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Email: register.information@tn.gov

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Sequence Number: 02-01-14
Rule ID(s): 5605
File Date: 2/3/14
Effective Date: 5/4/14

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Tennessee Department of Mental Health and Substance Abuse Services
Division:	Office of Licensure
Contact Person:	R. Kurt Hippel, Director, Office of Legislation and Rules
Address:	500 Deaderick Street 5th Floor, Andrew Jackson Building Nashville, TN
Zip:	37243
Phone:	615-532-6520
Email:	Kurt.Hippel@tn.gov

Revision Type (check all that apply):

___ Amendment
X New
X Repeal

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

Chapter Number	**Chapter Title**
0940-05-02	Licensure Administration and Procedures
Rule Number	**Rule Title**
0940-05-02-.01	Statement of Authority
0940-05-02-.02	Types and Conditions of Licenses
0940-05-02-.03	Unlawful Operation
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0940-05-02-.24	Assistance to Service Recipients when a License is Denied, Suspended, or Revoked
0940-05-02-.25	Civil Penalties for Licensees

0940-05-02-.01 Statement of Authority.

(1) The Department of Mental Health and Substance Abuse Services is authorized to license facilities and services operated for the provision of mental health, substance abuse, and personal support services in the State of Tennessee by T.C.A. Title 33, Chapter 2, Part 4.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404, 33-2-405, and 33-2-407.

0940-05-02-.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 with licensure laws, ordinances, rules, and regulations. Initial licenses will not exceed 12 months.

(2) Full License. A full license is valid for up to 12 months from the date of issuance and is issued to a facility or service when the licensee demonstrates compliance with all applicable licensure laws, ordinances, rules, and regulations as determined by the Department.

(3) Provisional License. A provisional license may be 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 all licensure laws, ordinances, rules, and regulations. A "diligent effort to comply " is determined by past performances of the facility or service in meeting licensure laws, ordinances, rules and regulations and correcting deficiencies and by the facility's or service's 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. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405, and 33-2-415.

0940-05-02-.03 Unlawful Operation.

(1) No person, partnership, association or corporation may begin delivering services until the Department issues a license. Providing mental health, substance abuse, developmental disability, intellectual disability, or personal support services without a license is unlawful and may result in civil and/or criminal sanctions pursuant to T.C.A. §§ 33-2-404, 33-2-407, 33-2-408, 33-2-409, 33-2-412, and 33-2-417.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404, 33-2-405, 33-2-407, 33-2-408, 33-2-409, 33-2-412, and 33-2-417.

0940-05-02-.04 Application Forms.

(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, and 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; and

(f) Any such other information as the Department may require.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405, 33-2-406, and 33-2-407.

0940-05-02-.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 Distinct Category of Service or Facility	$ 810.00
Two Distinct Categories of Services or Facility	$ 1,020.00
Three Distinct Categories of Service or Facility	$ 1,220.00
Four Distinct Categories of Service or Facility	$ 1,420.00
More than Four Distinct Categories of Services or Facilities	$ 1,620.00

Residential Facility Fees Per Site:

Mental Health Hospital Facilities (per bed)	$ 175.00
Mental Retardation Institutional Habilitation Facilities (per bed)	$ 175.00

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. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 3-2-405, 33-2-406, 33-2-407, 33-2-409, and 33-2-413.

0940-05-02-.06 Application Process for an 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 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. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404, 33-2-405, 33-2-406, and 33-2-407.

0940-05-02-.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 (by invoice), and the documents needed to process the renewal application.

(2) The applicant must submit the renewal application, fee invoice and other information required by licensure. All payments must be accompanied by a copy of the fee invoice before the fee will be credited to the appropriate agency or service.

(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 service's program performance history. Dates for unannounced inspections will be random varying from year to year.

(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 laws, ordinances, rules, and regulations, 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 laws, ordinances, rules, and regulations, 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. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, and T.C.A., Title 33, Chapter 2, Part 4.

0940-05-02-.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. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-3-403, 33-2-404, 33-2-405, and 33-2-407.

0940-05-02-.09 Number of Licenses Required.

Each licensee will be issued one license for each site at which the licensee is operating a facility or service. The license for each site will indicate what category or categories of facility and/or service is authorized to be operated at that site. However, when a licensee operates more than one category at a single site, two licenses may be issued if one or more of the categories at the site require an initial or a provisional license, and one or more are eligible for a full license.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404, 33-4-405, 33-2-406 and 33-2-407.

0940-05-02-.10 Change of Ownership or Location.

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. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404, 33-4-405, and 33-2-406.

0940-05-02-.11 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. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404, 33-4-405, 33-2-406.

0940-05-02-.12 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;

(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;

(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. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404, 33-2-405, 33-2-406, 33-2-407, 33-2-409, 33-2-411, 33-2-412, 33-2-413, and 33-2-414.

0940-05-02-13 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 any part thereof, or service providing mental health, developmental disabilities substance abuse, or personal support services in order to make inspections deemed necessary to determine compliance with licensure laws, ordinances, regulations and rules. The facility or service shall 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 and obtain copies of all records of the facility or service sufficient to determine compliance with licensure laws, ordinances, regulations and rules.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404, 33-2-407, 33-2-413, and 33-2-420.

0940-05-02-.14 Grounds for Denial, Revocation, or Suspension.

(1) The maintenance and renewal of a license is contingent upon evidence of continued compliance with licensure laws, ordinances, rules and regulations. Grounds for denying, suspending or revoking a license may include, but not be limited to, the following:

(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. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404, 33-4-405, 33-2-406, 33-2-407 and 33-2-408.

0940-05-02-.15 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 status 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. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404, 33-2-407, 33-2-409, 33-2-411, 33-2-412, 33-2-413, 3-2-414, 3-2-416, and 33-2-417.

0940-05-02-.16 Posting of the License.

The license certificate shall be posted for public viewing in a conspicuous place at the facility or service.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404,

0940-05-02-.17 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. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404, 33-2-407 and 33-2-408.

0940-05-02-.18 Exclusions from Licensure.

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

(1) A facility that is appropriately licensed by the Department of Health, and whose primary purpose is not the provision of mental health, developmental disability, or substance abuse services.

(2) A satellite hospital, as defined by rules of the Department of Health, whose primary purpose may be the provision of mental health, developmental disability or substance abuse services, and other facilities appropriately licensed by the Department of Health pursuant to T.C.A. § 68-11-201.

(3) A facility which is operated by county, municipal or state 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, substance abuse, or personal support services.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404.

0940-05-02-.19 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. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404,

0940-05-02-.20 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 which informs 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 serious allegations or suspicion of abuse, dereliction, or deficiency in the operation of the facility or service.

(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. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404 and 33-2-416.

0940-05-02-.21 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 licensee.

(5) The licensee shall maintain copies of the most recent compliance plans in a central location.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404,

0940-05-02-.22 Unannounced Inspection.

The Department shall make at least one (1) unannounced inspection of each licensed facility/service yearly.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404, and 33-2-413.

0940-05-02-.23 Inspection Fees.

(1) Pursuant to T.C.A. § 33-2-413(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. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404, and 33-2-413.

0940-05-02-.24 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. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404, and 33-2-414.

0940-05-02-.25 Civil Penalties for Licensees.

(1) The Department may, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a licensure law or rule.

(2) The procedure for imposing a civil penalty shall be as follows:

(a) Department staff shall verbally notify a licensee that a civil penalty may be imposed due to the licensee violation of a licensure law or rule;

(b) Within six (6) business days of the verbal notification, the licensee shall be notified in writing of the basis for the civil penalty and the amount imposed.

(c) The civil penalty shall be effective beginning on the date the written notification of the decision is issued.

(d) The Department may impose a penalty for each day a licensee remains in violation of a licensure rule, regulation, ordinance or law. Each licensure law, rule, regulation or ordinance violated shall constitute a separate offense.

(3) In determining the amount of the daily penalty, the commissioner may consider the following:

(a) The severity of the violation and the harm or risk of harm to the service recipient;

(b) The willfulness of the violation;

(c) The circumstances leading to the violation;

(c) The efforts made by the facility to attain compliance;

(d) Any extraordinary enforcement cost incurred by the Department;

(e) The interest of the public; and

(f) Whether the civil penalty imposed will be an economic deterrent to the non-compliant activity.

(4) The Department may impose a civil penalty in accordance with the following schedule:

(a) First Offense

i.	Priority 1/Critical Offenses	$ 500
ii.	All other offenses	$ 250

(b) Second or subsequent offense of same type within 12-month period:

i.	Priority 1/Critical Offense	$ 2500 to $5000
ii.	All other offenses	$ 500 to $ 2500

(5) The Department may continue to work with a licensee to seek compliance with any licensure law or rule. The Department may waive any penalty determined by the Department to impose a hardship. A hardship waiver of a civil penalty may be granted only when strict enforcement of a particular requirement would not be in the best interest of service recipients.

(6) A "Priority 1 offense" for the purposes of these rules is defined as a substantiated investigation involving the death of a service recipient; neglect physical or sexual abuse of the service recipient by the licensee or staff; and/or a serious injury to a service recipient. A "critical offense", for purposes of these rules, is defined as those Department-designated administrative rules whose violation could result in serious harm to the service recipient.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404, 33-2-407, 33-2-409, 33-2-412, 33-2-414, 33-2-416, and 33-2-417.

Repeals

Chapter 0940-05-02 Licensure Administration and Procedures is repealed in its entirety.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-403, 33-2-404, 33-2-407, and 33-2-409.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Mental Health and Substance Abuse Services on _____ (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *09/25/2013*

Rulemaking Hearing(s) Conducted on: (add more dates). *11/19/2013*

SUE B. HUNT
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF DAVIDSON

Date: 12/02/13

Signature:

Name of Officer: E. Douglas Varney

Title of Officer: Commissioner

Subscribed and sworn to before me on: December 2, 2013

Notary Public Signature: Sue B. Hunt

My commission expires on: May 8, 2017

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Attorney General and Reporter

1-8-14
Date

Department of State Use Only

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Filed with the Department of State on: 2/3/14

Effective on: 5/4/14

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

TDMHSAS Responses to Comments about
Rules Chapter 0940-05-02 Licensure Administration and Procedures
made prior to, during, or after the Rulemaking Hearing held on November 19, 2013

ReShena Barnes, Helping Hands Support Center, Inc.: What kind of investigations are being done for people that are operating without a license? There needs to be something done about this.

TDMHSAS Response: The Department takes very seriously allegations of individuals and other such entities providing personal support, mental health or substance abuse services without a license. The Department investigates all allegations it receives of individuals or agencies operating without a license. Complaints may be made by phone call, email, fax, in person, etc. A complainant may remain anonymous. If an individual or organization is found to be operating without a license and a license is required, the Department will take appropriate legal action against the agency as allowed in Tennessee Code Annotated §§ 33-2-405, 33-2-412, and 33-2-417.

Regulatory Flexibility Addendum
Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

The agency shall consider, but not be limited to, each of the following methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety, and well-being:

1. The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

   Rule Chapter 0940-05-02 has been revised to codify in administrative rule the requirements of T.C.A. §§ 33-2-407 and 33-2-409 regarding TDMHSAS's authority to impose civil penalties.

2. Clarity, conciseness, and lack of ambiguity in the rule.

   TDMHSAS seeks to clarify a fee schedule for the imposition of civil penalties. The establishment of a minimum and maximum civil penalty fee schedule based on the severity or critical nature of the offense notifies providers what monetary penalty can be assessed against them. The establishment of a fee schedule and enforcement criteria defines the necessary steps to be followed by TDMHSAS in order to assess a civil penalty. The establishment of a civil penalty fee schedule applies to all licensed providers thereby curbing inequity.

3. The establishment of flexible compliance and reporting requirements for small businesses.

   There are no new reporting requirements imposed by this rule.

4. The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses.

   There are no new reporting requirements or changes imposed by this rule.

5. The consolidation or simplification of compliance or reporting requirements for small businesses.

   There are no new reporting requirements or changes imposed by this rule.

6. The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.

   These rules clarify the basis for imposing civil penalties on those TDMHSAS-licensed agencies who fail to comply with TDMHSAS licensing rules and regulations and do not impose any performance standards. State law (T.C.A. §§ 33-2-407 and 33-2-409) currently provides TDMHSAS with the authority to impose these penalties.

7. The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

   These rules are designed to provide the operational standards necessary to safeguard the health, safety and well-being of all individuals served in a TDMHSAS-licensed agency.

Economic Impact Statement

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

   These rules apply to all TDMHSAS-licensed agencies in Tennessee. A little under one-half of the licensed providers in Tennessee, approximately 650 providers, qualify as small businesses (fewer than 50 employees).

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

   The proposed rules impose no new reporting requirements or costs on any TDMHSAS-licensed providers.

3. A statement of the probable effect on impacted small businesses and consumers.

   The new rules will have very minimal impact on small businesses. Pursuant to statutory authority, TDMHSAS already levies civil penalties against agencies in violation of TDMHSAS licensure rules and regulations. These rules provide a fee schedule based on the severity or critical nature of the violation. Currently TDMHSAS defaults to the statutory fee requirements found in T.C.A. §§ 33-2-407 and 33-2-409. Civil penalties allow the department to penalize facilities in non-compliance with TDMHSAS licensing rules. These changes were made to safeguard the health and safety of service recipients. When agencies/facilities are in non-compliance with licensure rules, the safety and welfare of service recipients is compromised. By establishing a fee schedule for civil penalties, the department is better able to monitor compliance with rules and penalize those who are non-compliant.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

   Because of the safety issues associated with non-compliance with licensure rules, TDMHSAS finds that having the authority to assess a civil penalty is necessary to business practices. The law already provides the authority to impose a civil penalty against an agency/facility. All providers are subject to the regulations in this chapter rule. By placing into rule what is already in practice, providers have clear notice of disciplinary actions and associated fees that may be assessed when they are non-compliant with the rules.

5. A comparison of the proposed rule with any federal or state counterparts.

   Rule Chapter 0940-05-02 has been revised to codify in rule what state law already allows in regard to civil penalties.

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

   The proposed rules conform to state laws governing licensed alcohol and drug and mental health facilities and personal support services agencies serving either the elderly or those with mental health issues. Small businesses are not directly impacted by the promulgation of the fee schedule; the rule just places in regulation what is already being done in practice. The effect of exempting small businesses from all or any part of the requirements contained in the rule would be inequitable, considering one half of licensed mental health and substance abuse facilities and personal support service agencies operating in Tennessee qualify as small businesses. More importantly, an exemption would create an environment in which the safety and public health accountability measures contemplated by the civil penalty schedule rule would be unevenly applied to those providing services in Tennessee.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

TDMHSAS estimates that this rule will have no projected impact on local governments. TDMHSAS estimates the rule will have a minimal impact on state government revenues.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The following is a brief description of the relevant changes in previous regulations effectuated by this rule:

**All citations referenced below refer to the current version of the rules contained herein.*

1. The most evident change is the formatting/renumbering of various sections of the rules and the reflection of the name change of the department. The rules will now reflect the current name of the department, Department of Mental Health and Substance Abuse Services, and remove any reference to developmental disabilities.
2. The rule makes housekeeping and technical changes to synch rule language with proper terminology.
3. The rule reclassifies an organization as a person, partnership, association, or corporation. (0940-05-02-.03).
4. The rule reinforces the practice of a fee invoice accompanying any payment of fees. (0940-05-02-.07).
5. The rule creates a new section (0940-05-02-.09 Number of Licenses Required) and defines how many licenses are required per site and defines how these licenses may be issued.
6. The rule renumbers and re-labels 0940-05-02-.10 to Change of Ownership or Location (in order to clarify the non-transferability of licenses).
7. The rule adds a new section that sets forth a fee schedule for civil penalties. Current statutes allow for penalties, however, the rules do not set forth this authority nor define a schedule. (0940-05-02-.25). Highlights include:
    A. Civil penalties may be in addition to or in lieu of any other disciplinary action.
    B. The procedure for assessing a civil penalty.
    C. The determination of the daily amount of the penalty.
    D. The fee schedule sets a minimum and maximum amount when there is a violation of a rule.
    E. The fee schedule determines the amount for a first offense or a second/subsequent offense.
    F. The rule defines a Priority 1 and Critical offense for fee determination.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. §§ 4-3-1601, 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-404, 33-2-407, and 33-2-409. (Tennessee statutes creating TDMHSAS and granting TDMHSAS and its commissioner certain authority, including the authority to promulgate rules and regulations regarding licensure and compliance, etc. Tennessee statutes governing the imposition of civil penalties and creation of a scale designating the minimum and maximum civil penalties to be assessed.)

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

As of November 13, 2013, TDMHSAS licenses 1,349 sites in Tennessee. This includes personal support services, mental health facilities, and alcohol and drug facilities across the state. This rule affects all TDMHSAS licensed providers. Providers had the opportunity to attend the public hearing on November 19, 2013 where they could submit oral comments. The public was given until November 20, 2013 to submit written comments. While this rule applies to all facilities/services licensed by TDMHSAS, civil penalties are only assessed in dire situations. TDMHSAS currently has the statutory ability to levy civil penalties, the fee schedule is just not defined in the rules; this rule will only define that fee schedule. Some TDMHSAS licensed providers may still urge rejection of this rule.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

TDMHSAS has no knowledge of any opinions of the attorney general and reporter and/or any judicial ruling that

directly relates to this rule.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

TDMHSAS estimates this rule will have a minimal fiscal impact on state and local government revenues and expenditures.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Kurt Hippel
TDMHSAS
Director of the Office of Legislation and Rules

Cynthia Tyler
TDMHSAS
Director of the Office of Licensure

Ashley Fuqua
TDMHSAS
Assistant Director of the Office of Licensure

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Kurt Hippel
TDMHSAS
Director of the Office of Legislation and Rules

Cynthia Tyler
TDMHSAS
Director of the Office of Licensure

Ashley Fuqua
TDMHSAS
Assistant Director of the Office of Licensure

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Kurt Hippel
TDMHSAS
Director of the Office of Legislation and Rules
500 Deaderick Street
5th Floor, Andrew Jackson Building
Nashville, TN 37243
(615)532-9439
Kurt.Hippel@tn.gov

Cynthia Tyler
TDMHSAS
Director of the Office of Licensure
500 Deaderick Street
5th Floor, Andrew Jackson Building
Nashville, TN 37243
(615)532-6586
Cynthia.Tyler@tn.gov

Ashley Fuqua
TDMHSAS
Assistant Director of the Office of Licensure
500 Deaderick Street
5th Floor, Andrew Jackson Building
Nashville, TN 37243
(615)532-3629
Ashley.Fuqua@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

NA

RULES
OF
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

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, alcohol and drug abuse, developmental disability, mental retardation, 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.* ***Administrative History:*** *Original rule filed November 16, 1978; effective January 1, 1979. Amendment filed May 22, 1979; effective July 10, 1979. Amendment filed December 8, 1980; effective January 22, 1981. Amendment filed November 30, 1983; effective December 30, 1983. Amendment filed March 11, 1987; effective April, 25, 1987. Repeal and new rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.~~

~~**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 may be 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;~~

(Rule 0940-5-2-.02, continued)

(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.* ***Administrative History:*** *Original rule filed November 16, 1978; effective January 1, 1979. Amendment filed May 22, 1979; effective July 10, 1979. Amendment filed December 8, 1980; effective January 22, 1981. Amendment filed November 30, 1983; effective December 30, 1983. Repeal and new rule filed June 30, 1986; effective July 30, 1986. Amendment filed October 14, 1986; effective November 28, 1986. Repeal and new rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

0940-5-2-.03 UNLAWFUL OPERATION. No organization may begin delivering services until the Department issues a license. Providing mental health, alcohol and drug abuse, developmental disability, mental retardation, 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.* ***Administrative History:*** *Original rule filed May 22,1979; effective July 10, 1979. Repeal and new rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

0940-5-2-.04 APPLICATION FORMS.

(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, and 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; and

(f) Any such other information as the Department may require.

(Rule 0940-5-2-.04, continued)

Authority: *T.C.A. §§ 33-2-404 and 33-2-406.* ***Administrative History:*** *Original rule filed May 22, 1979; effective July 10, 1979. Repeal and new rule filed May 26, 1988; effective July 11, 1988. Amendment February 12, 1992; effective March 28, 1992. Amendment filed March 19, 1992; effective May 3, 1992. Amendment filed October 3, 2002; effective December 17, 2002. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

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 (Per Bed):	$ 175.00

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.* ***Administrative History:*** *Original rule filed December 8, 1980; effective January 22, 1981. Repeal and new rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

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.

(Rule 0940-5-2-.06, continued)

(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.* ***Administrative History:*** *Original rule filed December 8, 1980; effective January 22, 1981. Repeal and new rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

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 service's program performance history. Dates for unannounced inspections will be random varying from year to year.

(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.

(Rule 0940-5-2-.07, continued)

Authority: *T.C.A. §§ 33-2-403, 33-2-404, 33-2-406, and 33-2-407.* ***Administrative History:*** *Original rule filed March 11, 1987; effective April 25, 1987. Repeal and new rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

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.* ***Administrative History:*** *Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

0940-5-2-.09 NON-TRANSFERABILITY 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.* ***Administrative History:*** *Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

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.* ***Administrative History:*** *Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

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;

(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.

(Rule 0940-5-2-.11, continued)

(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.* ***Administrative History:*** *Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

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: *T.C.A. §§ 33-2-404 and 33-2-413(b).* ***Administrative History:*** *Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

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, and 33-2-408.* ***Administrative History:*** *Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

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 status of the application has been determined by the Department. When the

(Rule 0940-5-2-.14, continued)
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. §§ 4-5-320, 33-2-403, 33-2-404, 33-2-407, and 33-2-408.* ***Administrative History:*** *Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

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.* ***Administrative History:*** *Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

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, and 33-2-408.* ***Administrative History:*** *Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

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.

(b) 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.

(c) 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.* ***Administrative History:*** *Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

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.* ***Administrative History:*** *(Formerly numbered as 0940-5-1-.05. For history prior to July, 1988 see pages 1.001 through 1.003). Amendment filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

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 which informs 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 serious allegations or suspicion of abuse, dereliction, or deficiency in the operation of the facility or service.

(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, and 33-2-416.* ***Administrative History:*** *Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

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 the most recent compliance plans in a central location.

Authority: *T.C.A. §§ 33-2-403 and 33-2-404.* ***Administrative History:*** *Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

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.* ***Administrative History:*** *Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

0940-5-2-.22 INSPECTION FEES.

(1) Pursuant to T.C.A. § 33-2-413(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.* ***Administrative History:*** *Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

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.* ***Administrative History:*** *Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.*

STATE OF TENNESSEE
DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
DIVISION OF GENERAL COUNSEL
5th FLOOR, ANDREW JACKSON BUILDING
500 DEADERICK STREET
NASHVILLE, TENNESSEE 37243

BILL HASLAM
GOVERNOR

E. DOUGLAS VARNEY
COMMISSIONER

April 24, 2014

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Mr. Cody York
Director of Publications
Division of Publications
Tennessee Department of State
Tennessee Tower, 8th Floor
312 Rosa L. Parks Avenue
Nashville, TN 37243

Dear Mr. York:

We write to inform you that the Rulemaking Hearing Rules for Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS) Rule Chapter 0940-05-02, Licensure Administration and Procedures, filed with Division of Publications on February 3rd, 2014, and effective May 4th, 2014, contain (2) two typographical errors.

The first typographical error can be found in 0940-05-02-.05(1) of the Rulemaking Hearing Rules for TDMHSAS Rule Chapter 0940-05-02, Licensure Administration and Procedures. In 0940-05-02-.05(1), the non-residential facility fee amount for "Two Distinct Categories of Service or Facility" is mistakenly written as "$1020.00". That fee amount is a typographical error and should read "$1010.00", as it does in the current version of this rule, found at 0940-05-02-.05(1). At no time did TDMHSAS intend for the fee amount for two distinct categories of service or facility to be $1020.00. This was simply a keystroke error and should read "$1010.00".

The second typographical error can be found in 0940-05-02-.12(1)(a) of the Rulemaking Hearing Rules for TDMHSAS Rule Chapter 0940-05-02, Licensure Administration and Procedures. 0940-05-02-.12(1)(a) reads "Joint;". This is a typographical error and should read "Joint Commission on Accreditation of Health Care Organizations (JCAHO);", which is how it appears in the current version of this rule, found at 0940-05-02-.11(1)(a). At no time did TDMHSAS intend to omit the full name of the Joint Commission on Accreditation of Health Care Organizations from 0940-05-02-.12(1)(a).

We request that the Division of Publications of the Tennessee Department of State correct these (2) two typographical errors upon publication of the Rulemaking Hearing Rules for

TDMHSAS Rule Chapter 0940-05-02, Licensure Administration and Procedures, which become effective on May 4th, 2014.

Thank you for your time and consideration and please let us know if we can be of any assistance in this matter.

Sincerely,

R. Kurt Hippel
Director of Legislation and Rules
TDMHSAS
Andrew Jackson Building, 5th Floor
500 Deaderick Street
Nashville, TN 37243

Cynthia Tyler
Director of Licensure
TDMHSAS
Andrew Jackson Building, 5th Floor
500 Deaderick Street
Nashville, TN 37243

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