

Notice of Rulemaking Hearings
State of Tennessee Department of Finance and Administration
Division of Mental Retardation Services

There will be three hearings before the Division of Mental Retardation Services to consider the promulgation of Rules – Rate Structure pursuant to : *T.C.A. § 33-1-309(d)* and *Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23* dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively. The Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, *T.C.A. § 4-5-204* and will take place as follows:

East Tennessee: Lakeshore Mental Health Institute, Maple Cottage, 5908 Lyons View Drive, Knoxville, TN 37919 1:00 EDST, June 21, 2005

Middle Tennessee: Clover Bottom Developmental Center, One Canon Way, Basement Large Conference Room, 275 Stewarts Ferry Pike, Nashville, TN 37214, 1:00 CDST, June 23, 2005

West Tennessee: Arlington Developmental Center Auditorium, Baker Building, 11293 Memphis-Arlington Rd., Memphis, Tennessee 38002, 1:00 CDST, June 28, 2005.

Any individuals with disabilities who wish to participate in these proceedings regarding Rate Structure Rules should contact the Division of Mental Retardation Services to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date they plan to attend to determine how it may reasonably provide such aid or service. Initial contact may be made with Brenda Clark, ADA Coordinator, Andrew Jackson Building, 13th floor, 500 Deaderick Street, Nashville, TN 37243, (615) 253-6811.

For a copy of this notice of rulemaking hearing, contact: Carolyn Griffith, Division of Mental Retardation Services, Andrew Jackson Building, 15th Floor, 500 Deaderick Street, Nashville, TN 34243, 615 253-2025.

Substance of Proposed Rules
Chapter 0940 – 4 – 3
Methodology Utilized to Determine Payments to Service Providers (Rate Structure)

Table of Contents

0940-4-3-.01	Purpose	0940-4-3-.09	Rate Setting Methodologies for Dental Services.
0940-4-3-.02	Scope		
0940-4-3-.03	Definitions	0940-4-3-.10	Rate Setting Methodologies for Personal Emergency Response Systems.
0940-4-3-.04	Rate Setting Methodologies for Medical, Residential and Supported Living.	0940-4-3-.11	Rate Setting Methodologies for Specialized Medical Equipment and Supplies.
0940-4-3-.05	Special Needs Adjustments.	0940-4-3-.12	Rate Setting Methodologies for Environmental Modifications.
0940-4-3-.06	Rate Setting Methodologies for Day Services.	0940-4-3-.13	Rate Setting Methodologies for Vehicle Modifications.
0940-4-3-.07	Rate Setting Methodologies for Clinical Services.		
0940-4-3-.08	Rate Setting Methodologies for Respite and Personal Assistance Services.		

0940-4-3-.01 Purpose.

This chapter establishes a rate setting methodology for Residential and Day Services that are provided through the Department of Finance and Administration – Division of Mental Retardation Services.

Authority: *T.C.A. § 33-1-309(d)* and *Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23* dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.02 Scope.

These rules apply to the procedures and practices used to establish rates of payment for Residential and Day Services acquired by the Department of Finance and Administration – Division of Mental Retardation Services for or on behalf of those persons served by it under the provisions of Title 33 of the *Tennessee Code Annotated* and *Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23*, dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

Authority: *T.C.A. § 33-1-309(d)* and *Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23* dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.03 Definitions.

As used in these rules, unless the context indicates otherwise, the terms listed below have the following meaning:

- (1) “Administrative Costs” are the allowable percentage of the service rate that includes the costs for administrative salaries and benefits, home office costs, office supplies and printing, phone and other communication, travel and conference, advertising, professional services, licensure and dues, legal and accounting fees, interest, depreciation, occupancy, general liability insurance, equipment and administrative vehicles.
- (2) “Base Rates” are the rates established using the base rate setting methodology.
- (3) “Direct Service Costs” are the costs for direct service staff salaries and benefits, overtime, direct supervision wages and benefits, contracted direct service/temporary help, recruiting/advertising, drug testing, background checks, Hepatitis B and TB tests, and other costs for direct service staff bonuses and employee appreciation events.
- (4) “Full Time Equivalent (FTE)” means the total cost for one direct support staff for forty hours. It includes direct service costs, non-direct program costs, administrative costs, and twenty (20) days of payment to cover service recipient absences.
- (5) “Non-Direct Program Costs” is the allowable percentage of the service rate that includes the costs for multi-site supervisors and benefits, training, off site computer/file storage, depreciation/amortization, internal monitoring, agency case management, personal funds management, healthcare oversight, specific assistance to individuals-room and board, specific assistance to individuals-non-room and board, transportation of individuals, staff travel, facility maintenance, facility supplies, habilitation supplies.

- (6) “Rate” is the amount paid per person to approved service providers for each unit of a DMRS service that is provided. A unit may be a portion of an hour, an hour, a day, a month, an item or a job, depending on the type of service.
- (7) “Rate Adjustment” is an increase(s) to the base rates that may be across the board adjustments for costs of living or increases for specific purposes that are appropriated by the Tennessee legislature.
- (8) “Rate Levels” are the series of rates for residential and day services that are based on the intensity of a service recipient’s needs and the size or site of the service setting.
- (9) “Rate Level Factor” is the multiplier applied to the FTE daily cost that reflects intensity of support need and number of persons in the home. Rate level factors were based on licensure requirements for staffing and professional judgement of estimated hours of direct support staff assistance required for individuals at each rate level.
- (10) “Rate Setting Methodology” is the manner in which the base rates for residential and day services are calculated or determined.
- (11) “Special Needs Adjustment” is an additional payment that may be added to the residential rate for an individual when certain specified criteria are met.
- (12) “Uniform Cost Report” is the mandatory annual report completed by providers of residential and/or day services that is submitted to the Division of Mental Retardation Services. The Uniform Cost Report is completed in the manner and in a format required by the Division.

Authority: *T.C.A. § 33-1-309(d)* and *Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23* dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.04 Rate Setting Methodologies for Medical, Residential and Supported Living.

- (1) Medical Residential, Residential Habilitation and Supported Living (Shift-Staffed) Model.
 - (a) For residential services that are shift-staffed, staff coverage is calculated as follows:
 1. 138 hours per week—5 days at 18 hours per day and 2 days at 24 hours per week.
 2. 3.45 Full Time Equivalent (FTE) are required to provide this coverage.
 3. The unit of service for these residential services is a day.
 - (b) The calculation of the daily cost per person for a Full Time Equivalent (FTE) is:
 1. Hourly direct support staff wage plus % for benefits for the hourly cost for direct support staff.
 2. Annual salary for direct supervision plus % for benefits divided by four residents equals the cost per person per year.

3. Divide the cost per person per year by 52 weeks and by 138 hours to arrive at the hourly cost for supervision.
4. Add together the hourly cost for direct support staff and the hourly cost for supervision.
5. Multiply the result from Step four by one and the % allowed (*e.g.* multiply by 1.20 for 20%) for non-direct program costs.
6. Multiply the result from Step five by one and the % allowed (*e.g.* multiply by 1.125 for 21.5%) for administrative costs to arrive at the hourly cost for coverage.
7. Multiply the hourly cost for an FTE by 138 hours to arrive at the weekly cost for coverage.
8. Divide the weekly cost by 7 days to arrive at the daily cost for coverage.
9. Divide the daily cost by 3.45 FTEs to arrive at the daily FTE cost per person.

(c) Calculation for the daily rate per person is:

1. For each Rate Level and Home Size, multiply the daily per person FTE cost by the rate level factor.
2. Divide the result of Step one by the facility size.
3. Multiply the result of Step two by 385 (to allow for 20 absent days).
4. Divide the result of Step three by 365 to arrive at the daily rate.

(2) Supported Living-Companion Model

(a) For non-shift staffed, companion model the unit of service is a day. The calculations are as follows:

(b) Calculate the daily rate per person.

1. Multiply the annual stipend by one and the % for benefits.
2. Add the companion room and board allowance.
3. Add the number of hours per year at the hourly rate for relief staff divided by 365 days.
4. Add costs in steps one through three.
5. Multiply the result of step four by one and the percent for non-direct program costs.
6. Multiply the result of step five by one and the percent for administrative costs.

7. Divide the result of step six by 365.
8. Multiply the result of step seven by 385 (to allow for 20 absent days).
9. Divide the result of step eight by 365 to arrive at the daily rate.

(3) Family Model for Residential Services

- (a) Family Model Residential Services are those provided in a family home under the supervision of a residential services agency. The unit of service is a day.
- (b) Calculate the daily rate per person.
 1. Multiply the annual stipend by one and the % for benefits.
 2. Add the number of hours per year at the hourly rate for relief staff divided by 365 days.
 3. Add direct supervision at annual salary plus % for benefits divided by 10 individuals divided by 365 days.
 4. Add costs in steps 1 through 3 above.
 5. Multiply the result of step four by one and the percent for non-direct program costs.
 6. Multiply the result of step five by one and the percent for administrative costs.
 7. Divide the result of step six by 365 days.
 8. Multiply the result of step seven by 385 days (to allow for 20 absent days).
 9. Divide the result of step eight by 365 days to arrive at the daily rate.

(4) Semi-Independent Living Model

- (a) Semi-Independent Living services are residential services provided to individuals who require limited support. The unit of service is a month.
- (b) Calculate the monthly rate per person.
 1. Multiply the hours per month amount for direct support staff by one and the % for benefits.
 2. Add direct supervision at annual salary plus % for benefits divided by 10 individuals divided by 12 months.
 3. Add one hundred and twenty dollars (\$120.00) for transportation

4. Add one hundred and fifty-five dollars (\$155.00) per month for case management/program supervision.
5. Multiply the results of steps one through four by one and the percent for administrative costs.

Authority: *T.C.A. § 33-1-309(d)* and *Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23* dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.05 Special Needs Adjustments.

- (1) An adjustment of an additional sixty dollars (\$60.00) per day is available to Residential Habilitation and Supported Living Levels 1-4, for homes with 1-4 persons.
- (2) An adjustment of twenty dollars (\$20.00) per day is available to Residential Habilitation homes with 5 or more people except for reasons of a vacancy in the home.
- (3) This adjustment may be used for additional staff coverage or higher wages for staff.
- (4) A special needs adjustment does not change the rate level designated for the individual, but adjusts the rate level as a result of one or more of the following circumstances:
 - (a) The individual has a history of significant behavioral or psychiatric problems that are now not apparent due to the design or intensity of services being received or the person has a situation that is unique and results in the need for additional resources.
 - (b) Less intensive services will likely result in recurrence of previous problems. The Regional Office must review the special adjustment at least annually.
 - (c) The individual is in circumstances that are time limited but that require support(s) at a higher level than described by the Level. (For example, the person has had a serious illness, injury, or surgery that requires more support while he is recovering than the Level describes.) A special adjustment may be approved for up to ninety (90) days and may be extended for an additional ninety (90) days.
 - (d) The person needs a roommate and requires a special adjustment until one moves in. A special adjustment may be approved for up to ninety (90) days and may be extended for an additional ninety (90) days.

Authority: *T.C.A. § 33-1-309(d)* and *Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23* dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.06 Rate Setting Methodologies for Day Services.

- (1) The unit of service is a day except for Follow Along which is a month.
- (2) For day services staff coverage is calculated for 6 hours per day for 243 days per year.
- (3) The cost models were calculated with the following direct service cost factors:

- (a) Non-direct program costs at twenty percent (20%).
 - (b) Administrative costs at twelve and one-half percent (12.5%).
 - (c) Transportation costs per day per person.
 - (d) Twenty (20) leave days.
- (4) Rate level factor based on service setting and intensity of need.
 - (5) Day Service settings include day habilitation facilities, community locations, and community employment locations.

Authority: *T.C.A. § 33-1-309(d)* and *Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23* dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.07 Rate Setting Methodologies for Clinical Services.

- (1) The unit for therapy and nursing services is a quarter hour.
- (2) The Unit for behavioral services is an hour.
- (3) The rate for clinical services is based on comparison with national rates of payment and comparable rates of payment within the State for like services.

Authority: *T.C.A. § 33-1-309(d)* and *Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23* dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.08 Rate Setting Methodologies for Respite and Personal Assistance Services.

- (1) The unit for respite and personal assistance services may be hourly or daily rates.
- (2) The rates are calculated based on hourly direct service costs and a percentage for administrative costs.

Authority: *T.C.A. § 33-1-309(d)* and *Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23* dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.09 Rate Setting Methodologies for Dental Services.

Dental Services rates are those set by TennCare for reimbursement of Medicaid funded dental care.

Authority: *T.C.A. § 33-1-309(d)* and *Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23* dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.10 Rate Setting Methodologies for Personal Emergency Response Systems.

Rates paid are the usual and customary rates for installation and monitoring set by the company providing the service.

Authority: *T.C.A. § 33-1-309(d)* and *Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23* dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.11 Rate Setting Methodologies for Specialized Medical Equipment and Supplies.

Rates paid are the usual and customary costs for the equipment or supplies.

Authority: *T.C.A. § 33-1-309(d)* and *Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23* dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.12 Rate Setting Methodologies for Environmental Modifications

Rates paid are the usual and customary costs for the modification.

Authority: *T.C.A. § 33-1-309(d)* and *Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23* dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.13 Rate Setting Methodologies for Vehicle Modifications.

Rates paid are the usual and customary costs for the modification.

Authority: *T.C.A. § 33-1-309(d)* and *Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23* dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

0940-4-3-.14 Rate Setting Methodologies for Vision Services.

Rates paid are the usual and customary charges for examination and corrective lenses.

Authority: *T.C.A. § 33-1-309(d)* and *Executive Orders of the State of Tennessee Nos. 9, 10, 21 and 23* dated February 7, 1996, October 14, 1996, July 29, 1999 and October 19, 1999, respectively.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Division of Mental Retardation Services.

Stephen H. Norris
Stephen H. Norris, Deputy Commissioner
Department of Finance and Administration
Division of Mental Retardation Services

Subscribed and sworn to before me this 15th day of April, 2005.

Carolyn R. Griffith
Notary Public



My Commission expires on the 4th day of March, 2008

All 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.

The notice of rulemaking set out herein was properly filed in the Department of State on the 15 day of April, 2005.

Rely C. Orrell
Secretary of State

By: Orrell

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