

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 amended 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 Commissioner's Large Conference Room on the 3rd Floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 10:00 a.m., Central Standard Time on the 17th day of January, 2007.

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, 3rd 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

Amendments

Chapter 0940-5-2
Licensure Administration And Procedures

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0940-5-2-.01 Statement of Authority. The Department of Mental Health and Developmental Disabilities is authorized to license facilities and services operated for the provision of mental health, developmental disability and personal support services in the State of Tennessee by T.C.A. Title 33, Chapter 2, Part 4.

Authority: T.C.A. §§ 33-2-403 and 33-2-404.

0940-5-2-.02 Types And Conditions Of Licenses.

- (1) Initial License. An initial license is issued to a facility or service to give the licensee an opportunity to implement minimum program requirements and to give the Department an opportunity to evaluate the facility's or service's compliance performance. Initial licenses will not exceed twelve months.
- (2) Full License. A full license is valid for up to one (1) year from the date of issuance and is issued to a facility or service when the licensee demonstrates compliance with the licensure law and applicable rules as determined by the Department.
- (3) Provisional License. A provisional license is issued to a facility or service when it does not meet all of the requirements for a full license. The Department may grant a provisional license if all of the conditions below are satisfied:
 - (a) The facility or service is making a diligent effort to comply with the licensure law and rules; A "diligent effort to comply with rules" is determined by past performance of the facility or service in meeting rules and correcting deficiencies and by commitments to correct existing deficiencies within time frames agreed to by the Department.
 - (b) The continued operation of the facility or service will not endanger the health or safety of individuals being served;
 - (c) The facility or service has submitted an acceptable compliance plan specifying how and when deficiencies will be corrected; The Department will consider the seriousness of the deficiencies and the past performances of the facility or service in determining whether the compliance plan is acceptable; and
 - (d) The facility or service has substantially met the commitments made in the preceding year's compliance plan, if any.

Authority: T.C.A. §§ 33-2-404, 33-2-406, and 33-2-415.

0940-5-2-.03 Unlawful Operation. No organization may begin delivering services until the Department issues a license. Providing mental health, developmental disability, or personal support services without a license is unlawful and may result in civil and/or criminal sanctions pursuant to T.C.A. §§ 33-2-405 and 33-2-412.

Authority: T.C.A. §§ 33-2-404 and 33-2-405.

0940-5-2-.04 Application Form.

- (1) The application for a license is to be made on forms prepared and supplied to the applicant by the Department.
- (2) Each application for a license must be submitted in writing, legible, with all the information requested on the application. The information gathered by the Department on the application is needed pursuant to T.C.A. §§ 33-2-406 to determine the applicant's responsible and reputable character and the applicant's ability to meet the minimum standards for the operation of a facility or service.
- (3) The information to be supplied to the Department is as follows:
 - (a) The name, address, and other background and identifying information of the applicant;
 - (b) A description of the location, design, and type of facility or service to be licensed;
 - (c) The name, address, and other background and identifying information of the person or persons responsible for the operation of the facility or service to be licensed including Social Security number and date of birth; place of residence during the past five years and place of birth; proof of citizenship or evidence of legal immigration status; criminal background check;
 - (d) Personal character references;
 - (e) The signature of the licensee applicant, or of the person charged by the licensee applicant, for certifying the correctness and completeness of the application, and for ensuring compliance with the licensure rules;
- (4) Any such other information as the Department may require.

Authority: T.C.A. §§ 33-2-404 and 33-2-406.

0940-5-2-.05 Fees.

- (1) The applicant must submit fees for the processing of the application prior to the Department's making a determination to grant or to deny licensure. Each initial and renewal application for licensure must be submitted with the appropriate fees. All fees submitted are non-refundable. The fee rate is based on the number of distinct categories of service or facility, as applicable, to be operated at each site. For a residential site, the fee rate is based on the number of beds to be licensed. A fee must be submitted for each facility and or service for which licensure is being sought under the following schedule:

Non-Residential Facility Fees Per Site:

One (1) Distinct Category of Service or Facility	\$ 810.00
Two (2) Distinct Categories of Services and/or Facilities	\$1,010.00
Three (3) Distinct Categories of Services and/or Facilities	\$ 1,220.00
Four (4) Distinct Categories of Services and/or Facilities	\$ 1,420.00
More Than Four (4) Distinct Categories of Services and/or Facilities	\$ 1,620.00

Residential Facility Fees Per Site:

Mental Health Hospital Facilities (Per Bed):	\$ 175.00
Mental Retardation Institutional Habilitation Facilities	\$ 175.00

(Per Bed):

All Other Residential Facilities:

Number of Beds	
2-3	\$ 200.00
4-10	\$ 280.00
11-15	\$ 410.00
16-50	\$ 810.00
More than 50 beds	\$ 1,220.00

Authority: T.C.A. §§ 33-2-403, 33-2-404, and 33-2-406.

0940-5-2-.06 Application Process For Initial License.

- (1) The applicant must submit application forms.
- (2) The applicant must submit the required fees for application processing.
- (3) The applicant is responsible for any fees charged by other regulatory agencies whose inspection of the facility or service is necessary for the issuance of licenses.
- (4) Upon receipt of the completed application and the required fees, the Department will arrange for needed inspections of the proposed site or sites, when applicable.
- (5) The Department will review the application, make any necessary investigations, review the results of the inspections of the proposed site or sites, when applicable, and take one (1) of the following actions:
 - (a) If the review indicates compliance with all requirements for an initial license, the initial license will be issued;
 - (b) If the review indicates deficiencies, the applicant will be notified and must correct deficiencies before a license is issued; or
 - (c) If the review indicates that a license should not be granted, the applicant will be so notified. Within fifteen (15) calendar days of such notification of denial, the applicant may file a written request for a hearing before the Licensure Review Panel on the denial.

Authority: T.C.A. §§ 33-2-403, 33-2-404, and 33-2-406.

0940-5-2-.07 Application Process For License Renewal.

- (1) Prior to the expiration of an initial, full or provisional license, the Department will notify the licensee of the need to submit an application for license renewal. The Department will advise the licensee of the information, fees, and the documents needed to process the renewal application.
- (2) The applicant must submit the renewal application, fee and other information required by licensure.
- (3) The applicant is responsible for any fees charged by other regulatory agencies whose inspection of the facility or service is necessary for the issuance of licenses.

- (4) The Department, when applicable, will conduct or arrange for inspections of the facility's or service's current life safety and environmental conditions, and review the facility's or services program performance history. Dates for unannounced inspections will be random varying from year to year. Inspections will begin no later than six (6) months from the date of issuance of the existing license.
- (5) Upon receipt of the application material and the required fees, the Department will review the application material, the current life safety and environmental conditions, when applicable, and the performance history of the facility or service and take one of the following actions:
 - (a) If the Department determines that all facilities or services operated by the licensee are in compliance with the applicable licensure law and rules, then a full license will be issued;
 - (b) If the Department determines that all facilities or services operated by the licensee do not comply with the applicable licensure law and rules, a provisional license may be issued covering the facility or service not in full compliance; or
 - (c) If the Department determines that a license should not be issued to one or more facilities or services operated by the licensee, the licensee shall be notified of the denial. Within fifteen (15) calendar days of such notification of denial, the licensee may file a written request for a hearing before the Licensure Review Panel on the denial.

Authority: T.C.A. §§ 33-2-403, 33-2-404, 33-2-406, and 33-2-407.

0940-5-2-.08 Distinct Categories Of Facilities And Services. The licensure rules identify and define distinct categories of facilities or services. These facilities and services must meet applicable life safety, environmental, and minimum program rules based on the type of program services and the needs of the persons served.

Authority: T.C.A. §§ 33-2-403, 33-2-404 and 33-2-406.

0940-5-2-.09 Nontransferability of Licenses. Licenses are not assignable or transferable except as provided by law. A new application must be made and a new license issued before services are provided when there is a change in the ownership of a facility/service or a change of location.

Authority: T.C.A. §§ 33-2-403, 33-2-404 and 33-2-406.

0940-5-2-.10 Time Limits. - Upon inspection of any facility or service making application for or holding a license, the Department may allow a reasonable time period for facility or service to correct deficiencies found by inspection.

Authority: T.C.A. §§ 33-2-403, 33-2-404, and 33-2-406.

0940-5-2-.11 Deemed Compliance.

- (1) A facility or service which is accredited or, certified, by any of the following may be deemed by the Department to be in compliance ("deemed compliance status") with applicable licensure program requirements:
 - (a) Joint Commission on Accreditation of Health Care Organizations (JCAHO);
 - (b) Council on Accreditation of Rehabilitation Facilities (CARF);

- (c) Social Security Act, Title XIX, Public Law 89-98, as amended (Medicaid) for Intermediate Care Facilities for the Mentally Retarded (ICF/MR) only; or
 - (d) The Accreditation Council on Services for People with Disabilities; or
 - (e) Council on Accreditation for Children and Family Services.
- (2) To be considered for a deemed compliance status determination under this section, the licensee must submit written and official evidence of certification for accreditation to the Department including any cited deficiencies with plan of correction.
 - (3) Facilities or services receiving deemed compliance status must also demonstrate compliance with the life safety and environmental rules. Deemed compliance status of the services offered by a facility or service does not alter the operator's obligation to correct any deficiencies cited during the unannounced inspections required by T.C.A. §§ 33-2-413 or to cooperate with investigations conducted by the Department of reports of abuse, dereliction, or deficiency in the operation of the facility or service. Notwithstanding the deemed compliance of a facility's services, such a facility is subject to the suspension or revocation of its license under the terms and procedures established in T.C.A. §§ 33-2-407 and the rules of this chapter.
 - (4) Pursuant to T.C.A. §§ 33-2-403(c), a facility or service which can demonstrate compliance with regulations and standards by a previously acquired license from another state agency is considered in compliance with rules promulgated by the Department to the extent that duplicate inspection and enforcement is necessary.

Authority: T.C.A. §§ 33-2-403, 33-2-404, and 33-2-406.

0940-5-2-.12 Access To Premises And Information. With or without giving notice, representatives of the Department shall have the right to enter upon or into the premises of any facility or service providing mental health, developmental disabilities, or personal support services in order to make inspections deemed necessary to determine compliance with licensure law and rules. The licensee must comply with all reasonable requests of the Department and allow it to obtain information from third parties, including, but not limited to, individuals being served by the facility or service, and or to review all records of the facility or service.

Authority: TCA §§ 33-2-404 and 33-2-413(b).

0940-5-2-.13 Grounds For Denial, Revocation, or Suspension.

- (1) The maintenance and renewal of a license is contingent upon evidence of continued compliance with rules and regulations. The Department may deny, suspend or revoke a license on any of the following grounds:
 - (a) Violation of licensure law or rules;
 - (b) Permitting, aiding or abetting the commission of any illegal act in a licensed facility or service;
 - (c) Conduct or practice detrimental to the welfare of individuals being served by a licensed facility or service;
 - (d) The submission of false information to the Department; or

(e) The use of subterfuge (for instance, filing through a second party after an individual has been denied a license).

(2) Unless the Department finds that summary suspension of a license is necessary, all license revocations, suspensions and denials shall be conducted in accordance with the applicable sections of the Uniform Administrative Procedures Act, Tennessee Code Annotated, Title 4, Part 5. Summary suspension may only occur when the Department determines that continued operation of a licensed facility or service presents an immediate threat to the health, safety, and welfare of individuals being served. When a summary suspension occurs, proceedings for revocation or other action against the licensee shall be promptly instituted and determined in accordance with the Uniform Administrative Procedures Act.

Authority: T.C.A. §§ 33-2-403, 33-2-404, 33-2-407, 33-2-408.

0940-5-2-.14 Expiration Of Licenses. The expiration date of all licenses issued by the Department will be indicated on the face of the license. However, when a licensee has made timely and sufficient application for a new license, (including payment of the required fees) the existing license does not expire until the outcome of the application has been determined by the Department. When the application is denied or the terms of the new license limited, the existing license does not expire until the last day for seeking review of the order or a later date fixed by order of the reviewing court.

Authority: T.C.A. §§ 33-2-403, 33-2-404, 33-2-407, and 33-2-408; 4-5-320.

0940-5-2-.15 Posting Of The License. The license certificate must be posted for public viewing in a conspicuous place at the facility or service.

Authority: T.C.A. §§ 33-2-403 and 33-2-404.

0940-5-2-.16 Surrender Requirements. The license certificate must be surrendered to the Department upon revocation or suspension of the license, upon transfer of ownership of the facility or service, or when the facility or service otherwise ceases to operate.

Authority: T.C.A. §§ 33-2-403, 33-2-404, 33-2-407, 33-2-408.

0940-5-2-.17 Exclusions From Licensure.

(1) The following facilities or services are excluded from the licensure jurisdiction of the Department:

(a) A facility that is appropriately licensed by the Department of Health, and whose primary purpose is not the provision of mental health or developmental disability services or a satellite hospital, as defined by rules of the Department of Health, whose primary purpose may be the provision of mental or developmental disability services, and other facilities appropriately licensed by the Department of Health pursuant to T.C.A. §§ 68-11-201.

(b) A facility which is operated by the Department of Education, the Department of Correction, the Department of Human Services, or the Department of Children's Services and that affirmatively states that its primary purpose is not the provision of mental health, developmental disability, or personal support services.

Authority: T.C.A. §§ 33-2-403 and 33-2-404.

0940-5-2-.18 Waiver Authority. The Department may waive any rule determined to be irrelevant or to pose a hardship. A hardship waiver may be granted only when strict enforcement of a particular requirement would not be in the best interest of service recipients. All waivers granted will be made in writing and entered in the official record of the licensed service or facility. This written document shall include the justification for the waiver. All waivers will be reviewed by the Department and the Licensure Review Panel.

Authority: T.C.A. §§ 33-2-403 and 33-2-404.

0940-5-2-.19 Investigation Of Abuse, Dereliction, Or Deficiency In Operation Of A Facility Or Service.

- (1) The Department will investigate reports or suspicion of abuse, dereliction, or deficiency in the operation of a licensed service or facility in accordance with T.C.A. §§ 33-2-416.
- (2) The licensee shall post a sign in the facility or service displaying the Department's regional toll-free telephone number. The sign must inform service recipients, families, and the public that they may file a complaint with the Department. Any exemptions to posting signs will be determined by the Department.
- (3) The licensee must report to the Department any allegations or suspicion of abuse, dereliction, or deficiency in the operation of the facility or services.
- (4) The licensee must report to the Department any significant occurrences involving the facility/ service or service recipient and staff, "Significant occurrences" may include, but not be limited to occurrences such as accidents, injuries, or death regarding individuals being served; fires, loss of heat/air conditioning, and/or other structural problems with the facility building(s).

Authority: T.C.A. §§ 33-2-403, 33-2-404, 33-2-416.

0940-5-2-.20 Notice Of Non-Compliance And Plan Of Compliance.

- (1) The Department will give a Department-prepared Notice of Non-Compliance to the licensee on a form provided by the Department when an inspection or investigation of a facility/service reveals non-compliance with licensure law or rules.
- (2) The licensee must submit, by the date specified on the Notice of Non-Compliance, a written Plan of Compliance in response to the Notice of Non-Compliance.
- (3) The licensee's written Plan of Compliance shall include a description of the action taken or to be taken in correcting deficiencies, and the date by which each corrective action is completed or to be completed.
- (4) The Department will notify the licensee in writing whether the Plan of Compliance is acceptable and the basis for the decision. When the Plan of Compliance is not acceptable, the Department and licensee may continue to seek agreement. If agreement cannot be reached in a reasonable time, as determined by the Department, the Department may institute sanctions against the license.
- (5) The licensee shall maintain copies of compliance plans in a central location.

Authority: T.C.A. §§ 33-2-403 and 33-2-404.

0940-5-2-.21 Unannounced Inspection. The Department shall make at least one (1) unannounced inspection of each licensed facility/service yearly.

Authority: T.C.A. §§ 33-2-403, 33-2-404, and 33-2-413.

0940-5-2-.22 Inspection Fees.

- (1) Pursuant to T.C.A. §§ 33-2-414(c), the Department is granted the authority to charge a fee in an amount not to exceed fifty dollars (\$50) for inspection of any facility or service.
- (2) The Department shall invoice the applicant or licensee for each applicable inspection. The applicant or licensee shall pay the inspection fee within thirty (30) days after receipt of the invoice, unless the current license expires before the end of the 30-day period. If the current license expires before the end of the 30-day period, the licensee shall pay the inspection fee before the expiration of the current license.
- (3) The Department may withhold the issuance of a license or suspend an existing license pending the payment of the inspection fee.

Authority: T.C.A. §§ 33-2-403, 33-2-404 and 33-2-413.

0940-5-2-.23 Assistance To Service Recipients When A License Is Denied, Suspended, or Revoked. When a license is to be denied, suspended, or revoked, the Department will notify the appropriate state and local agencies which may be able to provide assistance to service recipients by coordinating placement.

Authority: T.C.A. §§ 33-2-403, 33-2-404 and 33-2-414.

Repeals

- Rule 0940-5-2-.01 Statement of Authority is repealed.
- Rule 0940-5-2-.02 Unlawful Operation is repealed.
- Rule 0940-5-2-.03 Application Form is repealed.
- Rule 0940-5-2-.04 Application Fees is repealed.
- Rule 0940-5-2-.05 Application for an Initial License is repealed.
- Rule 0940-5-2-.06 Application for License Renewal is repealed.
- Rule 0940-5-2-.07 Distinct Facility Categories is repealed.
- Rule 0940-5-2-.08 Number of License Required is repealed.
- Rule 0940-5-2-.09 Nontransferability of Licenses is repealed.
- Rule 0940-5-2-.10 Types and Conditions is repealed.
- Rule 0940-5-2-.11 Time Limits is repealed.
- Rule 0940-5-2-.12 Deemed Compliance is repealed.
- Rule 0940-5-2-.13 Access to Facilities and Information is repealed.
- Rule 0940-5-2-.14 Grounds for Denial, Revocation, or Suspension is repealed.
- Rule 0940-5-2-.15 Expiration of Licenses is repealed.
- Rule 0940-5-2-.16 Posting of License is repealed.
- Rule 0940-5-2-.17 Surrender Requirement is repealed.
- Rule 0940-5-2-.18 Exclusions from Licensure is repealed.
- Rule 0940-5-2-.19 Waiver Authority is repealed.
- Rule 0940-5-2-.20 Investigation of Reported Abuses in Operation of Facility is repealed.
- Rule 0940-5-2-.21 Notice of Non-Compliance and Plan of Compliance is repealed.
- Rule 0940-5-2-.22 Unannounced Inspection is repealed.
- Rule 0940-5-2-.23 Reasonable Notice Inspection is repealed.
- Rule 0940-5-2-.24 Inspection Fees is repealed.
- Rule 0940-5-2-.25 Assistance to Clients when a License is Denied Suspended, or Revoked is repealed.

Authority: T.C.A. §§ 33-2-403 and 33-2-404.

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.

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of November, 2006. (11-13-06)