

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

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

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

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

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, and 33-2-404. **Administrative History:** Original rules filed May 26, 1988; effective July 11, 1988. Amendment filed May 28, 2010; to have been effective August 26, 2010. Stay of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on July 21, 2010; new effective date November 9, 2010. Withdrawal of amendment filed August 2, 2010. Amendment filed August 30, 2010; to have been effective January 29, 2011. Stay of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on January 29, 2011; new effective date March 7, 2011. Withdrawal of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on February 25, 2011. Repeal and new rules filed November 30, 2016; effective February 28, 2017. Administrative corrections made to agency names in December 2022 pursuant to Public Chapter 575 of 2012. Amendments filed February 24, 2026; effective May 25, 2026.

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

- (1) The governing body must ensure that a written policies and procedures manual is maintained. The manual must include the following elements:

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

- (a) A description of each facility service provided by the licensee. The description must include the hours of operation and admission and discharge criteria and rules for service recipients, if any;
- (b) An organizational chart or a statement which clearly shows or describes the lines of authority between the governing body, the chief executive officer, and the staff;
- (c) Policies and procedures which ensure that someone is delegated the authority to act in the absence of the individual responsible for the operation of the facility;
- (d) A schedule of fees currently charged to the service recipient, if any, for all services provided by the licensee, including a refund policy. The schedule shall include:
 - 1. The fee or fees for each service, including any additional charges for services not covered by the basic service fee;
 - 2. The process by which licensee will apply any governmental or other funds or donations to the fee or fees for services. This may include, but not be limited to, use of a service recipient's food stamps as payment for his or her meals; use of federal, state or other funds or donations to finance all or part of the service recipient's cost for services; or payments made to the agency for a service recipient's participation in an employment or rehabilitation program to finance the cost of services provided; and,
 - 3. The total cost of services to the service recipient;
- (e) A statement of service recipient rights and the grievance procedures to be followed when a suspected violation of service recipient rights has been reported. This statement shall, at a minimum, include those service recipient rights found in Rule 0940-05-06-.06 and, if applicable, 0940-05-06-.09;
- (f) Policies and procedures which ensure the confidentiality of service recipient information and which include the following provisions:
 - 1. The facility staff must comply with applicable confidentiality laws and regulations, including, but not limited to, T.C.A. § 33-3-103; the Health Insurance Portability and Accountability Act of 1996; and federal alcohol and drug regulations found at 42 C.F.R. Part 2;
 - 2. The service recipient must not be required to make public statements which acknowledge gratitude to the licensee or for the licensee's facility services;
 - 3. The service recipient must not be required to perform in public gatherings; and,
 - 4. Identifiable photographs of the service recipient must not be used without the written and signed consent of the service recipient or the service recipient's guardian;
- (g) A medication administration policy and control procedures for facilities involved in the administration of medication to service recipients or facilities that supervise the self-administration of medication by the service recipient;

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

- (h) The plans and procedures to be followed in the event of fire evacuation and natural disaster emergencies, including what the duties are of the employees assigned responsibility for those individuals not capable of self-preservation;
- (i) The plans and procedures to be followed in the event of an emergency involving service recipient care which will provide for emergency transportation of service recipients, emergency medical care, and staff coverage in such events;
- (j) A policy which prohibits service recipients, except those who may be certified by the Department as peer or family support specialists and who are working at a facility in that capacity, from having any of the following responsibilities:
 - 1. Responsibility for the care of other service recipients;
 - 2. Responsibility for the supervision of other service recipients unless on-duty/on-site staff are present; and,
 - 3. Responsibilities requiring access to confidential information;
- (k) Policies and procedures to be followed in the reporting and investigation of suspected or alleged abuse, neglect, or other critical incidents, whether perpetrated by or on the service recipient by staff, other service recipients or outside parties. The procedures must include provisions for corrective action, if any, to be taken as a result of such reporting and investigation. These procedures shall also include provisions for reporting incidents or allegations to the Department and, when necessary other appropriate state agencies and local law enforcement;
- (l) Policies and procedures which ensure that volunteers, if used by the facility, are in a supportive capacity and are under the supervision of appropriate designated staff members. A record should be maintained on each volunteer which shall include the volunteer's status on the Sexual Offender Registry (Sex Offender Registry) and Tennessee's Vulnerable Adult Abuse Registry (Abuse Registry). A volunteer included on either the Abuse Registry or the Sex Offender Registry shall not work in an agency providing services to vulnerable adults or children. It is recommended that the volunteer's record also include a criminal background check and references.
- (m) Policies and procedures which govern the use of service recipient behavior-management techniques, if used by the facility;
- (n) A policy regarding the use of human subjects in research, if the facility is involved or planning to be involved in such research, which includes procedures for the following:
 - 1. Identification of subjects, projects and staff;
 - 2. Provisions to protect the personal and civil rights of the subjects;
 - 3. Obtaining the consent of the subject involved;
 - 4. Assurance that all research projects are conducted under the direction and supervision of professional staff qualified by education and experience to conduct research;
 - 5. Emergency guidelines for problems that may develop during research activities; and,

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

6. Appointment of a facility representative to act as a coordinator of the research activities;
 - (o) Policies and procedures for ensuring that employees and volunteers comply with procedures for detection, prevention, and, if applicable, mandatory reporting of infectious and communicable diseases to the Tennessee Department of Health;
 - (p) Policies and procedures ensuring that employees and volunteers practice infection control procedures and standard precautions to protect the service recipient from infectious diseases;
 - (q) Policies and procedures regarding coordination of care with the service recipient's other health, mental health, social, educational and residential service providers;
 - (r) Policies and procedures describing the process by which the licensee will comply with Rule 0940-05-06-.03 Financial Management of All Services and Facilities, including process by which the service recipient or service recipient's representative may register a complaint with the licensee to address the licensee's holding and disbursement of service recipient's funds or property;
 - (s) Policies and procedures that address inappropriate relationships of a business, social, professional, romantic and sexual nature between the service recipient and the licensee, its staff and/or volunteers;
 - (t) Policies and procedures that address sanctions against an employee for violations of the licensee's policies and procedures and a process by which a complaint or grievance may be registered with the licensee;
 - (u) Policies and procedures, as dictated by 0940-05-06-.10, should facilities serve parent or guardian service recipients whose minor children also reside with them in the same facility;
 - (v) Policies and procedures shall be reviewed annually for determination of needed changes if deemed necessary by the governing body. Evidence of this review and determination shall be documented in the governing body minutes of the applicable meeting.
 - (w) Policies and procedures assigning an employee to be responsible for each individual who is not capable of self-preservation, regardless of whether the individual is a service recipient or not; and
 - (x) Licensees shall annually review their policies and procedures and make changes to them if deemed necessary by their governing body.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, and 33-2-404. **Administrative History:** Original rules filed May 26, 1988; effective July 11, 1988. Amendment filed May 28, 2010; to have been effective August 26, 2010. Stay of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on July 21, 2010; new effective date November 9, 2010. Withdrawal of amendment filed August 2, 2010. Amendment filed August 30, 2010; to have been effective January 29, 2011. Stay of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on January 29, 2011; new effective date March 7, 2011. Withdrawal of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on February 25, 2011. Repeal and new rules filed November 30, 2016; effective February 28, 2017. Administrative corrections made to agency names in December 2022 pursuant to Public Chapter 575 of 2012. Amendments filed February 24, 2026; effective May 25, 2026.

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

- (1) The licensee holding or receiving funds or property for the service recipient as trustee or representative payee will adhere to all laws, state and federal, that govern his fiduciary position and relation to the service recipient. A licensee may not retaliate against an employee, volunteer or other individual who reports a violation of the licensee's fiduciary obligation to the service recipient.
- (2) The licensee shall prohibit staff, volunteers and proprietors from soliciting or borrowing money or property from service recipients.
- (3) The licensee shall ensure that all money received, held and/or disbursed on behalf of the service recipient is for the strict, personal benefit of the service recipient.
- (4) The licensee shall not mix funds with those of the service recipient. The licensee shall maintain a separate account in a federally insured financial institution for the deposit and/or disbursement of service recipient funds.
- (5) The licensee shall not take funds or property of the service recipient for the licensee's personal or organizational use or gain.
- (6) The licensee shall maintain a written account of all monies received or disbursed on behalf of the service recipient. No less than annually, the licensee shall provide the service recipient or the service recipient's legal representative a report of all funds held and disbursed on behalf of the service recipient.
- (7) The licensee shall identify the source of each service recipient's funding in the applicable service recipient's chart. This identification shall specifically list whether the funding is public and, if so, identify the exact funding source(s) (e.g. Social Security Disability, Supplemental Nutrition Assistance Program (SNAP), Wellpoint, BlueCare, UnitedHealthcare Community Plan, TennCare Select, etc.).
- (8) The licensee shall obtain and maintain liability insurance in the name of the organization sufficient to cover reasonably foreseeable liabilities of the agency.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, and 33-2-404. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988. Amendment filed May 28, 2010; to have been effective August 26, 2010. Stay of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on July 21, 2010; new effective date November 9, 2010. Withdrawal of amendment filed August 2, 2010. Amendment filed August 30, 2010; to have been effective January 29, 2011. Stay of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on January 29, 2011; new effective date March 7, 2011. Withdrawal of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on February 25, 2011. Repeal and new rules filed November 30, 2016; effective February 28, 2017. Administrative corrections made to agency names in December 2022 pursuant to Public Chapter 575 of 2012. Amendments filed February 24, 2026; effective May 25, 2026.

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

- (1) A job description must be maintained which includes the employment requirements and the job responsibilities for each facility staff position. This description shall include whether this employee will be designated as an employee who can be assigned as an employee to assist individuals not capable of self-preservation.
- (2) A personnel record must be maintained which verifies that each employee meets their respective employment requirements for the staff position held. Included in the employee's

(Rule 0940-05-06-.04, continued)

personnel records shall be evidence of a criminal background check as specified in T.C.A. § 33-2-1202; the employee's status on the Tennessee Elderly and Vulnerable Abuse Registry (Abuse Registry) maintained by the Health Facilities Commission; and the employee's status on the Sexual Offender Registry (Sexual Offender Registry); the employee's date of birth; social security number; and records of any disciplinary action. An employee on either the Abuse Registry or Sexual Offender Registry is ineligible to remain employed by or work as a volunteer or independent contractor with the licensee in any capacity.

- (3) Annual training and development activities that assist the staff in meeting the needs of the service recipients. All direct care staff shall receive training in fire evacuation procedures. The agency shall document all training and development activities in which an employee participated in the employee's personnel records.
- (4) Training and development activities which are appropriate in assisting volunteers (if used by the facility) in implementing their assigned duties must be provided for each volunteer. The provision of such activities must be evidenced by documentation in the facility's records.
- (5) Direct-services staff members must be competent persons aged eighteen (18) years of age or older.
- (6) An employee's professional license or certification, including, but not limited to, certification as a peer or family support specialist, as required by the job description or state law.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, and 33-2-404. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988. Amendment filed May 28, 2010; to have been effective August 26, 2010. Stay of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on July 21, 2010; new effective date November 9, 2010. Withdrawal of amendment filed August 2, 2010. Amendment filed August 30, 2010; to have been effective January 29, 2011. Stay of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on January 29, 2011; new effective date March 7, 2011. Withdrawal of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on February 25, 2011. Repeal and new rules filed November 30, 2016; effective February 28, 2017. Administrative corrections made to agency names in December 2022 pursuant to Public Chapter 575 of 2012. Amendments filed February 24, 2026; effective May 25, 2026.

0940-05-06-.05 INDIVIDUAL SERVICE RECIPIENT RECORD REQUIREMENTS FOR ALL SERVICES AND FACILITIES.

The governing body must ensure that an individual record is maintained, in electronic or hard copy format, for each client being served and which minimally includes the following information:

- (1) The name and social security number of the service recipient;
- (2) The address of the service recipient or, for residential treatment programs, a permanent or previous address;
- (3) The telephone number of the service recipient;
- (4) The sex of the service recipient;
- (5) The date of the service recipient's birth;
- (6) The date of the service recipient's admission to the facility;
- (7) The source of the service recipient's referral to the facility;

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

- (8) If applicable, legal documents affirming that the service recipient has a court-appointed legal representative and the name, address and telephone number of the legal representative;
- (9) The name, address, and telephone number of a family representative and/or an emergency contact person;
- (10) If the facility charges fees for its services, a fee schedule, as described in Rule 0940-05-06-.02(1)(d), shall be dated, completed and signed by the service recipient (or the service recipient's legal representative) prior to provision of any services other than emergency services. The licensee should complete a new fee schedule when there is a change in the amount of fees, the services provided, or additional charges for which the service recipient is responsible are incurred;
- (11) When appropriate, informed, signed and dated consent and authorization forms for the release or obtaining of information from the service recipient. These forms shall be in compliance with state and federal confidentiality laws and include at least the following information:
 - (a) Name and title of the person or organization to or from whom disclosure is to be made;
 - (b) The signature of the service recipient or the service recipient's legal representative;
 - (c) The purpose of the disclosure;
 - (d) The extent and nature of information to be disclosed;
 - (e) A statement that the content is subject to revocation at any time except to the extent that action has already been taken in reliance thereon and a specified date, event or condition upon which the consent will expire without express revocation; and,
 - (f) The date on which the consent is signed;
- (12) Documentation that the service recipient or someone legally acting on behalf of the service recipient has been informed of the service recipient's rights and responsibilities and of the facility's general rules affecting the service recipient;
- (13) A written account of all monies received or disbursed on behalf of the service recipient and a copy of the annual report on the use and disbursement of service recipient funds as required by 0940-05-06-.03(6); and
- (14) The service recipient's record shall include a notation of any additional behavioral health providers the service recipient may concurrently see beyond the licensee and who the assigned case manager and/or social worker of the service recipient is, if applicable.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, and 33-2-404. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988. Amendment filed May 28, 2010; to have been effective August 26, 2010. Stay of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on July 21, 2010; new effective date November 9, 2010. Withdrawal of amendment filed August 2, 2010 Amendment filed August 30, 2010; to have been effective January 29, 2011. Stay of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on January 29, 2011; new effective date March 7, 2011. Withdrawal of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on February 25, 2011. Repeal and new rules filed November 30, 2016; effective February 28, 2017. Administrative corrections made to

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

agency names in December 2022 pursuant to Public Chapter 575 of 2012. Amendments filed February 24, 2026; effective May 25, 2026.

0940-05-06-.06 SERVICE RECIPIENT RIGHTS IN ALL SERVICES AND FACILITIES.

- (1) The following rights shall be afforded to all service recipients by all licensees and are not subject to modification:
 - (a) Service recipients have the right to be fully informed before or upon admission about their rights and responsibilities and about any limitation on these rights imposed by rules of the facility. The facility must ensure that the service recipient is given information about his or her rights that shall include at least the following:
 1. A statement of the specific rights guaranteed the service recipient by these rules and applicable state and federal laws;
 2. A description of the facility's complaint and grievance procedures;
 3. A listing of all available advocacy services;
 4. A copy of all general facility rules and regulations for service recipients; and,
 5. The information must be presented in a manner or format that promotes understanding by service recipients of their rights and an opportunity must be given to service recipients to ask questions about the information. If a service recipient who is unable to understand this information at the time of admission later becomes able to do so, the information must be presented to the service recipient at that time. If a service recipient is likely to continue indefinitely to be unable to understand this information, the facility must promptly attempt to provide the required information to a parent, guardian, or other appropriate person or agency responsible for protecting the rights of the service recipient;
 - (b) Service recipients have the right to voice grievances to staff of the facility, to the licensee, and to outside representatives of their choice with freedom from restraint, interference, coercion, discrimination or reprisal;
 - (c) Service recipients have the right to be treated with consideration, respect and full recognition of their dignity and individuality;
 - (d) Service recipients have the right to be protected by the licensee from neglect; from physical, verbal and emotional abuse (including corporal punishment); and from all forms of misappropriation and/or exploitation;
 - (e) Service recipients have the right to be assisted by the facility in the exercise of their civil rights;
 - (f) Service recipients have the right to be free of any requirement by the facility that they perform services which are ordinarily performed by facility staff;
 - (g) If residential services are provided, service recipients must be allowed to send personal mail unopened and to receive mail and packages which may be opened in the presence of staff when there is reason to believe that the contents thereof may be harmful to the service recipient or others;
 - (h) Service recipients have the right to privacy while receiving services;

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

- (i) Service recipients have the right to have their personal information kept confidential in accordance with state and federal confidentiality laws;
 - (j) Service recipients have the right to ask the facility to correct information in their records. If the facility refuses, the service recipient may include a written statement in the records of the reasons they disagree;
 - (k) Service recipients have the right to be informed about their care in a language they understand; and,
 - (l) Service recipients have the right to vote, make contracts, buy or sell real estate or personal property, or sign documents, unless the law or a court removes these rights.
- (2) The following rights must be afforded to all service recipients by all licensed facilities unless modified in accordance with Rules 0940-05-06-.07 or 0940-05-06-.08:
- (a) Service recipients have the right to participate in the development of the service recipient's individual program or treatment plans and to receive sufficient information about proposed and alternative interventions and program goals to enable them to participate effectively;
 - (b) Service recipients have the right to participate fully, or to refuse to participate, in community activities including cultural, educational, religious, community services, vocational and recreational activities;
 - (c) If residential services are provided, service recipient must be allowed to have free use of common areas in the facility with due regard for privacy, personal possessions, and the rights of others;
 - (d) Service recipients have the right to be accorded privacy and freedom for the use of bathrooms when needed;
 - (e) Service recipients shall be permitted to retain and use personal clothing and appropriate possessions including books, pictures, games, toys, radios, arts and crafts materials, religious articles, toiletries, jewelry and letters;
 - (f) If residential services are provided and if married service recipients reside in the facility, privacy for visits by spouses must be ensured, and if both spouses are service recipients residing in the facility, they must be permitted to share a room;
 - (g) If residential services are provided, service recipients have the right to associate and communicate privately with persons of their choice including receiving visitors at reasonable hours; and,
 - (h) If residential services are provided, service recipients supported have the right to be given privacy and freedom in the use of their bedroom/sleeping area.
 - (i) Service recipients shall have the right to make and receive phone calls during designated awake hours according to the facility's policy.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, and 33-2-404. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988. Amendment filed May 28, 2010; to have been effective August 26, 2010. Stay of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on July 21, 2010; new effective date November 9, 2010. Withdrawal of amendment

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filed August 2, 2010. Amendment filed August 30, 2010; to have been effective January 29, 2011. Stay of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on January 29, 2011; new effective date March 7, 2011. Withdrawal of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on February 25, 2011. Repeal and new rules filed November 30, 2016; effective February 28, 2017. Administrative corrections made to agency names in December 2022 pursuant to Public Chapter 575 of 2012. Amendments filed February 24, 2026; effective May 25, 2026.

0940-05-06-.07 MODIFICATION OR LIMITATION OF ALL SERVICE RECIPIENTS' RIGHTS.

- (1) The rights of all service recipients in a facility may only be modified or limited under the following conditions:
 - (a) It is demonstrated and documented that a legitimate program purpose cannot reasonably be achieved without such modification or limitation;
 - (b) No modification or limitation may be made solely for the convenience of facility staff or be more stringent than is necessary to achieve the demonstrated purpose;
 - (c) Service recipients or representatives of service recipients, as appropriate, must be fully informed of proposed facility rules, policies or procedures modifying or limiting service recipient rights, and of the reasons therefore and must be given an opportunity to object; to propose alternatives; and to consult with family, friends and/or advocacy agencies prior to their implementation;
 - (d) Facility rules, policies or procedures which modify or limit service recipient rights must be in writing and posted in a conspicuous place. If the service recipients receive services in their homes, they and/or their legally appointed representative shall be provided with a written copy of the proposed rules, policies or procedures; and,
 - (e) The facility is not a Medicaid-reimbursed home and community-based service (HCBS) provider required to comply with the federal home-based and community-based setting final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014).

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, and 33-2-404. **Administrative History:** *Original rule filed May 26, 1988; effective July 11, 1988. Amendment filed May 28, 2010; to have been effective August 26, 2010. Stay of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on July 21, 2010; new effective date November 9, 2010. Withdrawal of amendment filed August 2, 2010. Amendment filed August 30, 2010; to have been effective January 29, 2011. Stay of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on January 29, 2011; new effective date March 7, 2011. Withdrawal of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on February 25, 2011. Repeal and new rules filed November 30, 2016; effective February 28, 2017. Administrative corrections made to agency names in December 2022 pursuant to Public Chapter 575 of 2012. Amendments filed February 24, 2026; effective May 25, 2026.*

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

- (1) The rights of an individual service recipient in a facility may only be modified or limited under the following conditions:
 - (a) It is demonstrated and documented that such modification or limitation is necessary because of the individual service recipient's physical or mental condition or inappropriate behavior;

(Rule 0940-05-06-.08, continued)

- (b) To achieve a legitimate goal in the service recipient's individual program plan;
- (c) No modification or limitation may be made solely for the convenience of staff or be more stringent than is necessary;
- (d) The service recipient and/or the service recipient's legally appointed representative, as appropriate, must be fully informed of the proposed limitation or modification and must be given an opportunity to object, to propose alternatives, and to consult with family, friends, and/or advocacy agencies prior to implementation of the modifications or limitations;
- (e) Any modifications or limitations and the reasons therefore must be documented in the service recipient's record; and,
- (f) The facility is not a Medicaid-reimbursed home and community-based service (HCBS) provider required to comply with the federal home-based and community-based setting final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014).

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, and 33-2-404. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988. Amendment filed May 28, 2010; to have been effective August 26, 2010. Stay of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on July 21, 2010; new effective date November 9, 2010. Withdrawal of amendment filed August 2, 2010. Amendment filed August 30, 2010; to have been effective January 29, 2011. Stay of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on January 29, 2011; new effective date March 7, 2011. Withdrawal of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on February 25, 2011. Repeal and new rules filed November 30, 2016; effective February 28, 2017. Administrative corrections made to agency names in December 2022 pursuant to Public Chapter 575 of 2012. Amendments filed February 24, 2026; effective May 25, 2026.

0940-05-06-.09 SERVICES OR FACILITIES PROVIDING HOME AND COMMUNITY-BASED SERVICES.

A facility contracted to provide Medicaid-reimbursed home- and community-based services (HCBS) is required to comply with the federal home-based and community-based setting final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014).

- (1) Medicaid-reimbursed individuals receiving HCBS services shall be afforded the rights referenced in 42 C.F.R. 441.301(c)(4) of the HCBS Settings Rule.
- (2) The service recipients of an agency contracted to provide Medicaid-reimbursed HCBS residential services have the right to associate and communicate privately with persons of their choice including receiving visitors at any time.
- (3) The rights of persons supported in a facility receiving HCBS services may only be modified or limited as provided in the federal home-based and community-based setting final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014).
 - (a) Any modifications or limitations must be documented in the service recipient's record or service plan and must:
 - 1. Identify a specific and individualized assessed need;
 - 2. Document the positive interventions and supports used prior to any modifications to the person-centered service plan;

(Rule 0940-05-06-.09, continued)

3. Document less intrusive methods of meeting the need that have been tried but did not work;
4. Include a clear description of the condition that is directly proportionate to the specific assessed need;
5. Include regular collection and review of data to measure the ongoing effectiveness of the modification;
6. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;
7. Include the informed consent of the service recipient or legal representative; and,
8. Include an assurance that interventions and supports will cause no harm to the service recipient.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, and 33-2-404. **Administrative History:** Original rule filed May 28, 2010; to have been effective August 26, 2010. Stay of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on July 21, 2010; new effective date November 9, 2010. Withdrawal of amendment filed August 2, 2010. Amendment filed August 30, 2010; to have been effective January 29, 2011. Stay of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on January 29, 2011; new effective date March 7, 2011. Withdrawal of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on February 25, 2011. Repeal and new rules filed November 30, 2016; effective February 28, 2017. Administrative corrections made to agency names in December 2022 pursuant to Public Chapter 575 of 2012. Amendments filed February 24, 2026; effective May 25, 2026.

0940-05-06-.10 MINORS RESIDING WITH PARENTS OR GUARDIANS AT A FACILITY.

This section applies to facilities who are serving parents or guardians who have a minor child residing with them at the same facility. For the purposes of the Department's regulations, a minor residing with their parent or guardian at the facility does not meet the definition of a service recipient. These specialized programs provide behavioral health treatment; therapy; parenting skills training; medication management, in settings where allowed; psychosocial services; life skills; and job readiness education. These settings are supported by professional staff who ensure the safety of children in the environment while their parent or guardian and families work towards sobriety and recovery.

- (1) Facilities must notify the Office of Licensure and receive approval in writing before allowing children to reside with their parent or guardian at the facility. The licensure chapters where this model may be in place, post-approval, are limited to the following:
 - (a) Mental Health Adult Residential Treatment Services;
 - (b) Mental Health Supportive Living Facilities;
 - (c) Alcohol and Drug Halfway House Treatment Facilities;
 - (d) Alcohol and Drug Residential Detoxification Treatment Facilities;
 - (e) Alcohol and Drug Residential Rehabilitation Facilities; and
 - (f) Adult Supportive Residential Facilities.

(Rule 0940-05-06-.10, continued)

(2) The following policy and procedure requirements shall apply when minors are present:

- (a) Policies and procedures regarding minor(s) residing with their parent or guardian at the facility which shall include a description of responsibility the facility will undertake related to the care and responsibility for the minor(s), if any.
 - 1. If the facility will undertake any level of care and responsibility for minor(s) present, it shall ensure it obtains a Child Care license, should such license be required by the appropriate licensing authority.
- (b) Policies and procedures addressing needs of school age children, including but not limited to, education and other basic needs.
- (c) Policies and procedures that dictate how direct care staff will have been trained in the following areas:
 - 1. Pregnancy, perinatal, and postpartum care;
 - 2. Recognize the importance of family, social networks, and community systems in the therapeutic continuum of care;
 - 3. Know and address incidents of intimate partner violence (IPV);
 - 4. Working with interdisciplinary treatment teams to provide integrated care;
 - 5. Ensure knowledge of maternity care providers within your surrounding communities;
 - 6. Infant and child first aid, including but not limited to CPR and sleep safety; and
 - 7. Employees assisting minor(s) residing with their parent not capable of self-preservation during an emergency.
- (d) Policies and procedures addressing parenting education for service recipients.
- (e) Policies and procedures addressing the parent or guardian's responsibility for meeting the minor's basic needs regarding: food, clothing, hygiene, safety, discipline, supervision, and obtaining services in response to a referral made on behalf of the child.
- (f) Policies and procedures to address making arrangements for the care of the child at any time when the parent or guardian is not present at the facility or while they are receiving treatment.
- (g) Policies and procedures addressing parent-child interaction between staff, parent, and children services in order to provide a safe and healthy environment for service recipients and their children.
- (h) Policies and procedures for when a child is present at the facility, including but not limited to the following:
 - 1. Requirements for whether children must be immunized prior to the admission of the parent or guardian service recipient;

(Rule 0940-05-06-.10, continued)

2. Requirements for whether children must show no signs of illness prior to parent or guardian service recipient admission; and
 3. How the facility will ensure children are to continue receiving primary medical care during their stay and their parents/guardian's admission in the facility;
- (i) Facilities shall develop and implement written policies and procedures related to:
1. The maximum number of children permitted to reside in the facility at one (1) time; and
 2. Allowed ranges of age of children permitted to reside in the facility.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, and 33-2-404. **Administrative History:** Original rule filed May 28, 2010; to have been effective August 26, 2010. Stay of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on July 21, 2010; new effective date November 9, 2010. Withdrawal of amendment filed August 2, 2010. Amendment filed August 30, 2010; to have been effective January 29, 2011. Stay of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on January 29, 2011; new effective date March 7, 2011. Withdrawal of amendment filed by the Tennessee Department of Mental Health and Substance Abuse Services on February 25, 2011. Repeal and new rules filed November 30, 2016; effective February 28, 2017. Administrative corrections made to agency names in December 2022 pursuant to Public Chapter 575 of 2012. Amendments filed February 24, 2026; effective May 25, 2026.