity in real and personal property of whatever kind or nature. Assets include, but are not limited to, the individual's stocks, bonds, cash, accounts receivable, moneys due, or any other interests whether they are self-managed or held by the service recipient's authorized representative or by any other individual or entity on behalf of the service recipient.
- (2) "Charges" means the cost per patient day calculated under Rule 0940-02-01 Determination of Average Daily Cost, unless the actual cost exceeds 200% of the Average Daily Cost, in which case the Chief Officer of the RMHI may charge all or some portion of the actual bill to the service recipient, responsible relative, or third party payor.
- (3) "Department" or "TDMH" means the Tennessee Department of Mental Health.
- (4) "Federal Poverty Guidelines" means the latest federal poverty measurement guidelines, for all contiguous states and the District of Columbia, issued by the United States Department of Health and Human Services and published annually in the Federal Register under 42 U.S.C. 9902(2).
- (5) "Income" means gross income and is the total of earned and unearned income used by the Internal Revenue Service of the United States of America to determine whether an income tax return shall be filed.
- (6) "Liabilities" are debts and obligations. Liabilities consist of current liabilities, which are bills that are due to creditors to settle debts within a relatively short period of time (usually within one year) and include such obligations as utilities, rent insurance premiums, taxes, medical bills, repair bills, credit card balances. Liabilities also include long-term liabilities, which are debts that are not expected to be liquidated within one year and include mortgages and long-term leases, student and automobile loans and other structured and amortized loans.
- (7) "Net Worth" means the value of a person's assets compared to their liabilities.
- (8) "Period of indigence" means the period of time during which a service recipient has received or is receiving RMHI services and was determined to be indigent under this chapter.

- (9) "Period of non-indigence" means the period of time when a service recipient has received or is receiving RMHI services and was determined to be non-indigent under this chapter.
- (10) "Regional Mental Health Institute or RMHI" means a mental health hospital operated by TDMH for service recipients with mental illness or serious emotional disturbance.
- (11) "Responsible relative" means the parent of an unemancipated child with mental illness, serious emotional disturbance, alcohol dependence, drug dependence, or developmental disabilities who is receiving service in programs of the Department.
- (12) "Service recipient" means a person who is receiving care or has received care from a RMHI.
- (13) "Tennessee resident" means a person living in Tennessee with the intention of living there permanently or for an indefinite period of time.

Authority: T.C.A. §§ 4-4-103, 33-1-101, 33-1-302, 33-1-305, 33-1-309, and 33-2-1102.

0940-02-05-.03 RMHI Care at the Expense of the State for Indigent Service Recipients.

- (1) Any service recipient who receives care at a RMHI while indigent under this chapter shall receive that care at the expense of the state.
- (2) Nothing in this rule exempts any public or private third-party payor from financial liability for any allowable charges for care from an RMHI.
- (3) For the purposes of this rule, a service recipient is indigent during any period of time within which both of the following are true:
 - (a) The service recipient's income is less than 100% of the Federal Poverty Guidelines.
 - (b) The service recipient's net worth falls below the sum of \$50,000 plus 500% of the Federal Poverty Guidelines.
- (4) If an indigent service recipient has any responsible relatives, then an indigency determination will be made for the responsible relatives in addition to the service recipient. Only when the service recipient and all responsible relatives are found to be indigent, may a service recipient receive care at the expense of the state.
- (5) The determination of indigence shall be made by person(s) designated by the RMHI Chief Officer.
- (6) If the service recipient or responsible relative does not agree with the initial or subsequent determination, either person may request that the RMHI's Chief Officer review the decision. If the service recipient or responsible relative does not agree with the initial or subsequent determination, then either person may request that the Commissioner or designee make a final determination.
- (7) The Department may review and alter an indigency determination at any time, but shall review at least annually the indigency status of any service recipient continuously receiving care by an RMHI for one year or longer.
- (8) The service recipient or responsible relative may request a review and alteration of an indigency determination any time a change in income or net worth can be demonstrated.
- (9) The Department may access information to determine indigence from any relevant source of data, including but not limited to, state and federal agencies administering benefits to a service recipient or responsible relative.
- (10) The Department shall document the method by which indigence was determined in addition to all backup information used to substantiate the determination.
- (11) A service recipient or responsible relative shall be found to be non-indigent if:

- (a) A service recipient or responsible relative does not meet the criteria set forth in 0940-02-05-.03(3); or
 - (b) Insufficient information is available to determine indigence.
- (12) A person shall be liable for the total charges for care by an RMHI and for the amount of the state's expense incurred in recovering the amounts, including attorney salaries or fees, unless declared indigent under this rule. In order to be declared indigent, the person or responsible relative shall:
- (a) Provide TDMH with information TDMH deems necessary for the determination of indigency;
 - (b) Provide TDMH with a written release allowing TDMH to access any information TDMH deems necessary to determine indigency; or
 - (c) Notify TDMH of any change in status that may affect an indigency determination.
- (13) A person or responsible relative who knowingly provides false information that results in an inaccurate determination of indigence shall be liable for the total charges for care by an RMHI and for the amount of the state's expense incurred in recovering the amounts, including attorney salaries or fees.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-1102, and 33-2-1109.

0940-02-05-.04 Periodic Payments by Non-Indigent Service Recipients or Responsible Relatives.

- (1) Service recipients and their responsible relatives, if any, shall be liable for charges incurred for care received at a RMHI during any period of non-indigence as determined under this chapter.
- (2) The state has a continuing claim against a service recipient or responsible relative or his or her estate for any unpaid difference between the amount owed and the amount paid for care from a RMHI for any period of non-indigence.
- (3) At any time, a service recipient or responsible relatives may request a periodic payment plan under which a monthly payment amount will be established.
- (4) In cases where the service recipient or responsible relatives have a public or private third party payor, the periodic payment plan may apply to the agreed deductible, co-payments or any portion of the charges not reimbursed by the third party provided that the RMHI has not agreed to accept the third party payment as payment in full.
- (5) A payment plan may be established only when the service recipient's and all responsible relatives' net worth is less than the sum of \$50,000 plus 500% of the Federal Poverty Guidelines.
- (6) Person(s) designated by the RMHI Chief Officer shall determine whether a service recipient or responsible relative meets net worth requirements specified in Rule 0940-02-05-.04(5) to be eligible for a payment plan, and, if so, establish the amount of the monthly payment according to the schedule in Rule 0940-02-05-.04(11).
- (7) The Department may review and alter a periodic payment plan at any time.
- (8) If the service recipient or responsible relative does not agree with the initial or subsequent determination, either person may request that the RMHI's Chief Officer review the decision. If the service recipient or responsible relative does not agree with the initial or subsequent determination, then either person may request that the Commissioner or designee make a final determination.
- (9) The service recipient or responsible relative may request review and alteration of a payment plan determination any time a change in income or net worth can be demonstrated.

- (10) A person shall be liable for the total charges for care by an RMHI and for the amount of the state's expense incurred in recovering the amounts, including attorney salaries or fees, unless declared eligible to receive a payment plan under this rule. In order to be declared eligible to receive a payment plan, the person or responsible relative shall:
- (a) Provide TDMH with information TDMH deems necessary to establish a payment plan; or
 - (b) Provide TDMH with a written release allowing TDMH to access any information TDMH deems necessary to establish a payment plan.
- (11) A person or responsible relative who knowingly provides false information that results in an inaccurate establishment of a payment plan shall be liable for the total charges for care by an RMHI and for the amount of the state's expense incurred in recovering the amounts, including attorney salaries or fees.
- (12) The following monthly payment plan shall be established for service recipients or responsible relatives who request a payment plan and meet the net worth requirement stated in Rule 0940-02-05-.04(5).

Service recipient's income as a percentage of Federal Poverty Guidelines (FPG)	Formula for monthly payment amount
100% but less than 150% FPG	5% of the monthly equivalent of 100% FPG for a family size of one
150% but less than 200% FPG	5% of the monthly equivalent of 150% FPG for a family size of one
200% but less than 250% FPG	5% of the monthly equivalent of 200% FPG for a family size of one
250% but less than 500% FPG	5% of the monthly equivalent of 250% of FPG for a family size of one
Over 500% FPG	5% of average monthly income

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-1102, and 33-2-1104.

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: 8/25/11

Signature: [Handwritten Signature]

Name of Officer: Zachary S. Griffith

Title of Officer: General Counsel, Office of Legal Counsel

Subscribed and sworn to before me on: August 25, 2011

Notary Public Signature: Sue B. Hunt

My commission expires on: July 8, 2013

The rules included in this filing are approved by the Comptroller of the Treasury.



Date: Sept 19, 2011

Signature: [Handwritten Signature]

Name of Officer: Justin P. Wilson

Title of Officer: Comptroller of the Treasury

Subscribed and sworn to before me on: Sept. 19, 2011

Notary Public Signature: Bettye L. Stanton

My commission expires on: July 6, 2015

The rules included in this filing are approved by the Commissioner of Finance and Administration.



Date: 8/31/11

Signature: [Handwritten Signature]

Name of Officer: Mark A. Emkes

Title of Officer: Commissioner of Finance and Administration

Subscribed and sworn to before me on: August 31, 2011

Notary Public Signature: Kimberly D. Birdwell

My commission expires on: May 26, 2015

Department of State Use Only

Filed with the Department of State on: _____

9/23/11

Tre Hargett

Tre Hargett
Secretary of State

RECEIVED

2011 SEP 23 PM 3:08

SECRETARY OF STATE
PUBLICATIONS