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Sequence Number: 03-18-10
 Rule ID(s): 4658
 File Date (effective date): 03/08/2010
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Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Tennessee Department of Children's Services
Division:	
Contact Person:	Stacy L. Miller General Counsel
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Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment

New

Repeal

Statement of Necessity:

Pursuant to T.C.A. § 37-2-205(f) the Department is authorized to promulgate rules to effectuate the provisions of this statute.

These rules are being filed as emergency rules pursuant to T.C.A. § 4-5-208 (a)(1) & (3) in that proper application of T.C.A. § 37-20-205(f) is necessary to the health, safety, or welfare of children whom DCS serves and that these rules are required under a recent court order in order to authoritatively effectuate the provisions of T.C.A. § 37-20-205(f).

For a copy of these emergency rules contact: Aaron Campbell, Legislative Director, 436 6th Avenue North, 7th Floor- Cordell Hull Building, Nashville, Tennessee 37243 at (615) 741-7236.

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
0250-01	Procedures for recouping from counties state funds expended on children committed to state custody in excess of 300% of the average state commitment rate and for collaborative planning with affected counties.
Rule Number	Rule Title
0250-01-.01	Purpose of Chapter
0250-01-.02	Definitions for Purposes of this Chapter
0250-01-.03	Allocation and Expenditure of Resources
0250-01-.04	Procedures for Notifying and Billing Counties for Children in Custody
0250-01-.05	Procedures for Initiating a Collaborative Planning Process to Address Underlying Problems Contributing to Over-Commitment
0250-01-.06	Appeals

(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>)

Rules
Of
Tennessee Department of Children's Services

Chapter 0250-01-.01

Procedures for Recouping from Counties State Funds Expended on Children Committed to State Custody in Excess of 300% of the Average State Commitment Rate and for Collaborative Planning with Affected Counties

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0250-01-.06	Appeals

0250-01-.01 Purpose of Chapter

The purpose of these rules is to provide, in compliance with T.C.A. § 37-2-205(f), rules and regulations to effectuate the provisions of subsection (f)(1)(A), particularly for recoupment of state funds expended for the daily cost of care of children committed by a county to state custody in excess of 300% of the average state commitment rate and for collaborative planning with a county believed likely to exceed 200% of the average state commitment rate.

Authority: T.C.A. § 37-2-205, T.C.A. § 37-5-105. Administrative History: Original rule filed; effective

0250-01-.02 Definitions for Purposes of this Chapter

- (1) Department or DCS means the Department of Children's Services.
- (2) County's Child Population means a population count based on the latest data provided by Department of Health (Latest U.S. Census Data).
- (3) Average State Commitment Rate Per Thousand Children means the total state child population (18 and under) divided by the total number of commitments for the fiscal year of either of two classes of children: dependent and neglected children and delinquent children. The average state commitment rate for each class shall be based upon the higher of 2007-2008 fiscal year average or the 2008-2009 fiscal year average.
- (4) Actual Daily Cost to the State means the actual amount of state dollars expended for a child's care while the child is in custody.
- (5) Duration of the Length of Stay means the period of time from the commitment of a child to DCS custody by any order of the juvenile court at any stage of a dependency and neglect or delinquency proceeding until the child is released from DCS custody by order of the court.

- (6) Collaborative Planning Process means the process by which the Department partners with a county and/or court when the county is believed likely to exceed 200% of the state average commitment rate.
- (7) Commitment Report means a bimonthly report that the Department shall provide electronically to each juvenile court judge and county executive that includes at least the following data: each county's total child population, the number for both dependent and neglected children and delinquent children at which the county's total commitments will exceed 300% of the average state commitment rate, and each county's total commitments to date for the current fiscal year.
- (8) Commitment means a child's placement into DCS custody by a juvenile court order at any stage of any dependency and neglect or delinquency proceeding, but does not include a removal of a child by DCS without court order.
- (9) Allocate Resources means to assign resources in planning based on a projection of how and where resources are likely to actually be expended; however, the allocation of resources in no way limits their actual expenditure. Allocation will not restrict any child's full and equal access to the best available services or the Department's final commitment of all necessary resources to fulfill its obligations to each child committed to state custody.

Authority: T.C.A. § 37-2-205, T.C.A. § 37-5-105. Administrative History: Original rule filed ;effective

0250-01-.03 Allocation and Expenditure of Resources

- (1) As a planning measure, the Department shall project and allocate resources for children placed in state custody using a formula based on a county's child population and the average state commitment rate per thousand children.
- (2) The allocation of resources in no way diminishes DCS' obligation to pay for any child committed to DCS custody, regardless of whether any commitment exceeds either resources allocated or 300% of the statewide average commitment rate per thousand children.

0250-01-.04 Procedures for Notifying and Billing Counties for Children in Custody

- (1) DCS shall pay the full cost for each commitment of every dependent and neglected child or delinquent child committed to its custody.
- (2) Beginning July 1, 2009, DCS shall recoup from a county its actual paid-out daily cost for the duration of the length of stay for any child committed in excess of 300% of the average state commitment rate. The billing shall be sent to the County Executive. Billing for any fiscal year shall occur as soon as practicable after the close of that fiscal year. The county shall be billed for the state's actual daily cost during the fiscal year for any child committed in excess of 300% during that fiscal year or during a previous fiscal year. Thus, for example, if such a child is committed in fiscal year 2009-2010, the county will be billed after July 1, 2010, for the state's actual daily cost for caring for the child during fiscal year 2009-2010. If the child remains in custody in fiscal year 2010-2011, the county shall be billed after July 1, 2011, for the state's actual daily cost for caring for the child during fiscal year 2010-2011. Billing shall only be for the years during which T.C.A. § 37-2-205(f) remains in effect.
- (3) DCS shall provide a Commitment Report to the County Executive and the Juvenile Court Judge upon request or as appropriate to fulfill its statutory obligations.

Authority: T.C.A. § 37-2-205, T.C.A. § 37-5-105. Administrative History: Original rule filed; effective

0250-01-.05 Procedures for Initiating a Collaborative Planning Process to Address Underlying Problems Contributing to Over-Commitment

- (1) DCS shall notify in writing the Juvenile Court Judge and the County Executive any time a county is believed to be likely to exceed two hundred percent (200%) of the State average commitment rate. DCS shall also notify the Chairman and the Executive Director of the Select Committee on Children and Youth and the Regional Administrator. DCS shall offer in said notification to initiate a collaborative planning process upon the request of the County Executive or the Juvenile Court Judge. The County Executive and the Juvenile Court Judge shall notify the Department in writing of the acceptance or rejection of the offer to initiate a collaborative planning process. Said notification shall be sent to the Commissioner of the Department of Children's Services. Said collaborative planning process shall include, but is not limited to, developing and implementing strategies to identify and address underlying problems contributing to over commitment that may exist in such county.
- (2) On or before January 15 of each year, DCS shall provide a report to the General Assembly listing the counties that have exceeded the state average commitment limits and the actions taken by DCS to comply with T.C.A. § 37-2-205.

Authority: T.C.A. § 37-2-205, T.C.A. § 37-5-105. Administrative History: Original rule filed ;
effective

0250-01-.06 Appeals

- (1) A county billed under these rules may appeal pursuant to the Administrative Procedures Act only the amount or validity of the bill.

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 an emergency rule(s), lawfully promulgated and adopted.



Date: 03/02/10

Signature: Stacy L. Miller

Name of Officer: Stacy L. Miller

Title of Officer: Gen. Counsel

Subscribed and sworn to before me on: 03/02/10

Notary Public Signature: Harry F. Flemmings, II

My commission expires on: November 25, 2012

All emergency 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
3-4-10
 Date

Department of State Use Only

Filed with the Department of State on: 3/8/10

Effective for: 180 *days

Effective through: 9/4/10

* Emergency rule(s) may be effective for up to 180 days from the date of filing.

Tre Hargett
 Tre Hargett
 Secretary of State

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 PUBLICATIONS

Additional Information Required by Joint Government Operations Committee

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

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

This rule is being promulgated in accordance with T.C.A. § 37-2-205(f). This rule sets forth the mechanism by which counties will be billed in regards to an over-commitment of children from their county into state custody.

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

T.C.A. § 37-2-205(f)

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

Juvenile Courts and county officials. They would most likely object to this rule as they objected to the underlying statute.

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

None at this time.

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

Minimal

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

Stacy L. Miller, General Counsel and Aaron Campbell, Legislative Director

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

Stacy L. Miller

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

436 6th Avenue North, 7th Floor – Cordell Hull Building, Nashville, Tennessee 37243, 615-741-7236, stacy.miller@tn.gov

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

None