

**RULES
OF
THE TENNESSEE DEPARTMENT OF MENTAL HEALTH
AND SUBSTANCE ABUSE SERVICES
OFFICE OF THE COMMISSIONER**

**CHAPTER 0940-01-06
CAPACITY TO MAKE DECISIONS**

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0940-01-06-.01 PURPOSE.

The purpose of this chapter is to prescribe a uniform assessment process as required by T.C.A. § 33-3-217, to determine whether a patient with mental illness or serious emotional disturbance lacks capacity to make informed decisions on issues within the meaning of T.C.A. § 33-3-218 and Rule Chapter 0940-01-02.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 4-5-204, 33-1-101, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-3-217, and 33-3-218. **Administrative History:** Original rule filed December 29, 2005; effective March 14, 2006. Amendments filed December 22, 2025; effective March 22, 2026.

0940-01-06-.02 SCOPE.

This chapter covers informed decisions that are needed to be made in an inpatient psychiatric treatment setting, including state-operated Regional Mental Health Institutes (RMHIs), private psychiatric hospitals, and psychiatric units of private general hospitals. This chapter does not cover outpatient services and does not cover services in an emergency room in a medical or surgical facility except for psychiatric admission to the facility. This chapter does not apply to any emergency that endangers a patient's health or life.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 4-5-204, 33-1-101, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-3-217, and 33-3-218. **Administrative History:** Original rule filed December 29, 2005; effective March 14, 2006. Amendments filed December 22, 2025; effective March 22, 2026.

0940-01-06-.03 APPLICABILITY.

- (1) For patients aged 16 or older, who have a mental illness or serious emotional disturbance, this chapter applies to:
 - (a) Application for voluntary admission to or discharge from a hospital or inpatient treatment resource;
 - (b) After voluntary or involuntary admission to a hospital or inpatient treatment resource, determination of the patient's capacity to make an informed decision regarding:
 1. Inpatient mental health treatment, including use of psychotropic medication,
 2. Release of information,
 3. Request for information, or

(Rule 0940-01-06-.03, continued)

4. Treatment of a physical condition or illness in an inpatient psychiatric treatment setting.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 4-5-204, 33-1-101, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-3-217, 33-3-218, and 33-8-202. **Administrative History:** Original rule filed December 29, 2005; effective March 14, 2006. Amendments filed December 22, 2025; effective March 22, 2026.

0940-01-06-.04 DEFINITIONS.

- (1) “Examiner” means a physician, licensed practitioner, registered nurse, or qualified mental health professional.
- (2) “Lacks capacity” means that the person is:
 - (a) Unable to understand a proposed procedure or treatment; or
 - (b) Unable to understand the risks and benefits of such procedure or treatment; or
 - (c) Unable to understand the risks and benefits of any available alternative to the procedure or treatment; or
 - (d) Unable to understand the risks and benefits of not receiving the procedure or treatment.
- (3) “Licensed physician” means a graduate of an accredited medical school authorized to confer the degree of Doctor of Medicine (M.D.) who is duly licensed in the state, or an osteopathic physician who is a graduate of a recognized osteopathic college authorized to confer the degree of Doctor of Osteopathy (D.O.) and who is licensed to practice osteopathic medicine in the state.
- (4) “Licensed practitioner” means an individual who is licensed and qualified to direct or provide care, treatment, and services in accordance with state law and regulation, applicable federal law and regulation, and organizational policy.
- (5) “Mental illness”, as defined in T.C.A. § 33-1-101(19), means a psychiatric disorder, alcohol dependence, or drug dependence, but does not include intellectual disability or other developmental disabilities.
- (6) “Qualified mental health professional” means a person who is licensed in the state, if required for the profession, and who is a psychiatrist; physician with expertise in psychiatry as determined by training, education, or experience; psychologist with health service provider designation; psychological examiner, or senior psychological examiner; licensed master’s social worker with two (2) years of mental health experience or licensed clinical social worker; marital and family therapist; nurse who has a master’s degree in nursing who functions as a psychiatric nurse; professional counselor; or if the person is providing service to patients who are children, any of the above educational credentials plus mental health experience with children.
- (7) “Serious emotional disturbance” means a condition in a child who currently or at any time during the past year has had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet psychiatric diagnostic criteria that results in functional impairment that substantially interferes with or limits the child’s role or functioning in family, school, or community activities and includes any mental disorder, regardless of whether it is of biological etiology.

(Rule 0940-01-06-.04, continued)

Authority: T.C.A. §§ 4-4-103, 4-5-202, 4-5-204, 33-1-101, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-3-217, and 33-3-218. **Administrative History:** Original rule filed December 29, 2005; effective March 14, 2006. Amendments filed December 22, 2025; effective March 22, 2026.

0940-01-06-.05 ASSESSMENT.

- (1) Validity of the assessment. If an examiner concludes that a patient is unable to make an informed decision about a subject to which these rules apply, then the patient lacks capacity for a decision about the subject matter at that time.
- (2) Stringency of the assessment. The stringency of the capacity assessment should correspond directly with the seriousness of the likely consequences of the informed decision that needs to be made. The examiner should consider the risks and benefits of the decision in reaching a conclusion on the patient's capacity to make an informed decision, with decisions associated with a higher risk of negative consequences requiring a higher standard of decision-making capacity than lower risk decisions.
- (3) Performing the assessment.
 - (a) The examiner must approach the evaluation of a patient's capacity to make an informed decision on the presumption that the patient has capacity.
 - (b) The examiner must consider the patient's understanding of the information, the patient's ability to express a choice, the patient's appreciation of how the information applies to them, and the patient's ability to compare information and anticipate consequences of choice.
 - (c) The examiner must take reasonable steps to conduct the assessment in a way that enables the patient to show capacity to make informed decisions about the procedure or treatment.
 - (d) The examiner must provide relevant information to the patient, including:
 1. The issue to be decided and the reason a decision is needed;
 2. The proposed procedure or treatment and the risks and benefits of the proposed procedure or treatment;
 3. Any consequences of accepting or refusing the procedure or treatment;
 4. The risks and benefits of any available alternatives; and
 5. The patient's right to refuse or later withdraw from participation in the procedure or treatment and the risks and benefits of refusal or withdrawal.
 - (e) The examiner must consider the following in determining whether the person lacks capacity:
 1. The person's understanding of the proposed procedure or treatment;
 2. The person's understanding of the anticipated side effects of the proposed procedure or treatment;
 3. The person's understanding of what could happen if the procedure or treatment is carried out;

(Rule 0940-01-06-.05, continued)

4. The person's understanding of what could happen if the procedure or treatment is not carried out;
 5. The person's understanding of available alternative procedures or treatments, including their risks and benefits;
 6. The person's understanding that the procedure or treatment can be refused and what could happen if the procedure or treatment is refused;
 7. The person's understanding of whether the procedure or treatment can be stopped after it begins and the potential consequences; and
 8. The person's ability to maintain a choice by continuing to express the same decision about the issue at various times during the assessment process.
- (4) Documenting the assessment. The examiner must document the assessment, including:
- (a) The issue which required an informed decision;
 - (b) Specific actions, statements, or behaviors of the patient that initially gave reason to question the patient's capacity;
 - (c) Specific actions, statements and/or behaviors of the patient that support the examiner's conclusion about the patient's capacity to make an informed decision;
 - (d) The examiner's conclusion on the patient's capacity to make an informed decision; and
 - (e) The examiner's signature, credentials, and the date and time of the assessment.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 4-5-204, 33-1-101, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-3-217, and 33-3-218. **Administrative History:** Original rule filed December 29, 2005; effective March 14, 2006. Amendments filed December 22, 2025; effective March 22, 2026.

0940-01-06-.06 REPEALED.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 4-5-204, 33-1-101, 33-1-203, 33-1-204, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-3-217, and 33-3-218. **Administrative History:** Original rule filed December 29, 2005; effective March 14, 2006. Administrative corrections made to agency names in December 2022 pursuant to Public Chapter 575 of 2012. Repeal filed November 25, 2024; effective February 23, 2025.