

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

**CHAPTER 0940-03-11
TRANSFER OF SERVICE RECIPIENTS TO AND FROM THE
MTMHI FORENSIC SERVICES PROGRAM**

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0940-03-11-.01 DEFINITIONS.

- (1) "Assistant Commissioner" means the Tennessee Department of Mental Health and Substance Abuse Services Assistant Commissioner of Policy and Legislation or the Assistant Commissioner with administrative responsibility for the Office of Forensic Services.
- (2) "Chief Officer" means, for the purposes of this chapter, the person with overall authority for a regional mental health institute or the person's designee.
- (3) "Commissioner" means the Commissioner of the Tennessee Department of Mental Health and Substance Abuse Services.
- (4) "Department" means the Tennessee Department of Mental Health and Substance Abuse Services.
- (5) "Forensic Services Program" means a service or facility operated directly or through agreement by the Tennessee Department of Mental Health and Substance Abuse Services to provide assessment and/or treatment for service recipients who need a secure setting.
- (6) "Office of Forensic Services" means the Tennessee Department of Mental Health and Substance Abuse Services Office of Forensic and Juvenile Court Services.
- (7) "Transfer Committee" means a committee of five (5) persons established, pursuant to T.C.A. §§ 33-3-404 through 33-3-406, to review the transfer of service recipients who are inmates between the Department of Correction and the Tennessee Department of Mental Health and Substance Abuse Services.
- (8) "Service recipient" means, for the purposes of this chapter, a person with mental illness who is receiving services in a facility operated by the Tennessee Department of Mental Health and Substance Abuse Services or the Department of Correction.

Authority: T.C.A. §§ 4-4-103, 33-1-201, 33-1-202, 33-1-203, 33-1-204, 33-1-302, and 33-1-305.
Administrative History: Original rule filed March 18, 2010; effective June 16, 2010. Administrative corrections made to agency names in December 2022 pursuant to Public Chapter 575 of 2012.

**0940-03-11-.02 REGULAR TRANSFER TO MTMHI FORENSIC SERVICES PROGRAM FROM
REGIONAL MENTAL HEALTH INSTITUTE.**

- (1) The Commissioner may authorize a transfer to the Forensic Services Program at Middle Tennessee Mental Health Institute (MTMHI) of a service recipient who was admitted, committed, or hospitalized at a Regional Mental Health Institute when:
 - (a) The service recipient can more properly be cared for and treated in the Forensic Services Program at MTMHI than at the facility where the service recipient currently receives services;
 - (b) The transfer is in the service recipient's best interest; and
 - (c) The Commissioner determines that the service recipient is substantially likely to injure himself/herself or others if not treated in a secure facility.
- (2) Upon recommendation by the treatment team, the Chief Officer of the referring facility shall prepare and send a transfer packet to the Commissioner by way of the Office of Forensic Services. The transfer packet shall, at a minimum, include:
 - (a) A cover letter from the Chief Officer requesting the transfer with:
 1. The rationale for the request; and
 2. Documentation of the treatment interventions used to manage the service recipient's behavior in the Regional Mental Health Institute.
 - (b) Certificate of need for transfer from a licensed physician with expertise in psychiatry or a licensed psychologist with a health service provider designation that includes documentation related to the service recipient's behavior and attempted treatment interventions including, but not limited to, the use of isolation and/or restraint, a new unit assignment, and/or changes in medication;
 - (c) A mental status assessment/evaluation completed within twenty-four (24) hours prior to the request;
 - (d) A physical examination completed within the last six (6) months prior to the request for transfer with an addendum verifying that a physical exam was updated within the past twenty-four (24) hours;
 - (e) A copy of the court commitment order;
 - (f) A copy of the most recent risk assessment, if forensic; and
 - (g) Documentation that the service recipient and his or her conservator, spouse or responsible relative have been notified of the transfer request by the Chief Officer.
- (3) Unless the service recipient, conservator, spouse or responsible relative is in agreement with the transfer, the transfer cannot occur for twenty-four (24) hours from the time of the request for approval.
- (4) Upon receipt of the transfer request, the Office of Forensic Services shall review the request and determine within five (5) business days whether:
 - (a) All reasonable treatment interventions have been conducted and the service recipient should be transferred to the Forensic Services Program; or

(Rule 0940-03-11-.02, continued)

- (b) All reasonable treatment interventions have not been conducted.
- (5) If the Office of Forensic Services concludes that all reasonable treatment interventions have not been conducted, the Office may write to the Chief Officer requesting that additional specific interventions be attempted. The Office of Forensic Services shall notify the Assistant Commissioner of this request.
- (6) The Chief Officer may submit additional information clarifying the treatment interventions used to manage the service recipient's behavior safely in the RMHI or, after a reasonable period of time, reapply for this transfer after the recommended interventions have been tried, evaluated, and been deemed not to have succeeded in ameliorating the conditions that triggered the original transfer request.
- (7) If the Office of Forensic Services determines that a service recipient should be transferred to the Forensic Services Program, a memorandum and the transfer packet shall be sent to the Assistant Commissioner notifying him or her of the recommendation to transfer.
- (8) If the Assistant Commissioner concludes that all reasonable treatment interventions have not been conducted, then the Assistant Commissioner shall instruct the Office of Forensic Services to write to the Chief Officer requesting that additional specific interventions be attempted.
- (9) If the Assistant Commissioner concludes that a service recipient should be transferred, then the Office of Forensic Services shall prepare the following documents:
 - (a) A memo to the Commissioner from the Assistant Commissioner requesting approval for the transfer; and
 - (b) Three authorization forms to be signed by the Director of Forensic Services, the Assistant Commissioner and the Commissioner.
- (10) If the Commissioner concludes that all reasonable treatment interventions have not been conducted, then the Commissioner shall instruct the Office of Forensic Services to write to the Chief Officer requesting that additional specific interventions be attempted.
- (11) If the Commissioner concludes that all reasonable treatment interventions have been conducted, then the Office of Forensic Services shall prepare for the Commissioner's signature the following documents:
 - (a) A letter approving the transfer to the Chief Officer of the referring facility with a receipt of transfer notice form, an authorization letter to the service recipient, a form for the service recipient to file a complaint objecting to the transfer in Circuit Court as specified in Title 33, Chapter 7, and a signed authorization form;
 - (b) A letter approving transfer to the Chief Officer of MTMHI with a signed authorization form; and
 - (c) A letter to the appropriate relative or conservator with a complaint form for objecting to the transfer, sent via certified mail.
- (12) The following people may file a complaint in circuit court if they object to the transfer: service recipient; legal custodian, conservator, spouse or responsible relative of the service recipient. If a complaint is filed, the circuit court shall determine whether a service recipient may be transferred to a facility.

(Rule 0940-03-11-.02, continued)

- (13) Upon receipt of the transfer approval, the Chief Officer shall deliver the transfer authorization letter, the complaint form, and an acknowledgement of receipt form to the service recipient. The service recipient shall be given the opportunity to sign the acknowledgement of receipt at the time the notice is delivered. If the service recipient refuses to sign the acknowledgement of receipt, the person who delivers the notice of the transfer shall, in the presence of a witness, write on the receipt, "refused to sign receipt." After the service recipient either signs or fails to sign the acknowledgement of receipt, it shall be co-signed by the person who delivered the notice and a witness. The Chief Officer shall keep the signed receipt for their files and place a copy in the service recipient's record.
- (14) When the transfer is approved, the Chief Officer shall:
 - (a) Send written notice of the transfer to the committing court;
 - (b) Communicate with the MTMHI Forensic Services Program Director to arrange the transfer;
 - (c) Verify available suitable accommodations at the MTMHI Forensic Services Program by obtaining a confirmation number from MTMHI;
 - (d) Arrange for transportation and transfer of the service recipient within two (2) business days of receiving confirmation of available suitable accommodations; and
 - (e) Set up a teleconference between the referring physician and/or psychologist with health services provider designation and the receiving physician to discuss diagnosis and medication decisions prior to the transfer. This discussion shall be documented in the service recipient's record.
- (15) The MTMHI Forensic Services Program Director shall notify the referring Forensic Services Coordinator of the admission of the transferred service recipient.

Authority: T.C.A. §§ 4-4-103, 33-1-201, 33-1-202, 33-1-203, 33-1-204, 33-1-302, 33-1-305, 33-3-301, and 33-3-701, et seq. **Administrative History:** Original rule filed March 18, 2010; effective June 16, 2010.

0940-03-11-.03 EMERGENCY TRANSFER TO MTMHI FORENSIC SERVICES PROGRAM FROM REGIONAL MENTAL HEALTH INSTITUTE.

- (1) The Office of Forensic Services shall ensure that the emergency transfer of a service recipient from a Regional Mental Health Institute to the Forensic Services Program is expeditious, complies with statutory criteria for emergency transfer and considers the welfare and safety of the service recipient, other service recipients and staff.
- (2) An emergency transfer shall be approved if, and only if, all appropriate interventions have been tried and documented and deemed unsuccessful.
- (3) The licensed physician or licensed psychologist with health service provider designation shall make a determination that a service recipient meets all of the following criteria in order for a transfer to be considered:
 - (a) The service recipient requires emergency care and treatment that cannot be provided by the transferring facility;
 - (b) The transfer is in the service recipient's best interest;

(Rule 0940-03-11-.03, continued)

- (c) The service recipient has a substantial likelihood of injuring himself or herself or others if not treated in a secure facility; and
 - (d) The service recipient is not under a voluntary commitment.
- (4) After the licensed physician or licensed psychologist with health service provider designation determines that the service recipient meets the criteria specified in 0940-03-11-.03(3) for an emergency transfer, the Chief Officer of the referring Regional Mental Health Institute shall:
 - (a) Telephone the MTMHI Forensic Services Program Director and the Office of Forensic Services. If after normal working hours, the Assistant Commissioner may approve the transfer.
 - (b) Send by facsimile within two (2) hours of the verbal request for an emergency transfer the following information:
 - 1. Recommendations for transfer from the referring Chief Officer that includes the rationale for transfer and the interventions taken to treat the service recipient including, but not limited to, use of restraint or isolation, changes in medication, use of PRN medications, and/or changes in unit assignment.
 - 2. Documentation of the need for transfer from either a licensed physician with expertise in psychiatry or a licensed psychologist with health service provider designation.
 - 3. A written report of a physical examination completed by a licensed physician within the last six (6) months with an addendum within the last twenty-four (24) hours.
 - 4. The most recent risk assessment, if a forensic service recipient.
- (5) After receiving the documentation specified in 0940-03-11-.03(4), the Office of Forensic Services shall review the request and send this documentation with a recommendation to approve or disapprove the transfer to the Assistant Commissioner and the Commissioner.
- (6) Upon review of this information, the Director of the Office of Forensic Services, the Assistant Commissioner, and the Commissioner shall verbally authorize the transfer or request that further information be received prior to authorization or deny the transfer.
- (7) If the emergency transfer request is denied, the Forensic Coordinator at the Regional Mental Health Institute and the Office of Forensic Services shall develop an alternative safety plan and identify an appropriate period of time for the review of the safety plan. The safety plan may include, but is not limited to, behavioral modification, change in medications, and moving the service recipient to a different unit.
- (8) After an emergency transfer request is approved, then the Office of Forensic Services shall:
 - (a) Convey verbally the decision to the Chief Officer of the referring facility and the Chief Officer of MTMHI;
 - (b) Prepare a letter to the service recipient from the Commissioner of TDMHSAS stating that the transfer was approved. A copy of this letter shall be sent by facsimile and by mail to both the sending and receiving Chief Officers.

(Rule 0940-03-11-.03, continued)

- (9) If the emergency transfer request is approved, the Chief Officer of the referring facility shall:
- (a) Ensure that the service recipient receives a signed statement and a receipt of transfer notification from the referring Chief Officer notifying the service recipient of the authorized transfer;
 - (b) Provide the service recipient with the opportunity to sign the receipt of transfer notification at the time the notice is delivered. If the service recipient refuses to sign the acknowledgement, the person who delivers the notice of the transfer shall, in the presence of a witness, write on the receipt, "refused to sign receipt." After the service recipient either signs or fails to sign the acknowledgement of receipt, it shall be co-signed by the person who delivered the notice and a witness. The completed acknowledgement of receipt shall be filed in the office of the Chief Officer;
 - (c) Verbally contact the appropriate relative or conservator and send by mail a written notice of transfer; these contacts shall be documented in the service recipient's record;
 - (d) Set up a teleconference between the referring physician or psychologist and the receiving physician to discuss diagnosis and medication decisions: this discussion shall be documented in the service recipient's record;
 - (e) If the service recipient has not already been judicially committed, file a complaint for commitment under T.C.A. Title 33, Chapter 6, Part 5;
 - (f) Notify the committing court of the transfer; and
 - (g) Send a copy of the following documents to the Office of Forensic Services:
 - 1. A copy of the court commitment order;
 - 2. A copy of the court notification; and
 - 3. A copy of the notification of the transfer to the service recipient and to the appropriate relative or conservator.
 - (h) Verify available suitable accommodations at the MTMHI Forensic Services Program by obtaining a confirmation number from MTMHI.
- (10) The service recipient shall be transferred to the MTMHI Forensic Services Program, accompanied by a copy of his or her clinical record, within twenty-four (24) hours of the receipt of the verbal approval of the transfer request and confirmation of available suitable accommodations.
- (11) After the service recipient is transferred, the Office of Forensic Services shall prepare a letter to the service recipient from the Commissioner of TDMHSAS indicating that the continued need for treatment in the secure facility shall be determined within seventy-two (72) hours.
- (12) Within seventy-two (72) hours of the transfer, the treatment team at the Forensic Services Program shall make a recommendation to the Chief Officer of MTMHI about the need for continued care and treatment for up to thirty (30) days.
- (13) If the Chief Officer determines that there is a need for continued care and treatment for up to thirty (30) days, then the:

(Rule 0940-03-11-.03, continued)

- (a) Chief Officer of MTMHI shall send written notification to the service recipient of the need for continued care and treatment up to thirty (30) days and send a copy of the notification to the Office of Forensic Services; and
 - (b) Commissioner shall send written notice to the service recipient of the authorization of the continued need for care and treatment in the Forensic Services Program and send a copy of the letter to the referring and receiving Chief Officers.
- (14) If continued treatment for up to thirty (30) days at the Forensic Services Program is not needed, then the MTMHI Forensic Services Program Director shall:
 - (a) Notify the referring Regional Mental Health Institute Chief Officer by telephone and letter;
 - (b) Verify available suitable accommodations by obtaining a confirmation number from MTMHI;
 - (c) Transfer the service recipient to the referring facility within twenty-four (24) hours of confirming available suitable accommodations; and
 - (d) Notify the Office of Forensic Services by telephone and letter and send a copy of the letter to the Chief Officer of the referring Regional Mental Health Institute.
- (15) Within thirty (30) days of the transfer to the Forensic Services Program, the Forensic Services Program treatment team shall determine if continued care and treatment at the Forensic Services Program is required beyond thirty (30) days.
- (16) If the treatment team recommends continued treatment beyond thirty (30) days, then the Chief Officer of MTMHI shall:
 - (a) Notify the service recipient by letter;
 - (b) Request approval from the Commissioner by having the Director of the Forensic Services Program prepare a letter to the Commissioner justifying the need for continued care and treatment in the secure facility; and
 - (c) Send copies of the letter for continued care and treatment at the Forensic Services Program to the Director of the Office of Forensic Services.
- (17) After receiving the letter for continued care and treatment, the Office of Forensic Services Program shall review the request and send this documentation with a recommendation to approve or disapprove the transfer to the Assistant Commissioner and Commissioner.
- (18) If the Commissioner approves the need for continued care and treatment beyond thirty (30) days, the Commissioner shall:
 - (a) Send written notification to the Chief Officer of the referring facility by sending an authorization memorandum;
 - (b) Send written notification to the Chief Officer of MTMHI by sending an authorization memorandum;
 - (c) Send written notification to the service recipient and include a complaint form to object to the authorization; and

(Rule 0940-03-11-.03, continued)

- (d) Send written notification to the appropriate relative/conservator and include a complaint form to object to the authorization.
- (19) If the need for continued care and treatment in the Forensic Services Program beyond thirty (30) days is approved, the MTMHI Forensic Services Program Director shall notify the committing court of the authorization for continued care and treatment in the secure facility.
- (20) If continued care and treatment in the Forensic Services Program beyond thirty (30) days is not recommended, the Chief Officer of MTMHI shall:
 - (a) Send written notification to the Chief Officer of the referring facility and send a copy of the notice to the Office of Forensic Services;
 - (b) Return the service recipient to the referring facility within of seventy-two (72) hours, excluding week-ends and holidays, of providing notice of the decision.
- (21) If continued care and treatment in the MTMHI Forensic Services Program beyond thirty (30) days is not recommended, the Forensic Services Coordinator of the referring Regional Mental Health Institute shall:
 - (a) Send written notification to the appropriate relative or conservator that the service recipient has been transferred from the MTMHI Forensic Services Program to a Regional Mental Health Institute; and
 - (b) Send written notification to the committing court that the service recipient has been transferred from the MTMHI Forensic Services Program to a Regional Mental Health Institute.
- (22) The MTMHI Forensic Services Program Director shall notify the Office of Forensic Services of the date of the service recipient's return to the referring facility.

Authority: T.C.A. §§ 4-4-103, 33-1-201, 33-1-202, 33-1-203, 33-1-204, 33-1-302, 33-1-305, 33-3-301, and 33-3-701, et seq. **Administrative History:** Original rule filed March 18, 2010; effective June 16, 2010. Administrative corrections made to agency names in December 2022 pursuant to Public Chapter 575 of 2012.

0940-03-11-.04 TRANSFER FROM MTMHI FORENSIC SERVICES PROGRAM TO A REGIONAL MENTAL HEALTH INSTITUTE.

- (1) The Commissioner may authorize the transfer of any service recipient admitted, committed, or hospitalized under T.C.A. Title 33, Chapter 5 or Chapter 7 to the MTMHI Forensic Services Program back to a regional mental health institute when:
 - (a) The service recipient can be more properly cared for and treated in a non-secure facility;
 - (b) The transfer is in the service recipient's best interest;
 - (c) The transfer is not contrary to the safety and welfare of the service recipient, other service recipients or the staff of the receiving facility; and
 - (d) The service recipient no longer requires treatment in a secure facility.

(Rule 0940-03-11-.04, continued)

- (2) If the treatment team recommends that a service recipient be transferred from the MTMHI Forensic Services Program to a Regional Mental Health Institute, the MTMHI Forensic Services Program Director shall forward the following reports to the Chief Officer of MTMHI:
 - (a) A certified copy of the commitment order;
 - (b) A copy of the most recent staff conference report;
 - (c) A copy of the most recent physical examination completed within the last six (6) months and updated within the past twenty-four (24) hours;
 - (d) A copy of the most recent risk assessment, if forensic;
 - (e) A report of mental assessment and evaluation for transfer if not already included in the conference report; and
 - (f) A copy of the notifications provided to the court, to the service recipient, and to the service recipient's nearest relative or conservator, as applicable, regarding the request for transfer.
- (3) The Chief Officer of MTMHI shall review and approve the transfer request within seventy-two (72) hours of receipt and provide to the MTMHI Forensic Services Program Director a signed cover letter to the Commissioner that includes the following:
 - (a) Documentation of specific reasons for transfer and the service recipient's past and present behavior;
 - (b) Certification that the transfer is in the best interest of the service recipient; and
 - (c) Certification that the transfer will not be contrary to the safety and welfare of the service recipient or other service recipients and staff of the receiving facility.
- (4) Within twenty-four (24) hours of receiving the cover letter signed by the Chief Officer of MTMHI, the MTMHI Forensic Services Program Director shall forward the signed cover letter to the Office of Forensic Services with the following documents:
 - (a) Documents listed in Rule 0940-03-11-.04(2)(a) through (f); and
 - (b) A copy of the signed receipt of transfer notification. If the service recipient refuses to sign the receipt of transfer notification, the person who delivers the notice of the transfer shall, in the presence of a witness, write on the receipt, "refused to sign receipt." After the service recipient either signs or fails to sign the acknowledgement of receipt, it shall be co-signed by the person who delivered the notice and a witness. The completed acknowledgement of receipt shall be filed in the office of the Chief Officer.
- (5) At the time the transfer request is made to the Commissioner, the Chief Officer of MTMHI shall send a referral letter to the Chief Officer of the receiving facility along with:
 - (a) A copy of the documents listed in Rule 0940-03-11-.04(2)(a) through (f); and
 - (b) The service recipient's record.
- (6) The receiving Chief Officer may challenge the transfer request to the Commissioner within ten (10) days of receiving notice of the transfer request. A physician-to-physician

(Rule 0940-03-11-.04, continued)

teleconference may be conducted as part of this review process. The written challenge to the transfer request shall include:

- (a) Justification for the challenge; and
 - (b) An alternative Regional Mental Health Institute who has agreed to accept the transfer of the service recipient.
- (7) Upon receipt of the transfer documents, the Office of Forensic Services shall:
 - (a) Review documents sent by the Chief Officer of MTMHI;
 - (b) Interview the service recipient within forty-eight (48) hours of receipt of the transfer request, excluding Saturdays, Sundays, and legal holidays;
 - (c) Interview staff members involved in the service recipient's treatment; and
 - (d) Review the clinical chart at the MTMHI Forensic Services Program.
- (8) Following a review of the facts of the transfer request, the Office of Forensic Services shall prepare a report summarizing the clinical and legal information specific to the service recipient including the following:
 - (a) A statement that the transfer is or is not in the best interest of the service recipient;
 - (b) A statement that the transfer would or would not be contrary to the safety and well-being of other service recipients and staff;
 - (c) A description of the service recipient's current behavior;
 - (d) A recommendation for or against transfer with the rationale for this recommendation; and
 - (e) The date of the last aggressive behavior and/or attempted elopement and therapeutic intervention.
- (9) If the Office of Forensic Services concurs with the recommendation for transfer, the Director of the Office of Forensic Services shall prepare a recommendation memo to the Assistant Commissioner.
- (10) If the Office of Forensic Services does not concur with the recommendation for transfer, the Director of the Office of Forensic Services shall consult with the Director of the MTMHI Forensic Services Program to:
 - (a) Identify barriers to transfer;
 - (b) Develop a plan to eliminate barriers to transfer; and
 - (c) Establish a timeframe for reviewing progress.
- (11) The Office of Forensic Services shall notify the Chief Officers of MTMHI and the receiving facility and the Assistant Commissioner of the decision to delay the transfer and the recommended plan for addressing barriers to transfer.

(Rule 0940-03-11-.04, continued)

- (12) When the barriers to transfer have been eliminated, the Director of the MTMHI Forensic Services Program shall submit an updated report to the Office of Forensic Services and the Director of Forensic Services shall complete a recommendation memorandum to the Assistant Commissioner.
- (13) The Assistant Commissioner shall review the transfer request upon receipt of the recommendation memorandum.
- (14) If the Assistant Commissioner approves the transfer request, the Office of Forensic Services shall draft a recommendation memorandum to the Commissioner supporting the transfer request.
- (15) If the Assistant Commissioner does not concur with the recommendation of the Office of Forensic Services, the Director of the Office of Forensic Services shall:
 - (a) Consult with the Director of the MTMHI Forensic Services Program to identify barriers to transfer;
 - (b) Develop a plan to eliminate barriers to transfer; and
 - (c) Establish a time frame for reviewing progress.
- (16) Once the barriers to transfer have been eliminated, the Director of the MTMHI Forensic Services Program shall submit an updated report to the Director of the Office of Forensic Services who shall submit the updated request to the Assistant Commissioner for review.
- (17) If the Assistant Commissioner does not approve the request, consultation and planning as described in 0940-03-11-.04(16), shall continue until the Assistant Commissioner concurs with the request.
- (18) When the Director of the Office of Forensic Services and the Assistant Commissioner approve the transfer request, then the Office of Forensic Services shall prepare the following materials for the Commissioner to review:
 - (a) A letter from the Commissioner to the Chief Officer of MTMHI approving the transfer request;
 - (b) A letter from the Commissioner to the Chief Officer of the receiving facility: this letter shall indicate that the transfer is to occur within thirty (30) days of the approval;
 - (c) Three (3) authorization forms, each with original signatures, to be signed by the Director of the Office of Forensic Services, the Assistant Commissioner and the Commissioner; these forms are attachments to the memorandum to the referring facility, the receiving facility and for Department files;
 - (d) A letter from the Commissioner to the service recipient at the MTMHI Forensic Services Program with a complaint form;
 - (e) A letter from the Commissioner to the appropriate relative or conservator of the service recipient with a complaint form; and
 - (f) A completed transfer cover sheet.
- (19) If the Commissioner concurs with the transfer request, he or she shall complete the items specified in 0940-03-11-.04(18)(a) through (e).

(Rule 0940-03-11-.04, continued)

- (20) The Office of Forensic Services shall distribute the notifications specified in Rule 0940-03-11-.04(18)(a) through (f) after they have been completed by the Commissioner.
- (21) If the Commissioner does not concur with the transfer request, the Director of the Office of Forensic Services shall consult with the Director of the MTMHI Forensic Services Program to:
 - (a) Identify barriers to transfer;
 - (b) Develop a plan to eliminate barriers to transfer; and
 - (c) Establish a time frame for reviewing progress.
- (22) Once the barriers to transfer have been eliminated, the Director of the MTMHI Forensic Services Program shall submit an updated report to the Office of Forensic Services who shall submit this report to the Assistant Commissioner for review prior to sending it to the Commissioner. If the Commissioner does not approve the updated request, consultation and planning as described under Rule 0940-03-11-.04(21) shall continue until the Commissioner approves an updated request.
- (23) After receiving notification of transfer approval, the Director of the MTMHI Forensic Services Program shall:
 - (a) Set up a teleconference between the referring physician and the receiving physician to discuss diagnosis and medication decisions prior to the transfer of the service recipient; this discussion shall be documented in the service recipient's record; and
 - (b) Arrange for transportation and the transfer of the service recipient within thirty (30) days of the receipt of the letter from the Commissioner to the Chief Officer of the receiving Regional Mental Health Institute.
- (24) The Chief Officer of MTMHI shall notify the committing court of the date for transfer.

Authority: T.C.A. §§ 4-4-103, 33-1-201, 33-1-202, 33-1-203, 33-1-204, 33-1-302, 33-1-305, 33-3-301, and 33-3-701, et seq. **Administrative History:** Original rule filed March 18, 2010; effective June 16, 2010.

0940-03-11-.05 REGULAR TRANSFER TO MTMHI FORENSIC SERVICES PROGRAM FROM DEPARTMENT OF CORRECTION.

- (1) A service recipient may be transferred immediately to the MTMHI Forensic Services Program from a Department of Correction facility when the Director of a Department of Correction facility makes a determination, based on a written report of a licensed physician or psychologist with health services provider designation, that a service recipient in the director's custody:
 - (a) Has a mental illness;
 - (b) Is in need of residential care and treatment for the condition that cannot be provided at an appropriate facility of the Department of Correction and that can be provided at the MTMHI Forensic Services Program; and
 - (c) Waives in writing the right to a transfer hearing.

(Rule 0940-03-11-.05, continued)

- (2) The following information shall accompany a service recipient transferred to the MTMHI Forensic Services Program from the Department of Correction:
 - (a) A letter affirming the transfer to the MTMHI Forensic Services Program;
 - (b) A copy of the signed statement from the service recipient waiving the right to a transfer hearing; and
 - (c) The written report documenting that the service recipient meets the transfer criteria in 0940-03-11-.05(1)(a) and (b).
- (3) If the service recipient does not waive the right to a transfer hearing, the service recipient shall remain in the facility of the Department of Correction until the Director of a Department of Correction Facility convenes a transfer committee not less than seven (7) days or more than fourteen (14) days thereafter.
- (4) The transfer committee shall meet the requirements of T.C.A. §§ 33-3-404 et seq.
- (5) The transfer committee shall approve the transfer if the transfer meets the criteria in Rule 0940-03-11-.05(1)(a) and (b).
- (6) The chair of the transfer committee shall provide the service recipient with the following information if the transfer is approved:
 - (a) A written notice of the transfer committee's decision and a summary of the factual basis for the decision; and
 - (b) A complaint form for review of the transfer in circuit court under T.C.A., Title 33, Chapter 3, Part 7.
- (7) The Director of the Department of Correction facility shall transfer the service recipient five (5) days after the receipt of the transfer committee's notice to the service recipient if the following conditions are met:
 - (a) The transfer meets the criteria specified in Rule 0940-03-11-.05(1)(a) and (b); and
 - (b) The service recipient has not filed a complaint under T.C.A., Title 33, Chapter 3, Part 7; and
 - (c) The Director verifies available suitable accommodations at the MTMHI Forensic Services Program by obtaining a confirmation number from MTMHI.
- (8) When a transfer is approved by the transfer committee, the Director of the Department of Correction Facility shall provide the MTMHI Forensic Service Program with:
 - (a) A letter affirming the transfer to the MTMHI Forensic Services Program; and
 - (b) A summary of the factual basis for the transfer committee decision.
- (9) The transfer committee shall disapprove the transfer if the transfer does not meet the criteria specified in Rule 0940-03-11-.05(1)(a) and (b).
- (10) If the transfer is disapproved, the chair of the transfer committee shall provide the service recipient with a written notice of the transfer committee's decision and a summary of the factual basis for the decision.

(Rule 0940-03-11-.05, continued)

- (11) If the transfer is disapproved and the service recipient has already been transferred, the transfer committee shall order the service recipient returned to the Department of Correction facility.
- (12) The Chief Officer of MTMHI shall determine, within five (5) days, excluding Saturdays, Sundays, and legal holidays, whether a transfer is appropriate based on the advice of a licensed physician.
 - (a) If the transfer is not appropriate, the Chief Officer of MTMHI shall immediately transfer the service recipient back to the custody of the Department of Correction.
 - (b) If the transfer is appropriate, the Chief Officer of MTMHI shall:
 - 1. Ensure that the service recipient receives a signed statement and a receipt of transfer notification notifying the service recipient of the authorized transfer;
 - 2. Provide the service recipient with the opportunity to sign the receipt of transfer notification at the time the notice is delivered. If the service recipient refuses to sign the acknowledgement, the person who delivers the notice of the transfer shall, in the presence of a witness, write on the receipt, "refused to sign receipt." After the service recipient either signs or fails to sign the acknowledgement of receipt, it shall be co-signed by the person who delivered the notice and a witness. The completed acknowledgement of receipt shall be filed in the office of the Chief Officer;
 - 3. Verbally contact the appropriate relative or conservator and send by mail a written notice of transfer; these contacts shall be documented in the service recipient's record;
 - 4. Set up a teleconference between the referring physician or psychologist with health service provider designation and the receiving physician to discuss diagnosis and medication decisions: this discussion shall be documented in the service recipient's record;
 - 5. Send to the Office of Forensic Services a copy of the notification of the transfer to the service recipient and to the appropriate relative or conservator;
- (13) All complaints filed with circuit court to review whether a service recipient may be transferred to a facility shall follow the requirements in Title 33, Chapter 3, Part 7.

Authority: T.C.A. §§ 4-4-103, 33-1-201, 33-1-202, 33-1-203, 33-1-204, 33-1-302, 33-1-305, 33-3-301, 33-3-402, 33-3-404, 33-3-405, 33-3-406, 33-3-408, 33-3-409, and 33-3-701, et seq. **Administrative History:** Original rule filed March 18, 2010; effective June 16, 2010.

0940-03-11-.06 EMERGENCY TRANSFER TO MTMHI FORENSIC SERVICES PROGRAM FROM DEPARTMENT OF CORRECTION.

- (1) The emergency transfer of a service recipient to the MTMHI Forensic Services Program from the Department of Correction may occur when:
 - (a) The Director of a Department of Correction facility determines, based on a written report of a licensed physician or a licensed psychologist designated as a health services provider, that a service recipient in the Director's custody:

(Rule 0940-03-11-.06, continued)

1. Has mental illness; and
 2. Is in need of emergency residential care and treatment for the condition that cannot be provided at an appropriate facility of the Department of Correction and that can be provided at an appropriate residential program of the Tennessee Department of Mental Health and Substance Abuse Services.
- (2) If the Director of the Department of Correction facility orders the emergency transfer to the MTMHI Forensic Services Program, the Director shall:
- (a) Telephone the MTMHI Forensic Services Program Director and the Office of Forensic Services.
 - (b) Send by facsimile the following information:
 1. Recommendations for transfer from the referring Director of the Department of Correction facility that includes the rationale for transfer; and
 2. Documentation of the need for transfer from either a licensed physician or a licensed psychologist with health service provider designation.
 - (c) Verify available suitable accommodations at the MTMHI Forensic Services Program by obtaining a confirmation number from MTMHI.
- (3) After documentation is received by MTMHI and a confirmation number has been provided, the service recipient may be transferred immediately to the MTMHI Forensic Services Program.
- (4) When an service recipient is transferred to the MTMHI Forensic Services Program from the Department of Correction, the Chief Officer of MTMHI shall convene a transfer committee, as defined by T.C.A. §§ 33-3-404 et seq., not less than seven (7) days or more than fourteen (14) days thereafter unless the service recipient is returned to the Department of Correction before the hearing date.

Authority: T.C.A. §§ 4-4-103, 33-1-201, 33-1-202, 33-1-203, 33-1-204, 33-1-302, 33-1-305, 33-3-403, 33-3-404, 33-3-405, 33-3-406, and 33-3-701, et seq. **Administrative History:** Original rule filed March 18, 2010; effective June 16, 2010. Administrative corrections made to agency names in December 2022 pursuant to Public Chapter 575 of 2012.

0940-03-11-.07 TRANSFER FROM MTMHI FORENSIC SERVICES PROGRAM TO THE DEPARTMENT OF CORRECTION.

- (1) The Chief Officer of MTMHI may order a service recipient's return to the Department of Correction more than five (5) days after the transfer, excluding Saturdays, Sundays and legal holidays, if:
 - (a) A service recipient no longer meets the standards for transfer specified in Rule 0940-03-11-.05(1)(a) or (b); or
 - (b) Residential care and treatment in the facility is no longer advisable or beneficial.
- (2) Not less than seventy-two (72) hours in advance of the transfer, the Chief Officer of MTMHI shall:

(Rule 0940-03-11-.07, continued)

- (a) Ensure that the service recipient receives a signed statement notifying the service recipient of the authorized transfer; a receipt of transfer notification; a form to object to the transfer; and
 - (b) Provide the opportunity for the service recipient to sign the receipt of transfer notification at the time the notice is delivered. If the service recipient refuses to sign the acknowledgement, the person who delivers the notice of the transfer shall, in the presence of a witness, write on the receipt, "refused to sign receipt." After the service recipient either signs or fails to sign the acknowledgement of receipt, it shall be co-signed by the person who delivered the notice and a witness. The completed acknowledgement of receipt shall be kept on file in the office of the Chief Officer.
- (3) If the service recipient does not object to the transfer within seventy-two (72) hours of receiving the transfer notice of the proposed return, the service recipient shall be returned to the Department of Correction.
- (4) If the service recipient objects to the transfer within seventy-two (72) hours of receiving the transfer notice, the Chief Officer of MTMHI shall convene a transfer committee, as defined by T.C.A. §§ 33-3-404 et seq., to review the decision not less than seven (7) days or more than fourteen (14) days thereafter.
- (5) The transfer committee shall approve the transfer if it determines that the service recipient no longer meets the standards specified in Rule 0940-03-11-.05(1)(a) or (b) or that residential care and treatment in the facility are no longer advisable or beneficial.
- (6) The decision of the transfer committee approving or disapproving a transfer from the MTMHI Forensic Services Program is final and not subject to judicial review.

Authority: T.C.A. §§ 4-4-103, 33-1-201, 33-1-202, 33-1-203, 33-1-204, 33-1-302, 33-1-305, 33-3-408, and 33-4-409. **Administrative History:** Original rule filed March 18, 2010; effective June 16, 2010.