

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Agriculture

DIVISION: Forestry

SUBJECT: Open-Air Burning Permits

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 39-14-306

EFFECTIVE DATES: July 29, 2014, through June 30, 2015

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The Open Air Burning Permit Rules provide definitions and establish guidelines for the Tennessee Department of Agriculture, Division of Forestry to issue permits for outdoor burning. There are no previous rules.

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Regulatory Flexibility Addendum

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

- (1) Type or types of small business subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:

Sawmills, pallet manufacturers, handle mills, farmers, forest landowners, timberland management companies, consulting foresters and vendors that provide prescribed fire services. The only cost to these businesses would be the time spent obtaining the outdoor burning permit which is free. These businesses would benefit from the rule by having a process provided to them by the state that allows legal and safe outdoor burning.

- (2) Identification and estimate of the number of small businesses subject to the proposed rule:

Approximately 300 small businesses in the wood manufacturing and land management businesses would be affected by the rule.

- (3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

Records of permits issued are currently being kept by the Division of Forestry. The record keeping process uses electronic database systems. No increased costs are anticipated as a result of this rule.

- (4) Statement of the probable effect on impacted small businesses and consumers:

The impact of this rule on small businesses and consumers is negligible. The permits are free and the permit program and process costs are borne by the state. Those who do not comply with the permit law are in violation of T.C.A. § 39-14-306 and potentially face fines and other penalties.

- (5) Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:

There is no alternative to these rules that would alleviate the issues enumerated above. The rules are a balance of the need for public safety through preventing wildfires and the imposition on small businesses. Permits from the state forester for certain described open air fires are required by T.C.A. § 39-14-306.

- (6) Comparison of the proposed rule with any federal or state counterparts:

No federal rules are comparable. Permits of this type are issued by the forestry agencies in the southern states of Alabama, Florida, Georgia, Mississippi, North Carolina and South Carolina. Arkansas, Kentucky, Louisiana, Oklahoma, Texas and Virginia forestry agencies do not issue outdoor burning permits.

- (7) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

The exemption of small businesses from any or all of these requirements would be counter to safe business practices, do little to increase profitability; and, require a statutory change.

Impact on Local Governments

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

If adopted, these rules would have no impact on the expenditures or revenue of local governments.

**Department of State
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For Department of State Use Only

Sequence Number: 02-13-14
Rule ID(s): 5668
File Date: 2/20/14
Effective Date: 7/29/14

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Department of Agriculture
Division:	Forestry
Contact Person:	Theresa Denton
Address:	P. O. Box 40627
Zip:	37204
Phone:	615-837-5280
Email:	Theresa.Denton@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0080-07-05	Open-Air Burning Permits
Rule Number	Rule Title
0080-07-05-.01	Purpose
0080-07-05-.02	Definitions
0080-07-05-.03	Burning-Permit General Requirements and Limitations
0080-07-05-.04	Commissioner's Burning Ban

Chapter 0080-07-05
Open-Air Burning Permit

New Rules

0080-07-05-.01 Purpose.

These rules establish the criteria and procedures for the issuance of open-air burning permits or burn bans as provided at Tennessee Code Annotated Section 39-14-306 and shall be known and cited as the "Tennessee Open-Air Burning-Permit Rules."

Authority: T.C.A. §§39-14-306 and 4-3-203.

0080-07-05-.02 Definitions.

- (1) "State Forester" means the director of the Division of Forestry or authorized representative.
- (2) "Open-air fire" means any fire, whether or not confined, burning in the outdoors within 500 feet of any forest, grassland, or woodland. Open-air fire includes but is not limited to woody-debris fires, agricultural and silvicultural fires, and cooking and warming fires. Open-air fire does not include ceremonial fires, fireworks, or cooking-grill fires.
- (3) "Permit" means documentation of permission granted by the State Forester or the State Forester's authorized representative allowing the permittee to conduct an open-air fire.
- (4) "Burning-permit season" is from 8 a.m. local time on October 15 through 11:59 p.m. local time on May 15.
- (5) "Hazardous burning conditions" means that the Division of Forestry's parameters for safe open-air fires have been exceeded.
- (6) "Extreme fire hazard conditions" means that the Division of Forestry's parameters indicate that any open-air fire would create a significant public risk.
- (7) "Burning ban" means a declaration by the Commissioner of the Department of Agriculture forbidding any open-air fire in any area of the state.
- (8) "Seasonal permit" means a single permit that is in effect for an extended period.

Authority: T.C.A. §§39-14-306, 11-4-301 and 4-3-203.

0080-07-05-.03 Burning-Permit General Requirements and Limitations.

- (1) Permits may be issued by any reasonable means, including by telephone, in person or by Internet.
- (2) The permit is valid only for the days and hours specified.
- (3) Permit requests shall be refused any time the State Forester or the State Forester's authorized representative determines that open-air fires are unsafe.
- (4) The permit shall only allow burning of vegetation grown on the site, untreated wood waste, or other materials allowed for open burning by rules of the Tennessee Department of Environment and Conservation.
- (5) Each permit shall include a unique identifying number.
- (6) Each permit should include:
 - (a) Name of permittee.
 - (b) Location of burn.
 - (c) Date and time of burn.
 - (d) Material to be burned.
 - (e) Acres to be burned, if applicable.
 - (f) Identity of the permit issuer.
 - (g) Date and time of issuance.

- (h) Other information required by the Division of Forestry.
- (7) Seasonal permits shall be subject to the same general requirements as nonseasonal permits.
- (8) Seasonal permits may be revoked by the Division of Forestry after notice to the permittee.

Authority: T.C.A. §§39-14-306, 11-4-301, 11-4-405 and 4-3-203.

0080-07-05-.04 Commissioner's Burning Ban.

- (1) The State Forester shall immediately notify the Commissioner of the Department of Agriculture when extreme fire hazard conditions exist in any area of the state.
- (2) Prior to issuing a Commissioner's burning ban, the Commissioner shall consult with the county mayor or county executive of any area that will be subject to the burning ban.
- (3) The Commissioner shall make the final determination to issue the burning ban.

Authority: T.C.A. §39-14-306.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Department of Agriculture on February 4, 2014 and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: February 4, 2014

Signature: _____

Name of Officer: Julius T. Johnson

Title of Officer: Commissioner

Subscribed and sworn to before me on: February 4, 2014

Notary Public Signature: _____

My commission expires on: 09/11/2017



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

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.
 Attorney General and Reporter

2-18-14

Date

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Water Resources

SUBJECT: Class V Injection Well Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 69-3-101 et seq. and 68-203-101 et seq.

EFFECTIVE DATES: May 5, 2014 through June 30, 2015

FISCAL IMPACT: The agency reports that this amendment does not generate additional revenues.

STAFF RULE ABSTRACT: This rule proposes to eliminate the potential for duplicate fees in Class V injection well rules that existed before the Department's three heritage water divisions were merged into the Division of Water Resources.

Under the proposed changes, if the appropriate fees are paid through the Environmental Protection Fund (EPF) rule or the Subsurface Sewage Disposal System rule, those fees will no longer be assessed under the Underground Injection Control fee rule.

Also, the annual maintenance fee would not apply if paid through the EPF rule.

Public Hearing Comments

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

Comment: A commenter expressed their appreciation of the Department's attempts to be fair, such as by eliminating unnecessary or duplicative fees.

Response: We acknowledge the commenter's assessment of our efforts and recommended the adoption of these amendments.

Comment: A commenter requested the amount of state appropriation allotted to this division for FY 2013-14, the amount allotted in 2012-13, and the amount of anticipated appropriation for FY 2014-15.

Response: In FY 2012-13, the legacy Division of Water Pollution Control (WPC) was appropriated \$9,424,700; the legacy Division of Water Supply (DWS) was appropriated \$1,002,200; and the legacy Groundwater Protection Division (GWP) was appropriated \$2,155,400. When combined into the Division of Water Resources the total appropriated for this period was \$12,582,300 (WPC 74.9%, DWS 8%, GWP 17.1%). For FY 2013-14, the Division of Water Resources was appropriated \$13,435,100; an increase of \$852,800 from the previous fiscal year. The percentage of allocations to the legacy programs within the Division of Water Resources would increase proportionally to each program. Since the Administration is in the process of developing the recommended budget for FY 2014-15, which the Governor will submit to the General Assembly in late January 2014, we are not able to determine the amount that will be appropriated. However, we do not anticipate that the appropriation will be decreased.

Regulatory Flexibility Addendum

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

This amendment proposes to eliminate the potential for duplicate fees in Class V injection well rules that existed before TDEC's three heritage water divisions were merged into the Division of Water Resources. Under the proposed changes, if the appropriate permit application fees are paid through the Environmental Protection Fund (EPF) rule or the Subsurface Sewage Disposal System rule; those fees will no longer be assessed under the Underground Injection Control (UIC) fee rule. Also, the annual maintenance fee would not apply if paid through the EPF rule.

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

This change will primarily benefit applicants and permittees for large capacity septic systems and decentralized wastewater systems not utilizing spray irrigation. The Department receives about 10 permit applications per year and about 300 permittees pay the annual maintenance fee.

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

There will be no impact as a result of this rulemaking.

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

There will be no impact as a result of this rulemaking.

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

None.

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

Our rules remain consistent with surrounding states and the federal program does not have a comparable fee rule.

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

This amendment is beneficial to small businesses, therefore no exemption was proposed.

Impact on Local Governments

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

The Department anticipates that these amendments will not have a financial impact on local governments.

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Sequence Number: 02-05-14
 Rule ID(s): 5666
 File Date: 2/4/14
 Effective Date: 5/5/14

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Environment and Conservation
Division:	Water Resources
Contact Person:	Britton Dotson
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Zip:	37243
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0400-45-06	Chapter 0400-45-06
Rule Number	Rule Title
0400-45-06-.18	Fees For Class V Injection Wells

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Amendments

Chapter 0400-45-06 Underground Injection Control

Paragraphs (1) and (2) of Rule 0400-45-06-.18 Fees For Class V Injection Wells is amended by deleting them in their entirety and replacing them with the following so that, as amended, the paragraphs shall read:

(1) Application Fees

Provided the application fee has not been paid under Rule 0400-40-11-.02 or 0400-48-01-.21. ~~Applications~~ applications for authorizations or permits for the following Class V injection wells shall be accompanied by the following one-time application review fees:

(a)	Innovative technology wells	\$1,000 (per project)
(b)	Storm water drainage wells.	
	Subdivision	\$500 (per project)
	Commercial/industrial facilities	\$750 (per project)
(c)	Commercial/industrial geothermal wells	
	Open loop systems	\$750 (per facility)
(d)	Commercial/industrial SFDS and infiltration cells	\$500 (per facility)
(e)	Large capacity septic systems	\$250 (per facility)
	Churches	\$100 (per facility)
(f)	Remediation wells	
	Oversight under this rule	\$1,000 (per project)
	Oversight by the Commissioner not under this rule	None
(g)	Change of ownership	\$75
(h)	Modification of recharge point	\$350 (per project)

(2) Renewal Fee

Provided the annual maintenance fee has not been paid under Rule 0400-40-11-.02. ~~The~~ the following Class V wells shall submit the following fees with the renewal application:

(a)	Storm water drainage wells	
	Commercial/industrial facilities:	\$350 (per facility)
(b)	Commercial/industrial geothermal wells	
	Open loop	\$350 (per facility)
(c)	Commercial/industrial SFDS and infiltration cells:	\$250 (per facility)
(d)	Large capacity septic systems	\$250 (per facility)
	Churches	\$50 (per facility)

Authority: T.C.A. §§ 69-3-101 et seq., 68-203-101 et seq. and 4-5-201 et seq.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
James W. Cameron III	✓				
Jill E. Davis	✓				
Mayor Kevin Davis				✓	
Derek Gernt	✓				
John Guoynes	✓				
C. Monty Halcomb	✓				
Chuck Head	✓				
Charlie R. Johnson	✓				
Judy Manners	✓				
John McClurkan	✓				
Frank McGinley	✓				
D. Anthony Robinson	✓				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Water Quality, Oil and Gas on 01/21/2014, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/18/13

Rulemaking Hearing(s) Conducted on: (add more dates). 12/10/13

Date: January 21, 2014

Signature: *James W. Cameron III*

Name of Officer: James W. Cameron III

Title of Officer: Chair



Subscribed and sworn to before me on: January 21, 2014

Notary Public Signature: *Carol L. Grice*

My commission expires on: June 21, 2016

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

Robert E. Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter

1-28-14
Date

Department of State Use Only

Filed with the Department of State on: 2/4/14

Effective on: 5/5/14

Tre Hargett

Tre Hargett
Secretary of State

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SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

AGENCY: Tennessee Real Estate Commission

SUBJECT: Licensure; Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 62-13-203(a); 62-13-112; and 62-13-303.

EFFECTIVE DATES: May 8, 2014 through June 30, 2015

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: Creates two new rules relative to licensure. Rule 1260-01-.16 specifies penalty fees for reinstatement as well as the conditions for reissuance of a revoked real estate license, in accordance with Lapsed Errors and Omissions Insurance provisions of current law.

Rule 1260-01-.17 operationalizes statutory provisions requiring submission of fingerprints for background checks for all new real estate license applicants on or after January 1, 2014; specifies others included who would be required to comply with submission of fingerprints in order to be properly licensed or re-licensed.

Public Hearing Comments

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

Jim Gibbs commented before the Commission that he did not have any comments regarding the content of the proposed rules, but he did not believe that the proper analysis had been performed by the Commission during the rulemaking process with regard to complying with the statutes and Executive Order regarding the Regulatory Flexibility Act. Mr. Gibbs stated that he believed that both the analysis of impact on small businesses as well as the preparation of economic impact statement should be done prior to the rulemaking hearing.

The Commission responded by stating that they understand Mr. Gibbs' concerns, but the Commission believed that it had complied with the requirements of the Regulatory Flexibility Act by conducting a regulatory flexibility analysis of the impact on small businesses made by these rules at its July 2013 meeting and by preparing an economic impact statement at the rulemaking hearing.

Rule 1260-01-.16 Lapsed Errors and Omissions Insurance

A written comment was received from Ken Barnes stating that he does not believe that the Commission has the disciplinary authority to revoke or suspend a principal broker's license as referenced in 1260-01-.16(2)(c)(4) due to the statutory provision T.C.A. § 62-13-310(c), which states that an unlawful act or violation of Title 62, Chapter 13 by any affiliate broker may not be the cause for suspension or revocation of the broker with whom the affiliate broker is affiliated.

The Commission responded by stating that, after discussing the issue, the Commission believes that, pursuant to T.C.A. § 62-13-312(b)(15), the Commission does have the authority to suspend or revoke a principal broker's license for failure to exercise adequate supervision over the activities of licensed affiliate brokers, and this rule addresses possible revocation or suspension of a principal broker for failure to exercise adequate supervision over an affiliated licensee.

A written comment was also received from J. Russell Farrar, general counsel for the Tennessee Association of Realtors ("TAR"), which outlined TAR's concern regarding this rule and also referenced concerns with the Fingerprinting rule. Regarding the Lapsed Errors and Omissions Insurance rule, Mr. Farrar wrote that TAR was concerned that the civil penalty outlined for the principal brokers was greater than the penalty fee outlined for a licensee who allowed his or her errors and omissions insurance to lapse and asked that the Commission reconsider the civil penalty amounts and seek a lower amount to be imposed on the principal brokers.

The Commission voted to change the civil penalties outlined in the rule for the principal broker to reflect the same penalty fee amounts outlined in the rule for affiliated licensees suspended for more than thirty (30) days but within one hundred twenty (120) days.

Rule 1260-01-.17 Fingerprinting

Mr. Farrar's written comment also stated that TAR requested that, as a point of clarification, the rule be amended to clarify that any affiliate broker who is reactivating an inactive license or bringing a license out of retirement to apply for a broker license is not included in the requirement to submit fingerprints in an electronic format for the purpose of obtaining a criminal background check.

The Commission voted to amend the rule's language to include the clarification that the fingerprint requirement will not apply to someone who is reactivating an inactive affiliate broker license or bringing an affiliate broker license out of retirement to apply for a broker license.

Finally, Mr. Farrar's written comment also stated that the rule provides that the applicant shall be responsible for arranging the processing of the electronic fingerprints with the company contracted by the State to provide

electronic fingerprinting services, and the applicant shall be responsible for the payment of any fees associated with the processing of fingerprints to the respective agency, but TAR believes that the statute only authorizes the Tennessee bureau of investigation to collect the costs associated with the background check and not a third party company.

The Commission discussed that the company contracted by the State to provide electronic fingerprinting services is an agent of the TBI and FBI, and the Commission voted to amend the rule's language to clarify that the applicant shall be responsible for the payment of any fees associated with processing of fingerprints to the respective agent authorized by the TBI and FBI.

Regulatory Flexibility Addendum

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

Regulatory Flexibility Analysis - Methods of Reducing Impact of Rules on Small Businesses:

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

There is no overlap, duplication, or conflict with other federal, state, or local governmental rules.

- (2) Clarity, conciseness, and lack of ambiguity in the rule:

The rules are clear, concise, and unambiguous.

- (3) The establishment of flexible compliance and reporting requirements for small businesses:

These rules provide uniform and reasonable requirements, both for those individuals who are licensed and required by statute to maintain errors and omissions insurance, as well as those individuals who wish to be licensed with the Commission who are required by statute to provide fingerprints for the purpose of a background check. These requirements assist with ensuring the health, safety, and welfare of the citizens of Tennessee.

- (4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses:

These rules have no impact on reporting requirements for small businesses.

- (5) The consolidation or simplification of compliance or reporting requirements for small businesses:

These rules do not complicate compliance or reporting requirements for small businesses in any respect.

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

There are no performance standards for small businesses as a result of these rules.

- (7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

These rules do not result in the unnecessary creation of entry barriers or other effects that will stifle entrepreneurial activity, curb innovation, or increase costs.

Economic Impact Statement:

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

The types of small businesses that would be impacted by the rule would be real estate licensees that do not timely renew their E&O insurance, which is approximately three hundred (300) per year and initial applicants for real estate licenses who are required to get fingerprinted, which is approximately two thousand five hundred (2,500) per year. The rules are not expected to have a measurable impact on small businesses with respect to the E&O rule. Any cost is relatively de minimis and is avoidable by the small business. With respect to the fingerprinting rule, the rule is actually a cost saving measure that will benefit applicants.

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

There are no projected reporting, recordkeeping or other administrative costs required for these proposed rules.

(3) A statement of the probable effect on impacted small businesses and consumers;

There is no expected material adverse impact on small businesses or consumers as a result of these proposed rules. These proposed rules are expected to assist with the protection of the welfare and safety of the citizens of the State of Tennessee by helping to ensure that all licensees who are required to maintain errors and omissions insurance will do so and by further outlining the procedure for the collection of fingerprints for the purpose of obtaining a criminal background check for initial applicants for licensure, which will further benefit consumers. The electronic fingerprinting procedure will economically benefit small businesses.

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

There are no less burdensome, less intrusive, or less costly alternative methods known which will achieve the purpose and objectives of these proposed rules.

(5) A comparison of the proposed rule with any federal or state counterparts; and

There are no known federal or state counterparts to these rules.

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

Any possible exemption of small businesses from these rules would result in less protection for the citizens of the State of Tennessee and would not be feasible given that many licensees are small businesses.

Impact on Local Governments

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

These rules are not reasonably viewed as having a projected financial impact on local governments.

**Department of State
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Sequence Number: 02-06-14
Rule ID(s): 5067
File Date: 2/7/14
Effective Date: 5/8/14

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Tennessee Real Estate Commission
Division:	Regulatory Boards
Contact Person:	Julie Cropp
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1260-01	Licensing
Rule Number	Rule Title
1260-01-.16	Lapsed Errors and Omissions Insurance
1260-01-.17	Fingerprinting

Chapter 1260-01
Licensing

New Rules

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1260-01-.01 Applications for Examinations	1260-01-.11 Use of Education and Recovery Account Earnings
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1260-01-.04 Licenses	1260-01-.14 Filing of Documents
1260-01-.05	1260-01-.15 Errors and Omissions Insurance Coverage
Through	1260-01-.16 Lapsed Errors and Omissions Insurance
1260-01-.10 Repealed	1260-01-.17 Fingerprinting

Rule 1260-01-.16 Lapsed Errors and Omissions Insurance is added to Chapter 1260-01, and shall read as follows:

1260-01-.16 Lapsed Errors and Omissions Insurance

(1) Licensees Who Fail to Maintain Errors & Omissions (E&O) Insurance

(a) Penalty fees for Reinstatement of a Suspended License: Any licensee whose license is suspended for more than thirty (30) days pursuant to T.C.A. § 62-13-112 for failure to maintain E&O insurance must provide proof of insurance that complies with the required terms and conditions of coverage to the Commission and must pay the following applicable penalty fee in order to reinstate the license:

1. For a license suspended due to a lapse in E&O coverage for more than thirty (30) days but within one hundred twenty (120) days:
 - (i) Two Hundred Dollars (\$200.00) if the licensee's insurance carrier back-dated the licensee's E&O insurance policy to indicate continuous coverage; or
 - (ii) Four Hundred Dollars (\$400.00) if the licensee's insurance carrier did not back-date the licensee's E&O insurance policy to indicate continuous coverage.
2. For a license suspended due to a lapse in E&O coverage for more than one hundred twenty (120) days but less than six (6) months, a Five Hundred Dollar (\$500.00) penalty fee;
3. For a license suspended due to a lapse in E&O coverage for six (6) months up to one (1) year, a Five Hundred Dollar (\$500.00) penalty fee plus a penalty fee of One Hundred Dollars (\$100.00) per month, or portion thereof, for months six (6) through twelve (12).

(b) Conditions for Reissuance of a Revoked License: Upon revocation of a license pursuant to T.C.A. § 62-13-112 for failure to maintain E&O insurance, any individual seeking reissuance of such license shall:

1. Reapply for licensure, including payment of all fees for such application;
2. Pay the penalty fees outlined in subparagraph (a) above;
3. Pass all required examinations for licensure, unless the Commission waives such examinations; and
4. Meet any current education requirements for licensure, unless the Commission waives such education requirements.

(2) Principal Brokers of Licensees Who Fail to Maintain E&O Insurance:

- (a) A principal broker shall ensure, at all times, that all licensees affiliated with that principal broker shall hold E&O insurance as required by law. A failure to do so shall constitute failing to exercise adequate supervision over the activities of a licensed affiliated broker.
- (b) For any principal broker who has an affiliated licensee whose license is suspended pursuant to T.C.A. § 62-13-112 for failure to maintain E&O insurance, there shall be no penalty to the principal broker if either of the following two (2) circumstances occur within thirty (30) days of that affiliated licensee's license suspension:
1. The affiliated licensee has provided proof of insurance which complies with the required terms and conditions of coverage to the Commission; or
 2. The principal broker releases that affiliated licensee whose license is suspended for failure to maintain E&O insurance.
- (c) After the aforementioned thirty (30) day period, if the affiliated licensee has neither provided the required proof of insurance nor been released by the principal broker, the Commission authorizes a formal hearing on the matter of the principal broker's failure to exercise adequate supervision over an affiliated licensee who failed to maintain E&O insurance but also authorizes that a consent order shall be sent to the principal broker, offering that principal broker the opportunity to settle the matter informally, thereby making formal hearing proceedings unnecessary, according to the following schedule:
1. Notwithstanding the provisions of Tenn. Comp. R. & Regs. 1260-02-.32, if the principal broker's affiliated licensee reinstates his or her license, or the principal broker releases the affiliated licensee, more than thirty (30) days after suspension but within one hundred twenty (120) days after suspension, the consent order shall contain the following civil penalties:
 - (i) Two Hundred Dollars (\$200.00) if the affiliated licensee's insurance carrier back-dated the licensee's E&O insurance policy to indicate continuous coverage; or
 - (ii) Four Hundred Dollars (\$400.00) if the affiliated licensee's insurance carrier did not back-date the licensee's E&O insurance policy to indicate continuous coverage.
 2. If the principal broker's affiliated licensee reinstates his or her license, or the principal broker releases the affiliated licensee, more than one hundred twenty (120) days after suspension, the consent order referenced in this subparagraph (c) above shall contain a civil penalty of one thousand dollars (\$1,000.00).
 3. Where a principal broker does not accept any authorized consent order for failure to supervise an affiliated licensee's E&O insurance, the hearing shall be held before an administrative law judge sitting alone, pursuant to the Uniform Administrative Procedures Act, compiled at title 4, chapter 5.
 4. Nothing in this rule shall be construed as limiting the Commission's authority to:
 - (i) Authorize a consent order in a different amount than listed herein;
 - (ii) Seek any other legal discipline – including revocation or suspension of a license – for a failure to supervise an affiliated licensee's E&O insurance;
 - (iii) Review an initial order under the Uniform Administrative Procedures Act; or
 - (iv) Not seek discipline against a principal broker for failure to supervise an affiliated broker's maintenance of E&O insurance if the Commission determines that such discipline is not appropriate under the facts of that matter.

Authority: T.C.A. §§ 62-13-203, 62-13-112, and 62-13-312.

Rule 1260-01-.17 Fingerprinting is added to Chapter 1260-01, and shall read as follows:

1260-01-.17 Fingerprinting

- (1) Any initial applicant who is required to submit a complete and legible set of fingerprints for the purpose of obtaining a criminal background check pursuant to T.C.A. § 62-13-303 shall submit said fingerprints in an electronic format.
- (a) An initial applicant shall be deemed to have supplied the required set of fingerprints if that applicant causes a private company contracted by the State to electronically transmit that applicant's classifiable prints directly to the TBI and FBI to forward an electronic report based on that applicant's fingerprints to the Commission.
- (b) All sets of classifiable fingerprints required by this rule shall be furnished at the expense of the applicant.
- (c) The applicant shall make the arrangements for the processing of his or her fingerprints with the company contracted by the State to provide electronic fingerprinting services directly and shall be responsible for the payment of any fees associated with processing of fingerprints to the respective agent authorized by the TBI and FBI.
- (d) Applicants shall in all cases be responsible for paying application fees for licensure as established by the Commission.
- (e) In addition to new applicants for a broker, affiliate broker, time-share salesperson, or acquisition agent license, the following are considered "initial applicants" for purposes of this rule and, therefore, are required to submit fingerprints in an electronic format for the purpose of obtaining a criminal background check:
1. Any former licensee who must reapply in order to obtain reissuance of his or her license; and
 2. Any person who previously held an affiliate broker license but no longer holds said license at the time such person applies for a broker license. This does not include any person who has an affiliate broker license which is inactive or retired at the time of application for a broker license.
- (2) In the event that an applicant furnishes unclassifiable fingerprints or fingerprints which are unclassifiable in nature, the Commission may refuse to issue the requested license.
- (a) For the purposes of this rule, "unclassifiable prints" means that the electronic scan or the print of the person's fingerprints cannot be read, and therefore cannot be used to identify the person.
- (b) Should an applicant's fingerprints be rejected by the TBI or FBI, the applicant shall pay any fees assessed by the TBI or FBI for resubmission.

Authority: T.C.A. §§ 62-13-203 and 62-13-303.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Gary Blume	X				
Janet DiChiara	X				
John Griess	X				
Bear Stephenson	X				
Michelle Haynes	X				
Wendell Alexander	X				
Grover Collins	X				
Austin McMullen	X				
David Flitcroft				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Real Estate Commission on 11/06/2013, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/08/13

Rulemaking Hearing(s) Conducted on: (add more dates). 11/06/13



Date: 1/21/14

Signature: Julie E. Cropp

Name of Officer: Julie E. Cropp

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: JANUARY 21, 2014

Notary Public Signature: Margaret Williams

My commission expires on: 11/06/17

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

RE Cooper Jr
 Robert E. Cooper, Jr.
 Attorney General and Reporter
1-30-14
 Date

Department of State Use Only

Filed with the Department of State on: 2/7/14

Effective on: 5/8/14

Tre Hargett
 Tre Hargett
 Secretary of State

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G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	Mental Health and Substance Abuse Services
<u>DIVISION:</u>	Office of Licensure
<u>SUBJECT:</u>	Civil Penalties
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 33-1-309
<u>EFFECTIVE DATES:</u>	May 4, 2014 through June 30, 2015
<u>FISCAL IMPACT:</u>	Minimal
<u>STAFF RULE ABSTRACT:</u>	<ol style="list-style-type: none">1. The rule will now reflect the current name of the department, Department of Mental Health and Substance Abuse Services.2. The rule reclassifies an organization as a person, partnership, association, or corporation. (0940-05-02-.03).3. The rule increases the application fee for Two Distinct Categories of Services or Facility increased from \$1,010 to \$1,020 (0940-05-02-.05(1)).4. The rule reinforces the practice of a fee invoice accompanying any payment of fees. (0940-05-02-07).5. The rule creates a new section (0940-05-02-09 Number of Licenses Required) and defines how many licenses are required per site and defines how these licenses may be issued.6. It appears that there is typographical error (0940-05-02-.12(1)(a)) where the rule refers to "Joint". The current rule on Deemed Compliance refers to the "Joint Commission on Accreditation of Health Care Organizations (JCAHO)".7. The rule adds a new section that sets forth a fee schedule for civil penalties (0940-05-02-25), which are within the ranges authorized by T.C.A. Section 33-2-409.

Public Hearing Comments

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

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

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

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

Regulatory Flexibility Addendum

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

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

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

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

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

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

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

There are no new reporting requirements imposed by this rule.

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

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

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

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

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

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

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

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

Economic Impact Statement

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

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

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

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

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

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

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

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

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

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

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

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

Impact on Local Governments

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

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

**Department of State
Division of Publications**

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Sequence Number: 02-01-14
Rule ID(s): 56065
File Date: 2/3/14
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Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Tennessee Department of Mental Health and Substance Abuse Services
Division:	Office of Licensure
Contact Person:	R. Kurt Hippel, Director, Office of Legislation and Rules
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0940-05-02	Licensure Administration and Procedures
Rule Number	Rule Title
0940-05-02-.01	Statement of Authority
0940-05-02-.02	Types and Conditions of Licenses
0940-05-02-.03	Unlawful Operation
0940-05-02-.04	Application Forms
0940-05-02-.05	Fees
0940-05-02-.06	Application Process for an Initial License
0940-05-02-.07	Application Process for License Renewal
0940-05-02-.08	Distinct Categories of Facilities and Services
0940-05-02-.09	Number of Licenses Required
0940-05-02-.10	Change of Ownership or Location
0940-05-02-.11	Time Limits
0940-05-02-.12	Deemed Compliance
0940-05-02-.13	Access to Premises and Information
0940-05-02-.14	Grounds for Denial, Revocation, or Suspension
0940-05-02-.15	Expiration of Licenses
0940-05-02-.16	Posting of the License
0940-05-02-.17	Surrender Requirements
0940-05-02-.18	Exclusions from Licensure
0940-05-02-.19	Waiver Authority
0940-05-02-.20	Investigation of Abuse, Dereliction, or Deficiency in Operation of a Facility or Service
0940-05-02-.21	Notice of Non-Compliance and Plan of Compliance

0940-05-02-.22	Unannounced Inspection
0940-05-02-.23	Inspection Fees
0940-05-02-.24	Assistance to Service Recipients when a License is Denied, Suspended, or Revoked
0940-05-02-.25	Civil Penalties for Licensees

**RULES
OF
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES**

**CHAPTER 0940-5-2
LICENSURE ADMINISTRATION AND PROCEDURES**

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0940-5-2-.04	Application Forms	0940-5-2-.18	Waiver Authority
0940-5-2-.05	Fees	0940-5-2-.19	Investigation of Abuse, Dereliction, or Deficiency in Operation of a Facility or Service
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~~**0940-5-2-.01 STATEMENT OF AUTHORITY.**~~ The Department of Mental Health and Developmental Disabilities is authorized to license facilities and services operated for the provision of mental health, alcohol and drug abuse, developmental disability, mental retardation, and personal support services in the State of Tennessee by T.C.A. Title 33, Chapter 2, Part 4.

~~**Authority:** T.C.A. §33-2-403 and 33-2-404. **Administrative History:** Original rule filed November 16, 1978; effective January 1, 1979. Amendment filed May 22, 1979; effective July 10, 1979. Amendment filed December 8, 1980; effective January 22, 1981. Amendment filed November 30, 1983; effective December 30, 1983. Amendment filed March 11, 1987; effective April, 25, 1987. Repeal and new rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.~~

~~**0940-5-2-.02 TYPES AND CONDITIONS OF LICENSES.**~~

- ~~(1) Initial License. An initial license is issued to a facility or service to give the licensee an opportunity to implement minimum program requirements and to give the Department an opportunity to evaluate the facility's or service's compliance performance. Initial licenses will not exceed twelve months.~~
- ~~(2) Full License. A full license is valid for up to one (1) year from the date of issuance and is issued to a facility or service when the licensee demonstrates compliance with the licensure law and applicable rules as determined by the Department.~~
- ~~(3) Provisional License. A provisional license may be issued to a facility or service when it does not meet all of the requirements for a full license. The Department may grant a provisional license if all of the conditions below are satisfied:

 - ~~(a) The facility or service is making a diligent effort to comply with the licensure law and rules. A "diligent effort to comply with rules" is determined by past performance of the facility or service in meeting rules and correcting deficiencies and by commitments to correct existing deficiencies within time frames agreed to by the Department;~~
 - ~~(b) The continued operation of the facility or service will not endanger the health or safety of individuals being served;~~~~

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

- (c) ~~The facility or service has submitted an acceptable compliance plan specifying how and when deficiencies will be corrected. The Department will consider the seriousness of the deficiencies and the past performances of the facility or service in determining whether the compliance plan is acceptable; and~~
- (d) ~~The facility or service has substantially met the commitments made in the preceding year's compliance plan, if any.~~

Authority: ~~T.C.A. §§ 33-2-404, 33-2-406, and 33-2-415. **Administrative History:** Original rule filed November 16, 1978; effective January 1, 1979. Amendment filed May 22, 1979; effective July 10, 1979. Amendment filed December 8, 1980; effective January 22, 1981. Amendment filed November 30, 1983; effective December 30, 1983. Repeal and new rule filed June 30, 1986; effective July 30, 1986. Amendment filed October 14, 1986; effective November 28, 1986. Repeal and new rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.~~

0940-5-2-.03 UNLAWFUL OPERATION. ~~No organization may begin delivering services until the Department issues a license. Providing mental health, alcohol and drug abuse, developmental disability, mental retardation, or personal support services without a license is unlawful and may result in civil and/or criminal sanctions pursuant to T.C.A. §§ 33-2-405 and 33-2-412.~~

Authority: ~~T.C.A. §§ 33-2-404 and 33-2-405. **Administrative History:** Original rule filed May 22, 1979; effective July 10, 1979. Repeal and new rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.~~

0940-5-2-.04 APPLICATION FORMS.

- (1) ~~The application for a license is to be made on forms prepared and supplied to the applicant by the Department.~~
- (2) ~~Each application for a license must be submitted in writing, legible, with all the information requested on the application. The information gathered by the Department on the application is needed pursuant to T.C.A. § 33-2-406 to determine the applicant's responsible and reputable character and the applicant's ability to meet the minimum standards for the operation of a facility or service.~~
- (3) ~~The information to be supplied to the Department is as follows:~~
 - (a) ~~The name, address, and other background and identifying information of the applicant;~~
 - (b) ~~A description of the location, design, and type of facility or service to be licensed;~~
 - (c) ~~The name, address, and other background and identifying information of the person or persons responsible for the operation of the facility or service to be licensed including Social Security number and date of birth, place of residence during the past five years and place of birth, proof of citizenship or evidence of legal immigration status, and criminal background check;~~
 - (d) ~~Personal character references;~~
 - (e) ~~The signature of the licensee applicant or of the person charged by the licensee applicant for certifying the correctness and completeness of the application and for ensuring compliance with the licensure rules; and~~
 - (f) ~~Any such other information as the Department may require.~~

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

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

0940-5-2-.05 FEES.

- (1) The applicant must submit fees for the processing of the application prior to the Department's making a determination to grant or to deny licensure. Each initial and renewal application for licensure must be submitted with the appropriate fees. All fees submitted are non-refundable. The fee rate is based on the number of distinct categories of service or facility, as applicable, to be operated at each site. For a residential site, the fee rate is based on the number of beds to be licensed. A fee must be submitted for each facility and/or service for which licensure is being sought under the following schedule:

Non-Residential Facility Fees Per Site:

One (1) Distinct Category of Service or Facility	\$ 840.00
Two (2) Distinct Categories of Services and/or Facilities	\$ 1,040.00
Three (3) Distinct Categories of Services and/or Facilities	\$ 1,220.00
Four (4) Distinct Categories of Services and/or Facilities	\$ 1,420.00
More Than Four (4) Distinct Categories of Services and/or Facilities	\$ 1,620.00

Residential Facility Fees Per Site:

Mental Health Hospital Facilities (Per Bed):	\$ 175.00
Mental Retardation Institutional Habilitation Facilities (Per Bed):	\$ 175.00

All Other Residential Facilities:

Number of Beds	
2-3	\$ 200.00
4-10	\$ 280.00
11-15	\$ 410.00
16-50	\$ 840.00
More than 50 beds	\$ 1,220.00

Authority: T.C.A. §§ 33-2-403, 33-2-404, and 33-2-406. **Administrative History:** Original rule filed December 8, 1980; effective January 22, 1981. Repeal and new rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.

0940-5-2-.06 APPLICATION PROCESS FOR INITIAL LICENSE.

- (1) The applicant must submit application forms.
- (2) The applicant must submit the required fees for application processing.
- (3) The applicant is responsible for any fees charged by other regulatory agencies whose inspection of the facility or service is necessary for the issuance of licenses.
- (4) Upon receipt of the completed application and the required fees, the Department will arrange for needed inspections of the proposed site or sites, when applicable.

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

- (6) ~~The Department will review the application, make any necessary investigations, review the results of the inspections of the proposed site or sites, when applicable, and take one (1) of the following actions:~~
- (a) ~~If the review indicates compliance with all requirements for an initial license, the initial license will be issued;~~
 - (b) ~~If the review indicates deficiencies, the applicant will be notified and must correct deficiencies before a license is issued; or~~
 - (c) ~~If the review indicates that a license should not be granted, the applicant will be so notified. Within fifteen (15) calendar days of such notification of denial, the applicant may file a written request for a hearing before the Licensure Review Panel on the denial.~~

Authority: ~~T.C.A. §§ 33-2-403, 33-2-404, and 33-2-406. **Administrative History:** Original rule filed December 8, 1980; effective January 22, 1981. Repeal and new rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.~~

0940-5-2-.07 APPLICATION PROCESS FOR LICENSE RENEWAL

- (1) ~~Prior to the expiration of an initial, full or provisional license, the Department will notify the licensee of the need to submit an application for license renewal. The Department will advise the licensee of the information, fees, and the documents needed to process the renewal application.~~
- (2) ~~The applicant must submit the renewal application, fee and other information required by licensure.~~
- (3) ~~The applicant is responsible for any fees charged by other regulatory agencies whose inspection of the facility or service is necessary for the issuance of licenses.~~
- (4) ~~The Department, when applicable, will conduct or arrange for inspections of the facility's or service's current life safety and environmental conditions, and review the facility's or service's program performance history. Dates for unannounced inspections will be random varying from year to year.~~
- (5) ~~Upon receipt of the application material and the required fees, the Department will review the application material, the current life safety and environmental conditions, when applicable, and the performance history of the facility or service and take one of the following actions:~~
 - (a) ~~If the Department determines that all facilities or services operated by the licensee are in compliance with the applicable licensure law and rules, then a full license will be issued;~~
 - (b) ~~If the Department determines that all facilities or services operated by the licensee do not comply with the applicable licensure law and rules, a provisional license may be issued covering the facility or service not in full compliance; or~~
 - (c) ~~If the Department determines that a license should not be issued to one or more facilities or services operated by the licensee, the licensee shall be notified of the denial. Within fifteen (15) calendar days of such notification of denial, the licensee may file a written request for a hearing before the Licensure Review Panel on the denial.~~

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

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

~~**0940-5-2-.08 DISTINCT CATEGORIES OF FACILITIES AND SERVICES.** The licensure rules identify and define distinct categories of facilities or services. These facilities and services must meet applicable life safety, environmental and minimum program rules based on the type of program services and the needs of the persons served.~~

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

~~**0940-5-2-.09 NON-TRANSFERABILITY OF LICENSES.** Licenses are not assignable or transferable except as provided by law. A new application must be made and a new license issued before services are provided when there is a change in the ownership of a facility/service or a change of location.~~

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

~~**0940-5-2-.10 TIME LIMITS.** Upon inspection of any facility or service making application for or holding a license, the Department may allow a reasonable time period for facility or service to correct deficiencies found by inspection.~~

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

~~**0940-5-2-.11 DEEMED COMPLIANCE.**~~

- (1) A facility or service which is accredited or certified by any of the following may be deemed by the Department to be in compliance ("deemed compliance status") with applicable licensure program requirements:
 - (a) Joint Commission on Accreditation of Health Care Organizations (JCAHO);
 - (b) Council on Accreditation of Rehabilitation Facilities (CARF);
 - (c) Social Security Act, Title XIX, Public Law 89-98, as amended (Medicaid) for Intermediate Care Facilities for the Mentally Retarded (ICF/MR) only;
 - (d) The Accreditation Council on Services for People with Disabilities; or
 - (e) Council on Accreditation for Children and Family Services.
- (2) To be considered for a deemed compliance status determination under this section, the licensee must submit written and official evidence of certification for accreditation to the Department including any cited deficiencies with plan of correction.
- (3) Facilities or services receiving deemed compliance status must also demonstrate compliance with the life safety and environmental rules. Deemed compliance status of the services offered by a facility or service does not alter the operator's obligation to correct any deficiencies cited during the unannounced inspections required by T.C.A. § 33-2-413 or to cooperate with investigations conducted by the Department of reports of abuse, dereliction, or deficiency in the operation of the facility or service. Notwithstanding the deemed compliance of a facility's services, such a facility is subject to the suspension or revocation of its license under the terms and procedures established in T.C.A. § 33-2-407 and the rules of this chapter.

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

- (4) Pursuant to T.C.A. § 33-2-403(c), a facility or service which can demonstrate compliance with regulations and standards by a previously acquired license from another state agency is considered in compliance with rules promulgated by the Department to the extent that duplicate inspection and enforcement is necessary.

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

0940-5-2-12 ACCESS TO PREMISES AND INFORMATION. With or without giving notice, representatives of the Department shall have the right to enter upon or into the premises of any facility or service providing mental health, developmental disabilities, or personal support services in order to make inspections deemed necessary to determine compliance with licensure law and rules. The licensee must comply with all reasonable requests of the Department and allow it to obtain information from third parties, including, but not limited to, individuals being served by the facility or service, and/or to review all records of the facility or service.

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

0940-5-2-13 GROUNDS FOR DENIAL, REVOCATION, OR SUSPENSION.

- (1) The maintenance and renewal of a license is contingent upon evidence of continued compliance with rules and regulations. The Department may deny, suspend or revoke a license on any of the following grounds:
- (a) Violation of licensure law or rules;
 - (b) Permitting, aiding or abetting the commission of any illegal act in a licensed facility or service;
 - (c) Conduct or practice detrimental to the welfare of individuals being served by a licensed facility or service;
 - (d) The submission of false information to the Department; or
 - (e) The use of subterfuge (for instance, filing through a second party after an individual has been denied a license).
- (2) Unless the Department finds that summary suspension of a license is necessary, all license revocations, suspensions and denials shall be conducted in accordance with the applicable sections of the Uniform Administrative Procedures Act, Tennessee Code Annotated, Title 4, Part 5. Summary suspension may only occur when the Department determines that continued operation of a licensed facility or service presents an immediate threat to the health, safety, and welfare of individuals being served. When a summary suspension occurs, proceedings for revocation or other action against the licensee shall be promptly instituted and determined in accordance with the Uniform Administrative Procedures Act.

Authority: T.C.A. §§ 33-2-403, 33-2-404, 33-2-407, and 33-2-408. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.

0940-5-2-14 EXPIRATION OF LICENSES. The expiration date of all licenses issued by the Department will be indicated on the face of the license. However, when a licensee has made timely and sufficient application for a new license (including payment of the required fees), the existing license does not expire until the status of the application has been determined by the Department. When the

(Rule 0940-5-2-14, continued)

application is denied or the terms of the new license limited, the existing license does not expire until the last day for seeking review of the order or a later date fixed by order of the reviewing court.

Authority: ~~T.C.A. §§ 4-5-320, 33-2-403, 33-2-404, 33-2-407, and 33-2-408. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.~~

0940-5-2-15 POSTING OF THE LICENSE. The license certificate must be posted for public viewing in a conspicuous place at the facility or service.

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

0940-5-2-16 SURRENDER REQUIREMENTS. The license certificate must be surrendered to the Department upon revocation or suspension of the license, upon transfer of ownership of the facility or service, or when the facility or service otherwise ceases to operate.

Authority: ~~T.C.A. §§ 33-2-403, 33-2-404, 33-2-407, and 33-2-408. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.~~

0940-5-2-17 EXCLUSIONS FROM LICENSURE.

- (1) The following facilities or services are excluded from the licensure jurisdiction of the Department:
- (a) A facility that is appropriately licensed by the Department of Health, and whose primary purpose is not the provision of mental health or developmental disability services.
 - (b) A satellite hospital, as defined by rules of the Department of Health, whose primary purpose may be the provision of mental or developmental disability services, and other facilities appropriately licensed by the Department of Health pursuant to T.C.A. § 68-11-201.
 - (c) A facility which is operated by the Department of Education, the Department of Correction, the Department of Human Services, or the Department of Children's Services and that affirmatively states that its primary purpose is not the provision of mental health, developmental disability, or personal support services.

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

0940-5-2-18 WAIVER AUTHORITY. The Department may waive any rule determined to be irrelevant or to pose a hardship. A hardship waiver may be granted only when strict enforcement of a particular requirement would not be in the best interest of service recipients. All waivers granted will be made in writing and entered in the official record of the licensed service or facility. This written document shall include the justification for the waiver. All waivers will be reviewed by the Department and the Licensure Review Panel.

Authority: ~~T.C.A. §§ 33-2-403 and 33-2-404. **Administrative History:** (Formerly numbered as 0940-5-1-.05. For history prior to July, 1988 see pages 1.001 through 1.003). Amendment filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.~~

0940-5-2-19 INVESTIGATION OF ABUSE, DERELICTION, OR DEFICIENCY IN OPERATION OF A FACILITY OR SERVICE.

- (1) ~~The Department will investigate reports or suspicion of abuse, dereliction, or deficiency in the operation of a licensed service or facility in accordance with T.C.A. § 33-2-416.~~
- (2) ~~The licensee shall post a sign in the facility or service displaying the Department's regional toll-free telephone number which informs service recipients, families, and the public that they may file a complaint with the Department. Any exemptions to posting signs will be determined by the Department.~~
- (3) ~~The licensee must report to the Department any serious allegations or suspicion of abuse, dereliction, or deficiency in the operation of the facility or service.~~
- (4) ~~The licensee must report to the Department any significant occurrences involving the facility/service or service recipient and staff. "Significant occurrences" may include, but not be limited to occurrences such as accidents, injuries, or death regarding individuals being served; fires, loss of heat/air conditioning, and/or other structural problems with the facility building(s).~~

Authority: ~~T.C.A. §§ 33-2-403, 33-2-404, and 33-2-416. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.~~

0940-5-2-20 NOTICE OF NON-COMPLIANCE AND PLAN OF COMPLIANCE.

- (1) ~~The Department will give a Department-prepared Notice of Non-Compliance to the licensee on a form provided by the Department when an inspection or investigation of a facility/service reveals non-compliance with licensure law or rules.~~
- (2) ~~The licensee must submit, by the date specified on the Notice of Non-Compliance, a written Plan of Compliance in response to the Notice of Non-Compliance.~~
- (3) ~~The licensee's written Plan of Compliance shall include a description of the action taken or to be taken in correcting deficiencies, and the date by which each corrective action is completed or to be completed.~~
- (4) ~~The Department will notify the licensee in writing whether the Plan of Compliance is acceptable and the basis for the decision. When the Plan of Compliance is not acceptable, the Department and licensee may continue to seek agreement. If agreement cannot be reached in a reasonable time, as determined by the Department, the Department may institute sanctions against the licensee.~~
- (5) ~~The licensee shall maintain copies of the most recent compliance plans in a central location.~~

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

0940-5-2-21 UNANNOUNCED INSPECTION. ~~The Department shall make at least one (1) unannounced inspection of each licensed facility/service yearly.~~

Authority: ~~T.C.A. §§ 33-2-403, 33-2-404, and 33-2-413. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.~~

0940-5-2-22 INSPECTION FEES.

- (1) Pursuant to T.C.A. § 33-2-413(c), the Department is granted the authority to charge a fee in an amount not to exceed fifty dollars (\$50) for inspection of any facility or service.
- (2) The Department shall invoice the applicant or licensee for each applicable inspection. The applicant or licensee shall pay the inspection fee within thirty (30) days after receipt of the invoice, unless the current license expires before the end of the 30-day period. If the current license expires before the end of the 30-day period, the licensee shall pay the inspection fee before the expiration of the current license.
- (3) The Department may withhold the issuance of a license or suspend an existing license pending the payment of the inspection fee.

Authority: T.C.A. §§ 33-2-403, 33-2-404, and 33-2-413. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.

0940-5-2-23 ASSISTANCE TO SERVICE RECIPIENTS WHEN A LICENSE IS DENIED, SUSPENDED, OR REVOKED. When a license is to be denied, suspended, or revoked, the Department will notify the appropriate state and local agencies which may be able to provide assistance to service recipients by coordinating placement.

Authority: T.C.A. §§ 33-2-403, 33-2-404, and 33-2-414. **Administrative History:** Original rule filed May 26, 1988; effective July 11, 1988. Repeal and new rule filed April 10, 2008; effective June 24, 2008.

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

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

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

0940-05-02-.02 Types and Conditions of Licenses.

- (1) Initial License. An initial license is issued to a facility or service to give the licensee an opportunity to implement minimum program requirements and to give the Department an opportunity to evaluate the facility's or service's compliance with licensure laws, ordinances, rules, and regulations. Initial licenses will not exceed 12 months.
- (2) Full License. A full license is valid for up to 12 months from the date of issuance and is issued to a facility or service when the licensee demonstrates compliance with all applicable licensure laws, ordinances, rules, and regulations as determined by the Department.
- (3) Provisional License. A provisional license may be issued to a facility or service when it does not meet all of the requirements for a full license. The Department may grant a provisional license if all of the conditions below are satisfied:
 - (a) The facility or service is making a diligent effort to comply with all licensure laws, ordinances, rules, and regulations. A "diligent effort to comply" is determined by past performances of the facility or service in meeting licensure laws, ordinances, rules and regulations and correcting deficiencies and by the facility's or service's commitments to correct existing deficiencies within time frames agreed to by the Department;
 - (b) The continued operation of the facility or service will not endanger the health or safety of individuals being served;
 - (c) The facility or service has submitted an acceptable compliance plan specifying how and when deficiencies will be corrected. The Department will consider the seriousness of the deficiencies and the past performances of the facility or service in determining whether the compliance plan is acceptable; and
 - (d) The facility or service has substantially met the commitments made in the preceding year's compliance plan, if any.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405, and 33-2-415.

0940-05-02-.03 Unlawful Operation.

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

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

0940-05-02-.04 Application Forms.

- (1) The application for a license is to be made on forms prepared and supplied to the applicant by the Department.
- (2) Each application for a license must be submitted in writing, legible, with all the information

requested on the application. The information gathered by the Department on the application is needed pursuant to T.C.A. § 33-2-406 to determine the applicant's responsible and reputable character and the applicant's ability to meet the minimum standards for the operation of a facility or service.

- (3) The information to be supplied to the Department is as follows:
- (a) The name, address, and other background and identifying information of the applicant;
 - (b) A description of the location, design, and type of facility or service to be licensed;
 - (c) The name, address, and other background and identifying information of the person or persons responsible for the operation of the facility or service to be licensed including Social Security number and date of birth, place of residence during the past five years and place of birth, proof of citizenship or evidence of legal immigration status, and criminal background check;
 - (d) Personal character references;
 - (e) The signature of the licensee applicant or of the person charged by the licensee applicant for certifying the correctness and completeness of the application and for ensuring compliance with the licensure rules; and
 - (f) Any such other information as the Department may require.

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

0940-05-02-.05 Fees.

- (1) The applicant must submit fees for the processing of the application prior to the Department's making a determination to grant or to deny licensure. Each initial and renewal application for licensure must be submitted with the appropriate fees. All fees submitted are non-refundable. The fee rate is based on the number of distinct categories of service or facility, as applicable, to be operated at each site. For a residential site, the fee rate is based on the number of beds to be licensed. A fee must be submitted for each facility and/or service for which licensure is being sought under the following schedule:

Non-residential Facility Fees Per Site:

One Distinct Category of Service or Facility	\$ 810.00
Two Distinct Categories of Services or Facility	\$ 1,020.00
Three Distinct Categories of Service or Facility	\$ 1,220.00
Four Distinct Categories of Service or Facility	\$ 1,420.00
More than Four Distinct Categories of Services or Facilities	\$ 1,620.00

Residential Facility Fees Per Site:

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

All Other Residential Facilities:

Number of Beds

2 – 3	\$ 200.00
4 – 10	\$ 280.00

11 – 15	\$ 410.00
16 – 50	\$ 810.00
More than 50 beds	\$ 1,220.00

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

0940-05-02-.06 Application Process for an Initial License.

- (1) The applicant must submit application forms.
- (2) The applicant must submit the required fees for application processing.
- (3) The applicant is responsible for any fees charged by other regulatory agencies whose inspection of the facility or service is necessary for the issuance of licenses.
- (4) Upon receipt of the completed application and the required fees, the Department will arrange for needed inspections of the proposed site or sites, when applicable.
- (5) The Department will review the application, make any necessary investigations, review the results of the inspections of the proposed site or sites, when applicable, and take one of the following actions:
 - (a) If the review indicates compliance with all requirements for an initial license, the initial license will be issued;
 - (b) If the review indicates deficiencies, the applicant will be notified and must correct deficiencies before a license is issued; or
 - (c) If the review indicates that a license should not be granted, the applicant will be so notified. Within fifteen (15) calendar days of such notification of denial, the applicant may file a written request for a hearing before the Licensure Review Panel on the denial.

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

0940-05-02-.07 Application Process for License Renewal.

- (1) Prior to the expiration of an initial, full or provisional license, the Department will notify the licensee of the need to submit an application for license renewal. The Department will advise the licensee of the information, fees (by invoice), and the documents needed to process the renewal application.
- (2) The applicant must submit the renewal application, fee invoice and other information required by licensure. All payments must be accompanied by a copy of the fee invoice before the fee will be credited to the appropriate agency or service.
- (3) The applicant is responsible for any fees charged by other regulatory agencies whose inspection of the facility or service is necessary for the issuance of licenses.
- (4) The Department, when applicable, will conduct or arrange for inspections of the facility's or service's current life safety and environmental conditions, and review the facility's or service's program performance history. Dates for unannounced inspections will be random varying from year to year.
- (5) Upon receipt of the application material and the required fees, the Department will review the application material, the current life safety and environmental conditions, when applicable, and the performance history of the facility or service and take one of the following actions:

- (a) If the Department determines that all facilities or services operated by the licensee are in compliance with the applicable licensure laws, ordinances, rules, and regulations, then a full license will be issued;
- (b) If the Department determines that all facilities or services operated by the licensee do not comply with the applicable licensure laws, ordinances, rules, and regulations, a provisional license may be issued covering the facility or service not in full compliance; or
- (c) If the Department determines that a license should not be issued to one or more facilities or services operated by the licensee, the licensee shall be notified of the denial. Within fifteen (15) calendar days of such notification of denial, the licensee may file a written request for a hearing before the Licensure Review Panel on the denial.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, and T.C.A., Title 33, Chapter 2, Part 4.

0940-05-02-.08 Distinct Categories of Facilities and Services.

The licensure rules identify and define distinct categories of facilities or services. These facilities and services must meet applicable life safety, environmental and minimum program rules based on the type of program services and the needs of the persons served.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-3-403, 33-2-404, 33-2-405, and 33-2-407.

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

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

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

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

Licenses are not assignable or transferable except as provided by law. A new application must be made and a new license issued before services are provided when there is a change in the ownership of a facility/service or a change of location.

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

0940-05-02-.11 Time Limits.

Upon inspection of any facility or service making application for or holding a license, the Department may allow a reasonable time period for facility or service to correct deficiencies found by inspection.

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

0940-05-02-.12 Deemed Compliance.

- (1) A facility or service which is accredited or certified by any of the following may be deemed by the Department to be in compliance ("deemed compliance status") with applicable licensure program requirements:

- (a) Joint;
 - (b) Council on Accreditation of Rehabilitation Facilities (CARF);
 - (c) Social Security Act, Title XIX, Public Law 89-98, as amended (Medicaid) for Intermediate Care Facilities for the Mentally Retarded (ICF/MR) only;
 - (d) The Accreditation Council on Services for People with Disabilities; or
 - (e) Council on Accreditation for Children and Family Services.
- (2) To be considered for a deemed compliance status determination under this section, the licensee must submit written and official evidence of certification for accreditation to the Department including any cited deficiencies with plan of correction.
- (3) Facilities or services receiving deemed compliance status must also demonstrate compliance with the life safety and environmental rules. Deemed compliance status of the services offered by a facility or service does not alter the operator's obligation to correct any deficiencies cited during the unannounced inspections required by T.C.A. § 33-2-413 or to cooperate with investigations conducted by the Department of reports of abuse, dereliction, or deficiency in the operation of the facility or service. Notwithstanding the deemed compliance of a facility's services, such a facility is subject to the suspension or revocation of its license under the terms and procedures established in T.C.A. § 33-2-407 and the rules of this chapter.
- (4) Pursuant to T.C.A. § 33-2-403(c), a facility or service which can demonstrate compliance with regulations and standards by a previously acquired license from another state agency is considered in compliance with rules promulgated by the Department to the extent that duplicate inspection and enforcement is necessary.

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

0940-05-02-13 Access to Premises and Information.

With or without giving notice, representatives of the Department shall have the right to enter upon or into the premises of any facility or any part thereof, or service providing mental health, developmental disabilities substance abuse, or personal support services in order to make inspections deemed necessary to determine compliance with licensure laws, ordinances, regulations and rules. The facility or service shall comply with all reasonable requests of the Department and allow it to obtain information from third parties, including, but not limited to, individuals being served by the facility or service, and/or to review and obtain copies of all records of the facility or service sufficient to determine compliance with licensure laws, ordinances, regulations and rules.

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

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

- (1) The maintenance and renewal of a license is contingent upon evidence of continued compliance with licensure laws, ordinances, rules and regulations. Grounds for denying, suspending or revoking a license may include, but not be limited to, the following:
- (a) Violation of licensure law or rules;
 - (b) Permitting, aiding or abetting the commission of any illegal act in a licensed facility or service;
 - (c) Conduct or practice detrimental to the welfare of individuals being served by a licensed facility or service;

- (d) The submission of false information to the Department; or
 - (e) The use of subterfuge (for instance, filing through a second party after an individual has been denied a license).
- (2) Unless the Department finds that summary suspension of a license is necessary, all license revocations, suspensions and denials shall be conducted in accordance with the applicable sections of the Uniform Administrative Procedures Act, Tennessee Code Annotated, Title 4, Part 5. Summary suspension may only occur when the Department determines that continued operation of a licensed facility or service presents an immediate threat to the health, safety, and welfare of individuals being served. When a summary suspension occurs, proceedings for revocation or other action against the licensee shall be promptly instituted and determined in accordance with the Uniform Administrative Procedures Act.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404, 33-4-405, 33-2-406, 33-2-407 and 33-2-408.

0940-05-02-.15 Expiration of Licenses.

The expiration date of all licenses issued by the Department will be indicated on the face of the license. However, when a licensee has made timely and sufficient application for a new license (including payment of the required fees), the existing license does not expire until the status of the application has been determined by the Department. When the application is denied or the terms of the new license limited, the existing license does not expire until the last day for seeking review of the order or a later date fixed by order of the reviewing court.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404, 33-2-407, 33-2-409, 33-2-411, 33-2-412, 33-2-413, 3-2-414, 3-2-416, and 33-2-417.

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

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

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

0940-05-02-.17 Surrender Requirements.

The license certificate must be surrendered to the Department upon revocation or suspension of the license, upon transfer of ownership of the facility or service, or when the facility or service otherwise ceases to operate.

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

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

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

- (1) A facility that is appropriately licensed by the Department of Health, and whose primary purpose is not the provision of mental health, developmental disability, or substance abuse services.
- (2) A satellite hospital, as defined by rules of the Department of Health, whose primary purpose may be the provision of mental health, developmental disability or substance abuse services, and other facilities appropriately licensed by the Department of Health pursuant to T.C.A. § 68-11-201.
- (3) A facility which is operated by county, municipal or state department of education, the Department of Correction, the Department of Human Services, or the Department of Children's Services and that affirmatively states that its primary purpose is not the provision of mental health, developmental disability, substance abuse, or personal support services.

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

0940-05-02-.19 Waiver Authority.

The Department may waive any rule determined to be irrelevant or to pose a hardship. A hardship waiver may be granted only when strict enforcement of a particular requirement would not be in the best interest of service recipients. All waivers granted will be made in writing and entered in the official record of the licensed service or facility. This written document shall include the justification for the waiver. All waivers will be reviewed by the Department and the Licensure Review Panel.

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

0940-05-02-.20 Investigation of Abuse, Dereliction, or Deficiency in Operation of a Facility or Service.

- (1) The Department will investigate reports or suspicion of abuse, dereliction, or deficiency in the operation of a licensed service or facility in accordance with T.C.A. § 33-2-416.
- (2) The licensee shall post a sign in the facility or service displaying the Department's regional toll-free telephone number which informs service recipients, families, and the public that they may file a complaint with the Department. Any exemptions to posting signs will be determined by the Department.
- (3) The licensee must report to the Department any serious allegations or suspicion of abuse, dereliction, or deficiency in the operation of the facility or service.
- (4) The licensee must report to the Department any significant occurrences involving the facility/service or service recipient and staff. "Significant occurrences" may include, but not be limited to occurrences such as accidents, injuries, or death regarding individuals being served; fires, loss of heat/air conditioning, and/or other structural problems with the facility building(s).

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

0940-05-02-.21 Notice of Non-Compliance and Plan of Compliance.

- (1) The Department will give a Department-prepared Notice of Non-Compliance to the licensee on a form provided by the Department when an inspection or investigation of a facility/service reveals non-compliance with licensure law or rules.
- (2) The licensee must submit, by the date specified on the Notice of Non-Compliance, a written Plan of Compliance in response to the Notice of Non-Compliance.
- (3) The licensee's written Plan of Compliance shall include a description of the action taken or to be taken in correcting deficiencies, and the date by which each corrective action is completed or to be completed.
- (4) The Department will notify the licensee in writing whether the Plan of Compliance is acceptable and the basis for the decision. When the Plan of Compliance is not acceptable, the Department and licensee may continue to seek agreement. If agreement cannot be reached in a reasonable time, as determined by the Department, the Department may institute sanctions against the licensee.
- (5) The licensee shall maintain copies of the most recent compliance plans in a central location.

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

0940-05-02-.22 Unannounced Inspection.

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

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

0940-05-02-.23 Inspection Fees.

- (1) Pursuant to T.C.A. § 33-2-413(c), the Department is granted the authority to charge a fee in an amount not to exceed fifty dollars (\$50) for inspection of any facility or service.
- (2) The Department shall invoice the applicant or licensee for each applicable inspection. The applicant or licensee shall pay the inspection fee within thirty (30) days after receipt of the invoice, unless the current license expires before the end of the 30-day period. If the current license expires before the end of the 30-day period, the licensee shall pay the inspection fee before the expiration of the current license.
- (3) The Department may withhold the issuance of a license or suspend an existing license pending the payment of the inspection fee.

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

0940-05-02-.24 Assistance to Service Recipients When a License is Denied, Suspended or Revoked.

When a license is to be denied, suspended, or revoked, the Department will notify the appropriate state and local agencies which may be able to provide assistance to service recipients by coordinating placement.

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

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

- (1) The Department may, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a licensure law or rule.
- (2) The procedure for imposing a civil penalty shall be as follows:
 - (a) Department staff shall verbally notify a licensee that a civil penalty may be imposed due to the licensee violation of a licensure law or rule;
 - (b) Within six (6) business days of the verbal notification, the licensee shall be notified in writing of the basis for the civil penalty and the amount imposed.
 - (c) The civil penalty shall be effective beginning on the date the written notification of the decision is issued.
 - (d) The Department may impose a penalty for each day a licensee remains in violation of a licensure rule, regulation, ordinance or law. Each licensure law, rule, regulation or ordinance violated shall constitute a separate offense.
- (3) In determining the amount of the daily penalty, the commissioner may consider the following:
 - (a) The severity of the violation and the harm or risk of harm to the service recipient;
 - (b) The willfulness of the violation;
 - (c) The circumstances leading to the violation;

- (c) The efforts made by the facility to attain compliance;
 - (d) Any extraordinary enforcement cost incurred by the Department;
 - (e) The interest of the public; and
 - (f) Whether the civil penalty imposed will be an economic deterrent to the non-compliant activity.
- (4) The Department may impose a civil penalty in accordance with the following schedule:
- (a) First Offense

i.	Priority 1/Critical Offenses	\$ 500
ii.	All other offenses	\$ 250
 - (b) Second or subsequent offense of same type within 12-month period:

i.	Priority 1/Critical Offense	\$ 2500 to \$5000
ii.	All other offenses	\$ 500 to \$ 2500
- (5) The Department may continue to work with a licensee to seek compliance with any licensure law or rule. The Department may waive any penalty determined by the Department to impose a hardship. A hardship waiver of a civil penalty may be granted only when strict enforcement of a particular requirement would not be in the best interest of service recipients.
- (6) A "Priority 1 offense" for the purposes of these rules is defined as a substantiated investigation involving the death of a service recipient; neglect physical or sexual abuse of the service recipient by the licensee or staff; and/or a serious injury to a service recipient. A "critical offense", for purposes of these rules, is defined as those Department-designated administrative rules whose violation could result in serious harm to the service recipient.

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

Repeals

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

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

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

I further certify the following:

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

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



Date: 12/02/13

Signature: [Handwritten Signature]

Name of Officer: E. Douglas Varney

Title of Officer: Commissioner

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

Notary Public Signature: [Handwritten Signature]

My commission expires on: May 8, 2017

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

[Handwritten Signature]
 Robert E. Cooper, Jr.
 Attorney General and Reporter
1-8-14
 Date

Department of State Use Only

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

Effective on: 5/4/14

[Handwritten Signature]
 Tre Hargett
 Secretary of State

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