

**RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
AND MENTAL RETARDATION**

**CHAPTER 0940-05-06
MINIMUM PROGRAM REQUIREMENTS
FOR ALL FACILITIES**

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0940-05-06-.01 GOVERNANCE REQUIREMENTS FOR ALL FACILITIES.

- (1) The governing body must ensure that the facility complies with all applicable federal, state, and local laws, ordinances, rules, and regulations.
- (2) The governing body must ensure that the facility is administered and operated in accordance with written policies and procedures.
- (3) The governing body must exercise general direction over the facility and establish policies governing the operation of the facility and the welfare of the individuals served.
- (4) The governing body must designate an individual responsible for the operation of the facility.
- (5) The governing body must ensure that the licensed facility serves only persons whose placement will not cause the facility to violate its licensed status and capacity based on the facility's distinct licensure category, the facility's life safety occupancy classification, and the required staffing ratios, if any.

Authority: T.C.A. § 33-2-504. **Administrative History:** Original rules filed May 26, 1988; effective July 11, 1988. Amendment filed May 28, 2010; to have been effective August 26, 2010. Stay of amendment filed by the Tennessee Department of Mental Health and Developmental Disabilities on July 21, 2010; new effective date November 9, 2010. Withdrawal of amendment filed August 2, 2010. Amendment filed August 30, 2010; to have been effective January 29, 2011. Stay of amendment filed by the Tennessee Department of Mental Health and Developmental Disabilities on January 29, 2011; new effective date March 7, 2011. Withdrawal of amendment filed by the Department of Mental Health and Developmental Disabilities on February 25, 2011.

0940-05-06-.02 POLICIES AND PROCEDURES FOR ALL FACILITIES.

- (1) The governing body must ensure that a written policies and procedures manual is maintained. The manual must include the following elements:
 - (a) A description of each facility service provided by the licensee. The description must include the hours of operation and admission and discharge criteria;

(Rule 0940-05-06-.02, continued)

- (b) An organizational chart of a statement which clearly shows or describes the lines of authority between the governing body, the chief executive officer, and the staff;
- (c) A policy and procedures which ensure that someone is delegated the authority to act in the absence of the individual responsible for the operation of the facility;
- (d) A schedule of fees, if any, currently charged to the client for all services provided by the licensee;
- (e) A statement of client rights and the grievance procedures to be followed when a suspected violation of client rights has been reported;
- (f) A policy and procedures which ensure the confidentiality of client information and which include the following provisions:
 - 1. The facility staff must comply with applicable confidentiality laws and regulations. (e.g., T.C.A. § 33-3-104(10); federal alcohol and drug regulations found at 42 CFR, Part 2);
 - 2. The client must not be required to make public statements which acknowledge gratitude to the licensee or for the licensee's facility services;
 - 3. The client must not be required to perform in public gatherings; and,
 - 4. Identifiable photographs of the client must not be used without the written and signed consent of the client or the client's guardian;
- (g) A medication administration policy and control procedures for facilities involved in the administration of medication to clients;
- (h) The plans and procedures to be followed in the event of fire evacuation and natural disaster emergencies;
- (i) The plans and procedures to be followed in the event of an emergency involving client care which will provide for emergency transportation of clients, emergency medical care, and staff coverage in such events;
- (j) A policy which prohibits clients from having any of the following responsibilities:
 - 1. Responsibility for the care of other clients;
 - 2. Responsibility for the supervision of other clients unless on-duty/on-site staff are present; and,
 - 3. Responsibilities requiring access to confidential information;
- (k) A policy and procedures to be followed in the reporting and investigation of suspected or alleged abuse, or neglect of clients, or other critical incidents. The procedures must include provisions for corrective action, if any, to be taken as a result of such reporting and investigation;
- (l) A policy and procedures which ensure that volunteers, if used by the facility, are in a supportive capacity and are under the supervision of appropriate designated staff members;

(Rule 0940-05-06-.02, continued)

- (m) A policy and procedures which govern the use of client behavior-management techniques, if used by the facility;
- (n) A policy regarding the use of human subjects in research, if the facility is involved or planning to be involved in such research, which includes procedures for the following:
 - 1. Identification of subjects, projects, and staff;
 - 2. Provisions to protect the personal and civil rights of the subjects;
 - 3. Obtaining the consent of the subjects involved;
 - 4. Assurance that all research projects are conducted under the direction and supervision of professional staff qualified by education and experience to conduct research;
 - 5. Emergency guidelines for problems that may develop during research activities; and,
 - 6. Appointment of a facility representative to act as coordinator of the research activities.

Authority: T.C.A. § 33-2-504. **Administrative History:** Original rules filed May 26, 1988; effective July 11, 1988. Amendment filed May 28, 2010; to have been effective August 26, 2010. Stay of amendment filed by the Tennessee Department of Mental Health and Developmental Disabilities on July 21, 2010; new effective date November 9, 2010. Withdrawal of amendment filed August 2, 2010. Amendment filed August 30, 2010; to have been effective January 29, 2011. Stay of amendment filed by the Tennessee Department of Mental Health and Developmental Disabilities on January 29, 2011; new effective date March 7, 2011. Withdrawal of amendment filed by the Department of Mental Health and Developmental Disabilities on February 25, 2011.

0940-05-06-.03 FINANCIAL MANAGEMENT OF ALL FACILITIES.

- (1) The licensee holding or receiving funds or property for the client as trustee or representative payee will adhere to all laws, state and federal, that govern his position and relation to the client.
- (2) The license must prohibit staff and proprietors from borrowing money from clients.
- (3) The licensee must ensure that all money held and disbursed in the client's behalf if for the strict, personal benefit of the client.
- (4) The licensee must not mix its fund with those of the client.
- (5) The licensee must not take funds or property of the client for the facility's own use or gain.
- (6) The licensee must provide an annual reporting to the client or the client's parent or guardian of the client's funds being held and disbursed by the facility.

Authority: T.C.A. § 33-2-504. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988. Amendment filed May 28, 2010; to have been effective August 26, 2010. Stay of amendment filed by the Tennessee Department of Mental Health and Developmental Disabilities on July 21, 2010; new effective date November 9, 2010. Withdrawal of amendment filed August 2, 2010. Amendment filed August 30, 2010; to have been effective January 29, 2011. Stay of amendment filed by the Tennessee Department of Mental Health and Developmental Disabilities on January 29, 2011; new effective date March 7, 2011. Withdrawal of amendment filed by the Department of Mental Health and Developmental Disabilities on February 25, 2011.

0940-05-06-.04 PERSONNEL REQUIREMENTS FOR ALL FACILITIES.

- (1) A job description must be maintained which includes the employment requirements and the job responsibilities for each facility staff position.
- (2) A personnel record must be maintained which verifies that each employee meets the respective employment requirements for the staff position held.
- (3) Training and development activities which are appropriate in assisting the staff in meeting the needs of the clients being served must be provided for each staff member. The provision of such activities must be evidenced by documentation in the facility records.
- (4) Training and development activities which are appropriate in assisting volunteers (if used by the facility) in implementing their assigned duties must be provided for each volunteer. The provision of such activities must be evidenced by documentation in the facility's records.
- (5) Direct-services staff members must be competent persons aged eighteen (18) years of age or older.

Authority: T.C.A. § 33-2-504. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988. Amendment filed May 28, 2010; to have been effective August 26, 2010. Stay of amendment filed by the Tennessee Department of Mental Health and Developmental Disabilities on July 21, 2010; new effective date November 9, 2010. Withdrawal of amendment filed August 2, 2010. Amendment filed August 30, 2010; to have been effective January 29, 2011. Stay of amendment filed by the Tennessee Department of Mental Health and Developmental Disabilities on January 29, 2011; new effective date March 7, 2011. Withdrawal of amendment filed by the Department of Mental Health and Developmental Disabilities on February 25, 2011.

0940-05-06-.05 INDIVIDUAL CLIENT RECORD REQUIREMENTS FOR ALL FACILITIES. The governing body must ensure that an individual client record is maintained for each client being served which minimally include the following information:

- (a) The name of the client;
- (b) The address of the client;
- (c) The telephone number of the client;
- (d) The sex of the client;
- (e) The date of the client's birth;
- (f) The date of the client's admission to the facility;
- (g) The source of the client's referral to the facility;
- (h) The name, address, and telephone number of an emergency contact person;
- (i) If the facility charges fees for its services, a written fee agreement dated and signed by the client (or the client's legal representative) prior to provision of any services other than emergency services. This agreement must include at least the following information:
 1. The fee or fees to be paid by the client;
 2. The services covered by such fees, and

(Rule 0940-05-06-.05, continued)

3. Any additional charges for services not covered by the basic service fee;
- (j) Appropriate informed, signed, and dated consent and authorization forms for the release or obtainment of information about the client; and
- (k) Documentation that the client or someone acting on behalf of the client has been informed of the client's rights and responsibilities and of the facility's general rules affecting client.

Authority: T.C.A. § 33-2-504. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988. Amendment filed May 28, 2010; to have been effective August 26, 2010. Stay of amendment filed by the Tennessee Department of Mental Health and Developmental Disabilities on July 21, 2010; new effective date November 9, 2010. Withdrawal of amendment filed August 2, 2010 Amendment filed August 30, 2010; to have been effective January 29, 2011. Stay of amendment filed by the Tennessee Department of Mental Health and Developmental Disabilities on January 29, 2011; new effective date March 7, 2011. Withdrawal of amendment filed by the Department of Mental Health and Developmental Disabilities on February 25, 2011.

0940-05-06-.06 CLIENT RIGHTS IN ALL FACILITIES.

- (1) The following rights must be afforded to all clients by all licensees and are not subject to modification.
 - (a) Clients 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 the rules of the facility. The facility must ensure that the client is given oral and/or written rights information that includes at least the following:
 1. A statement of the specific rights guaranteed the client by these rules and applicable state laws;
 2. A description of the facility's grievance procedure;
 3. A listing of available advocacy services; and
 4. A copy of all general facility rules and regulations for clients.

The information must be presented in a manner that promotes understanding by clients of their rights, and an opportunity must be given to clients to ask questions about the information. If a client who is unable to understand this information at the time of admission later becomes able to do so, the information must be presented to the client at that time. If a client is likely to continue indefinitely to be unable to understand this information, the facility must promptly attempt to provide the required information to a parent, guardian, or other appropriate person or agency responsible for protecting the rights of the client;
 - (b) Clients have the right to voice grievances to staff of the facility, to the licensee, and to outside representatives of their choice with freedom from restraint, interference, coercion, discrimination, or reprisal;
 - (c) Clients have the right to be treated with consideration, respect, and full recognition of their dignity and individuality;
 - (d) Clients 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;

(Rule 0940-05-06-.06, continued)

- (e) Clients have the right to be assisted by the facility in the exercise of their civil rights;
 - (f) Clients have the right to be free of any requirement by the facility that they perform services which are ordinarily performed by facility staff; and
 - (g) If residential services are provided, clients must be allowed to send personal mail unopened and to receive mail and packages which may be opened in the presence of staff when there is reason to believe that the contents thereof may be harmful to the client or others.
- (2) The following rights must be afforded to all clients by all licensed facilities unless modified in accordance with rules 0940-05-06-.07 or 0940-05-06-.08:
- (a) Clients have the right to participate in the development of their individual program plans and to receive sufficient information about proposed and alternative interventions and program goals to enable them to participate effectively;
 - (b) Clients have the right to participate fully, or to refuse to participate, in community activities including cultural, educational, religious, community services, vocational, and recreational activities;
 - (c) If residential services are provided, clients must be allowed to have free use of common areas in the facility with due regard for privacy, personal possessions, and the right of others;
 - (d) If residential services are provided, clients have the right to be accorded privacy and freedom for the use of bathrooms at all hours;
 - (e) If residential services are provided, clients have the right to be accorded privacy and freedom for the use or bathrooms at all hours;
 - (f) If residential services are provided and if married clients reside in the facility, privacy for visits by spouses must be ensured, and if both spouses are clients residing in the facility, they must be permitted to share a room; and
 - (g) If residential services are provided, clients have the right to associate and communicate privately with persons of their choice including receiving visitors at reasonable hours.

Authority: T.C.A. § 33-2-504. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988. Amendment filed May 28, 2010; to have been effective August 26, 2010. Stay of amendment filed by the Tennessee Department of Mental Health and Developmental Disabilities on July 21, 2010; new effective date November 9, 2010. Withdrawal of amendment filed August 2, 2010. Amendment filed August 30, 2010; to have been effective January 29, 2011. Stay of amendment filed by the Tennessee Department of Mental Health and Developmental Disabilities on January 29, 2011; new effective date March 7, 2011. Withdrawal of amendment filed by the Department of Mental Health and Developmental Disabilities on February 25, 2011.

0940-05-06-.07 MODIFICATION OR LIMITATION OF RIGHTS OF ALL CLIENTS BY FACILITY RULES, POLICIES, OR PROCEDURES.

- (1) The rights of all clients of a facility may only be modified or limited under the following conditions:
 - (a) It is demonstrated and documented that a legitimate program purpose cannot reasonably be achieved without such modification or limitation;

(Rule 0940-05-06-.07, continued)

- (b) No modification or limitation may be made solely for the convenience of facility staff or be more stringent than is necessary to achieve the demonstrated purpose;
- (c) Clients or representatives of clients, as appropriate, must be fully informed of proposed facility rules, policies or procedures modifying or limiting client rights, and of the reasons therefore and must be given an opportunity to object; to propose alternatives; and to consult with family, friends, and/or advocacy agencies prior to their implementation; and
- (d) Facility rules, policies, or procedures which modify or limit client rights must be in writing and posted in a conspicuous place.

Authority: T.C.A. § 33-2-504. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988. Amendment filed May 28, 2010; to have been effective August 26, 2010. Stay of amendment filed by the Tennessee Department of Mental Health and Developmental Disabilities on July 21, 2010; new effective date November 9, 2010. Withdrawal of amendment filed August 2, 2010. Amendment filed August 30, 2010; to have been effective January 29, 2011. Stay of amendment filed by the Tennessee Department of Mental Health and Developmental Disabilities on January 29, 2011; new effective date March 7, 2011. Withdrawal of amendment filed by the Department of Mental Health and Developmental Disabilities on February 25, 2011.

0940-05-06-.08 MODIFICATION OR LIMITATION OF AN INDIVIDUAL CLIENT'S RIGHTS.

- (1) The rights of an individual client in a facility 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 individual client's physical or mental condition;
 - (b) To achieve a legitimate goal in the client's individual program plan;
 - (c) No modification or limitation may be made solely for the convenience of staff or be more stringent than is necessary;
 - (d) The client or a representative of the client, as appropriate, must be fully informed of the proposed limitation or modification and 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; and
 - (e) Any modifications or limitations and the reasons therefore must be documented in the client's Individual Program Plan.

Authority: T.C.A. § 33-2-504. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988. Amendment filed May 28, 2010; to have been effective August 26, 2010. Stay of amendment filed by the Tennessee Department of Mental Health and Developmental Disabilities on July 21, 2010; new effective date November 9, 2010. Withdrawal of amendment filed August 2, 2010. Amendment filed August 30, 2010; to have been effective January 29, 2011. Stay of amendment filed by the Tennessee Department of Mental Health and Developmental Disabilities on January 29, 2011; new effective date March 7, 2011. Withdrawal of amendment filed by the Department of Mental Health and Developmental Disabilities on February 25, 2011.

0940-05-06-.09 RESERVED.

Authority: T.C.A. § 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-407. **Administrative History:** Original rule filed May 28, 2010; to have been effective August 26, 2010. Stay of amendment filed by the Tennessee Department of Mental Health and Developmental Disabilities on July 21, 2010; new effective date November 9, 2010. Withdrawal of amendment filed August 2, 2010. Amendment

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0940-05-06-.10 RESERVED.

Authority: T.C.A. § 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-407. **Administrative History:** *Original rule filed May 28, 2010; to have been effective August 26, 2010. Stay of amendment filed by the Tennessee Department of Mental Health and Developmental Disabilities on July 21, 2010; new effective date November 9, 2010. Withdrawal of amendment filed August 2, 2010. Amendment filed August 30, 2010; to have been effective January 29, 2011. Stay of amendment filed by the Tennessee Department of Mental Health and Developmental Disabilities on January 29, 2011; new effective date March 7, 2011. Withdrawal of amendment filed by the Department of Mental Health and Developmental Disabilities on February 25, 2011.*