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This filing replaces the emergency rules filed on June 30, 2010.

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Sequence
 Number: 08-07-10
 Rule ID(s): 4812
 File Date (effective
 date): 08/06/2010
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 Date: 02/02/2011

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 Finance and Administration
Division:	Intellectual Disabilities Services
Contact Person:	Theresa C. Sloan, General Counsel
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Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment

New

Repeal

Statement of Necessity:

This statement of necessity is made in accordance with the Uniform Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5, specifically T.C.A. § 4-5-208, the Rules for Filing Rulemaking Documents, Chapter 1360-01-01 et.seq., T.C.A. § 33-1-309(d) and T.C.A. §33-1-204. It is the finding of the Department of Finance and Administration, Division of Intellectual Disabilities Services, that the foregoing rule amendments to the Methodology Utilized to Determine Payments to Service Providers (Rate Structure) should be effective immediately as emergency rules.

These rules are meant to encompass and supersede the emergency rules filed by the Department of Finance and Administration, Division of Intellectual Disabilities Services (DIDS, Division), on June 30, 2010 with an end date of December 27, 2010. At the time of the June 30, 2010, filing DIDS could not have reasonably foreseen the confusion that was generated surrounding the two person need for personal assistance services, thus the need for this filing as clarification surrounding the reimbursement structure for personal assistance services.

Pursuant to an agreement between DIDS and the Bureau of TennCare, the agencies have worked extensively over the past several years to revise the ratemaking system currently in effect for community

service providers under agreement with the Division. The result of this effort has been the development of a methodology for determining the funding mechanism/amounts to be paid to the Division's contractors who aid intellectually disabled persons served by DIDS in Tennessee.

DIDS is making a concerted effort through adjustment of its rates of payment pursuant to its existing rules to modify the amounts paid to DIDS providers. It is imperative that the Division's program expenditures remain within its approved fiscal limits and that of the budgetary limitations placed upon it by the legislature. These emergency rule amendments establish a rate formulation methodology to comport with and complete this process.

The delay in promulgating these amendments utilizing the ordinary rulemaking procedure as found in Title 4, chapter 5 of the Tennessee Code Annotated, as well as chapter 1360 of the O.C.R.R.S.T. could cause the loss of critical federal matching funding for these services. The current legislature has only very recently set the parameters for the coming fiscal year, leading to these rate making changes. Furthermore, without the rates resulting from this process, the Division will incur a significant deficit between its operating expenses and available funding; leading to the reality of being unable to compensate its contracted providers. These persons and organizations furnish necessary-and in some cases critical services-to residents across the State of Tennessee who have needs for assistance due to intellectual disabilities.

The Division of Intellectual Disabilities Services will send a written notice to those persons it believes will be effected by these rules as well as posting them on its website within ten (10) working days of the date of their filing.

For a copy of these emergency rule contact: Simone Cuarino, Legal Assistant, Division of Intellectual Disabilities Services, Thirteenth Floor (Suite 1310), Andrew Jackson Building, 500 Deaderick Street, Nashville, Tennessee 37243, (615) 253-2020.

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/RuleTitle per row)

Chapter Number	Chapter Title
0940-04-03	Methodology Utilized to Determine Payments to Service Providers (Rate Structure)
Rule Number	Rule Title
0940-04-03-.03	Definitions
0940-04-03-.04	Rate Setting Methodologies for Medical, Residential Services
0940-04-03-.05	Rate Setting Methodologies for Residential and Supported Living
0940-04-03-.06	Special Needs Adjustments
0940-04-03-.07	Rate Setting Methodologies for Day Services
0940-04-03-.08	Rate Setting Methodologies for Clinical Services
0940-04-03-.09	Rate Setting Methodologies for Respite and personal Assistance Services
0940-04-03-.10	Rate Setting Methodologies for Dental Services
0940-04-03-.11	Rate Setting Methodologies for Personal Emergency Response Systems
0940-04-03-.12	Rate Setting Methodologies for Specialized Medical Equipment and Supplies
0940-04-03-.13	Rate Setting Methodologies for Environmental Modifications

0940-04-03-.14	Rate Setting Methodologies for Vehicle Modifications
0940-04-03-.15	Rate Setting Methodologies for Vision Services
0940-04-03-.16	Rate Setting Methodologies for Independent Support Coordination Services
0940-04-03-.17	Rate Setting Methodologies for services funded exclusively by the State [Non-Waiver State Funded (NWSF) Services.]

Rule 0940-04-03 Methodology Utilized to Determine Payments to Service Providers (Rate Structure) is amended by deleting it in its entirety and substituting the following:

Rules
Of
Tennessee Department of Finance and Administration
Division of Intellectual Disabilities Services

Amended Rules

Chapter 0940– 04–03
Methodology Utilized To Determine Payments to Service Providers
(Rate Structure)

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0940-04-03-.04	Rate Setting Methodologies for Medical, Residential Services.	0940-04-03-.15	Rate Setting Methodologies for Vision Services
0940-04-03-.05	Rate Setting Methodologies for Residential and Supported Living.	0940-04-03-.16	Rate Setting Methodologies for Independent Support Coordination Services
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0940-04-03-.07	Rate Setting Methodologies for Day Services.		
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0940-04-03-.01 Purpose.

This chapter establishes a rate setting methodology for Residential Day and other Services that are provided through the Department of Finance and Administration Division of Intellectual Disabilities Services.

Authority: T.C.A. §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.02 Scope.

These rules apply to the procedures and practices used to establish rates of payment for Residential, Day and other services acquired by the Department of Finance and Administration – Division of Intellectual Disabilities Services for or on behalf of those persons served by it under its various Medicaid Waivers; the provisions of Title 33 and 34 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); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.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, for example, 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) "Direct Service Costs" are the costs for direct service such as staff salaries and benefits, overtime, direct supervision wages and benefits, contracted direct service/temporary help, training, recruiting/advertising, drug testing, background checks, Hepatitis B and TB tests, and other costs for direct service staff bonuses and employee appreciation events.
- (3) "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) annual days of payment to cover service recipient absences.
- (4) "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.
- (5) "Rate" is the amount paid per person to approved service providers for each unit of a DIDS service that is provided. A rate unit may be a portion of an hour, a day, a month, an item or a job, depending on the type of service.
- (6) "Rate Levels" are the series of rates for residential, day and other services that are based on a service recipient's needs and the size or site of the service setting.

- (7) "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 judgment of estimated hours of direct support staff assistance required for individuals at each rate level.
- (8) "Rate Setting Methodology" is the manner in which the rates for residential, day and other services are calculated or determined.
- (9) "Special Needs Adjustment" is an additional payment that may, within the discretion of the Division and subject to resource availability, be added to the residential rate for an individual in appropriate circumstances, e.g. periodic crisis that require additional support.
- (10) "Uniform Cost Report" is a report relating to costs and/or operating expenses/revenues completed by providers that is submitted as required by the Division of Intellectual Disabilities Services. The Uniform Cost Report is completed and transmitted in the manner, format and timeframe required by the Division.

Authority: T.C.A. §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.04 Rate Setting Methodologies For Medical, Residential Services.

- (1) Medical Residential Services.
 - (a) For residential services that are shift-staffed, staff coverage is calculated as follows:
 - 1. 168 hours per week—7 days at 24 hours per week.
 - 2. 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. Allowable Hourly direct support staff wages plus % for benefits for the hourly cost for direct support staff.
 - 2. Annual allowable 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 168 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 for non-direct program costs.
 - 6. Multiply the result from Step five by one and the % allowed for administrative costs to arrive at the hourly cost for coverage.
 - 7. Multiply the hourly cost for an FTE by 168 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 allowable 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.

Authority: T.C.A. §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.05 Rate Setting Methodologies for Residential Habilitation and Supported Living.

(2) 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 day is equal to one week
2. 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 for non-direct program costs.
6. Multiply the result from Step five by one and the % allowed 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 allowable 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 % for non-direct program costs.
 6. Multiply the result of step five by one and the % 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.

Authority: T.C.A. §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.06 Special Needs Adjustments.

- (1) An adjustment up to an additional thirty-five dollars (\$35.00) 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 such as DSM-IV diagnosis, violent acting out, serious self-injury or danger to others 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.

Authority: T.C.A. §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.07 Rate Setting Methodologies For Day Services.

- (1) The unit of service is a day.
- (2) For day services staff coverage is calculated for 6 hours per day for 243 days per year.
- (3) The cost models are calculated with the following direct service cost factors:
 - (a) Non-direct program costs at the allowable percentage.
 - (b) Administrative costs at the allowable percentage.
 - (c) Transportation costs per day per person.
 - (d) Twenty (20) leave days.

- (4) Rate level factor based on service setting and of need of the individual.
- (5) Day Service settings include day habilitation facilities, community locations, and community employment locations.

Authority: T.C.A. §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.08 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 one quarter (1/4) of 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); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.09 Rate Setting Methodologies For Respite and Personal Assistance Services.

- (1) The unit for respite and personal assistance services may be one quarter (1/4) of an hour or daily rates as determined by DIDS.
- (2) The determination of rates in this section (.09) is calculated based on units of one quarter (1/4) of an hour for one (1) staff person or of one day of allowable direct service costs for one (1) staff person and a percentage of administrative costs. Reimbursement for two (2) staff to deliver services to one (1) service recipient at the same time is not covered under any circumstances.
- (3) There will be one (1) maximum rate for one-quarter (1/4) of an hour of Personal Assistance.
- (4) There will be one (1) maximum rate for one-quarter (1/4) of an hour of Respite services.

Authority: T.C.A. §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.10 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); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.11 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); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 &34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.12 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); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 &34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.13 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); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 &34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.14 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); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 &34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.15 Rate Setting Methodologies For Vision Services.

Rates paid are a combination of the usual and customary charges for examination and corrective lenses and those set by TennCare for reimbursement of Medicaid funded vision care.

Authority: T.C.A. §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 &34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.16 Rate Setting Methodologies for Independent Support Coordination Services

Current rates in this category are found at Rule 0620-06-03-.04 (h) and were derived after consideration of provider input, resource availability as well as system service requirements. Future changes in amounts paid for this service will be made utilizing such tools as: consultation with stake-holders (e.g. Independent Support Coordinators, Independent Support Coordination Agencies/Organizations), review of similar services in other states, market conditions, and system needs. Rates are always subject to DIDS funding/resource availability.

Authority: T.C.A. §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 &34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee

Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.17 Rate Setting Methodologies for services funded exclusively by the State [Non-Waiver; State Funded (NWSF) Services.

Rates paid are discretionary and based upon Service Recipient need, limited by system and service requirements and subject to DIDS funding and resource availability.

Authority: T.C.A. §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

* 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: 8-4-10

Signature: [Handwritten Signature]

Name of Officer: James R. Finch, Ed.D.

Title of Officer: Deputy Commissioner

Subscribed and sworn to before me on: 8-4-10

Notary Public Signature: Marcia E. Campey

My commission expires on: July 7, 2013

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.

[Handwritten Signature]
 Robert E. Cooper, Jr.
 Attorney General and Reporter
8-4-10
 Date

Department of State Use Only

Filed with the Department of State on: 8/6/10

Effective for: 180 *days

Effective through: 2/2/11

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

RECEIVED
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[Handwritten Signature]
 Tre Hargett
 Secretary of State

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 rule will not have a projected impact on local governments.

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 was written and made effective in 2006 as mandated by T.C.A. 33-1-309(d). This amendment brings the current rule into compliance with necessary rate adjustments due to budget constraints and legislative mandates.

- (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;

All methodology utilized by DIDS for determining payment to serve providers shall be adopted as rules in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, which shall be consistent among providers providing substantially the same services [T.C.A. 33-1-309 (d)]

- (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;

Tennessee Community Organizations (TNCO) and several hundred other contracted service providers across the state. It is unknown as to whether any individual provider would support or object to this change.

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

None are directly related to this rule. However, under Tennessee's Home and Community Based Services Waiver, Self Determination Waiver and Arlington Waiver, the state is required to develop and adequately fund the provider network.

- (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;

It is anticipated that these amendment changes to the rate methodology structure will have a fiscal impact. However, this information cannot be supplied at this the DIDS fiscal and budget staff completes the process for such estimations.

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

Lucia Belier, Fred Hix and Melinda Lanza.

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

As above

- (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

Dr. James Finch, DIDS Deputy Commissioner, or designee, 500 Deaderick Street, 15th Floor, Nashville, TN 37243, (615) 532-6538, Fred Hix, Assistant Commissioner for Administrative Services, 500 Deaderick Street,

15th Floor, Nashville, TN 37243, (615) 253-6710, James.Finch@tn.gov

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

None at this time.

Rules
Of
Tennessee Department of Finance and Administration
Division of Intellectual Disabilities Services

Amended Rules

Chapter 0940-04-03
Methodology Utilized To Determine Payments to Service Providers
(Rate Structure)

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0940-04-03-.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.~~ **Division of Intellectual Disabilities 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.~~ **Tenn. Code Ann. (T.C.A.) §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the “Reimbursement Rate” for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.**

0940-04-03-.02 Scope.

These rules apply to the procedures and practices used to establish rates of payment for Residential and Day **and other** Services acquired by the Department of Finance and Administration – ~~Division of Mental Retardation Services~~ **Division of Intellectual Disabilities Services** for or on behalf of those persons served by it under **its various Medicaid Waivers**; the provisions of Title 33 **and 34** 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.~~ **Tenn. Code Ann. (T.C.A.) §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. § 33-1-302 & 303 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the “Reimbursement Rate” for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.**

0940-04-03-.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, **for example**, 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) “Direct Service Costs” are the costs for direct service **such as** staff salaries and benefits, overtime, direct supervision wages and benefits, contracted direct service/temporary help, **training**, recruiting/advertising, drug testing, background checks, Hepatitis B and TB tests, and other costs for direct service staff bonuses and employee appreciation events.
- (3) “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.
- (4) “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.
- (5) “Rate” is the amount paid per person to approved service providers for each unit of a **DMRS DIDS** service that is provided. A rate 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.
- (6) “Rate Levels” are the series of rates for residential, **and day and other** services that are based on ~~the intensity of~~ a service recipient’s needs and the size or site of the service setting.

- (7) "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 judgment of estimated hours of direct support staff assistance required for individuals at each rate level.
- (8) "Rate Setting Methodology" is the manner in which the rates for residential, and day and other services are calculated or determined.
- (9) "Special Needs Adjustment" is an additional payment that may, within the discretion of the Division and subject to resource availability be added to the residential rate for an individual when certain specified criteria are met in appropriate circumstances, e.g. periodic crisis that require additional support.
- ~~(10) "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.~~
- (10) "Uniform Cost Report" is a report relating to costs and/or operating expenses/revenues completed by providers that is submitted as required by the Division of Intellectual Disabilities Services. The Uniform Cost Report is completed and transmitted in the manner, format and timeframe 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. Tenn. Code Ann. (T.C.A.) §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. § 33-1-302 & 303 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.04 Rate Setting Methodologies For Medical, Residential Services.

- (1) Medical Residential Services.
 - (a) For residential services that are shift-staffed, staff coverage is calculated as follows:
 - 1. 168 hours per week—7 days at 24 hours per week.
 - 2. 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. Allowable Hourly direct support staff wages plus % for benefits for the hourly cost for direct support staff.
 - 2. Annual allowable 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 168 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 for non-direct program costs.
 6. Multiply the result from Step five by one and the % allowed for administrative costs to arrive at the hourly cost for coverage.
 7. Multiply the hourly cost for an FTE by 168 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 allowable 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.

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.~~ Tenn. Code Ann. (T.C.A.) §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. § 33-1-302 & 303 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.0405 Rate Setting Methodologies for ~~Medical,~~ Residential **Habilitation** and Supported Living.

(2) ~~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 **per day is equal to one week.**
 2. ~~3.45 Full Time Equivalents (FTE) are required to provide this coverage.~~
 - 3.2. 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 for non-direct program costs.
6. Multiply the result from Step five by one and the % allowed 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 allowable 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.

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.~~ ~~Tenn. Code Ann. (T.C.A.) §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.~~

(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.

0940-04-03-.0506 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.
- (1) An adjustment up to an additional thirty-five dollars (\$35.00) 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 such as DSM-IV diagnosis, violent acting out, serious self-injury or danger to others 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.~~ Tenn. Code Ann. (T.C.A.) §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-0607 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 are calculated with the following direct service cost factors:
 - (a) Non-direct program costs at the allowable percentage
 - (b) Administrative costs at the allowable percentage
 - (c) Transportation costs per day per person.
 - (d) Twenty (20) leave days.
- (4) Rate level factor based on service setting and ~~intensity~~ of need **of the individual.**
- (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.~~ Tenn. Code Ann. (T.C.A.) §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-0708 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.~~
- (2) **The Unit for behavioral services is one quarter (1/4) of 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.~~ Tenn. Code Ann. (T.C.A.) §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-0809 Rate Setting Methodologies For Respite and Personal Assistance Services.

- (1) ~~The unit for respite and personal assistance services may be hourly or daily rates.~~
(1) The unit for respite and personal assistance services may be one quarter (1/4) of an hour or daily rates as determined by DIDS.
- (2) ~~The rates are calculated based on hourly direct service costs and a percentage for administrative costs.~~
(2) The determination of rates in this section (.09) is calculated based on units of one quarter (1/4) of an hour for one (1) staff person or of one day of allowable direct service costs for one (1) staff person and a percentage for administrative costs. Reimbursement for two (2) staff to deliver services to one (1) service recipient at the same time is not covered under any circumstances.
- (3) There will be one (1) maximum rate or one-quarter (1/4) of an hour of Personal Assistance.
- (4) There will be one (1) maximum rate for one-quarter (1/4) of an hour of Respite 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.~~ Tenn. Code Ann. (T.C.A.) §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-0910 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.~~ Tenn. Code Ann. (T.C.A.) §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.1011 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.~~ Tenn. Code Ann. (T.C.A.) §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.1112 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.~~ Tenn. Code Ann. (T.C.A.) §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.1213 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.~~ Tenn. Code Ann. (T.C.A.) §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.1314 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.~~ Tenn. Code Ann. (T.C.A.) §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29,

1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.1415 Rate Setting Methodologies For Vision Services.

Rates paid are a combination of the usual and customary charges for examination and corrective lenses and those set by TennCare for reimbursement of Medicaid funded vision 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.~~ Tenn. Code Ann. (T.C.A.) §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 &34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.16 Rate Setting Methodologies for Independent Support Coordination Services

Current rates in this category are found at Rule 0620-06-03-.04 (h) and were derived after consideration of provider input, resource availability as well as system service requirements. Future changes in amounts paid for this service will be made utilizing such tools as: consultation with stakeholders (e.g. Independent Support Coordinators, Independent Support Coordination Agencies/Organizations), review of similar services in other states, market conditions, and system needs. Rates are always subject to DIDS funding/resource availability.

Authority Tenn. Code Ann. (T.C.A.) §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 &34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.17 Rate Setting Methodologies for services funded exclusively by the State [Non-Waiver; State Funded (NWSF) Services.

Rates paid are discretionary and based upon Service Recipient need, limited by system and service requirements and subject to DIDS funding and resource availability.

Authority Tenn. Code Ann. (T.C.A.) §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 &34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and, the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.



STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
Division of Mental Retardation Services
OFFICE OF GENERAL COUNSEL

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August 6, 2010

Mr. Fred Standbrook
Legislative Attorney
Government Operations Committee Staff
Office of Legal Services
War Memorial Building
Nashville, Tennessee 37219

RE: *Department of Finance and Administration, Division of Intellectual Disabilities Services' Amendment to Rules, Chapter 0940-04-03, (currently Division of Mental Health and Developmental Disabilities Rules, Chapter 0940-4-3).*

Dear Mr. Standbrook:

Pursuant to Tenn. Code Ann. § 4-5-226(i), please find enclosed a copy of the amendments to existing rules promulgated by the Department of Finance and Administration, Division of Intellectual Disabilities Services ("DIDS", formerly the Division of Mental Retardation Services or "DMRS"). Below is an explanation of these amendments and how they will effect the existing rules at 0940-4-3 *et seq.* known as and the Division of Mental Health and Developmental Disabilities Rules for the Division of Mental Retardation Services 0940-3-4 *et seq.*, "Methodology Utilized to Determine Payments to Service Providers (Rate Structure)".

These amendments must be in place as Emergency Rules by August 9, 2010.

1. The current rules of the Division of Intellectual Disabilities Services are now amended as follows:

0940-04-03-.01 Purpose.

In this section the Division of Mental Retardation is removed and the Division of Intellectual Disabilities is added. In addition, the authority is updated to reflect the latest citations.

0940-04-03-.02 Scope.

In this section the Division's name is changed, some minor wording is changed and authority is update to reflect the latest citations.

0940-04-03-.03 Definitions.

In this section some minor wording is changed.

In addition, in (8) "Rate Setting Methodology" the definition is amended to state "day and other services" instead of "day services".

In (9) "Special Needs Adjustment" the definition is reworded for greater clarity without changing the actual meaning of the definition.

In (10) the entire "Uniform Cost Report" is deleted and a new definition (10) is substituted that adds language emphasizing that all providers are expected to submit these reports in the manner DIDS requires.

Authority is updated to reflect the latest citations.

0940-04-03-.04 Rate Setting Methodologies For Medical, Residential Services.

This is a new section which now sets out the rate setting methodologies for medical, residential services. This section also gives the calculation for Full Time Equivalents (FTE) and for the daily rate per person in these services.

(1) Medical Residential Services.

(a) For residential services that are shift-staffed, staff coverage is calculated as follows:

1. 168 hours per week-7 days at 24 hours per week
2. 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. Allowable Hourly direct support staff wages plus % for benefits for the hourly cost for direct support staff.
2. Annual allowable salary for direct supervision plus % of benefits divided for four residents equals the cost per person per year.

3. Divide the cost per person by year by 52 weeks and by 168 hours to arrive at the hourly cost for supervision.
4. Add together the hourly cost for direct support staff and hourly cost for supervision
5. Multiply the result from Step four by one and the % allowed for non-direct program costs.
6. Multiply the result from Step five by one and the % allowed for administrative costs to arrive at the hourly cost for coverage.
7. Multiply the hourly cost for an FTE by 168 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 allowable 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 365 (to allow for 20 absent days.)
4. Divide the result of Step three by 365 to arrive at the daily rate.

Authority Tenn. Code Ann. (T.C.A.) §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-2864900 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.05 Rate Setting Methodologies for Residential Habilitation and Supported Living.

This former section .04 is now .05 and adds "habilitation". Only minor wording is amended for clarification through (3) and authority is updated to reflect the latest applicable citations. Removed in its entirety is (4) "semi-independent living model".

0940-04-03-.06 Special Needs Adjustments.

This former section .05 is now .06. Amended is the amount for special needs that is available to providers of Residential Habilitation and Supported Living Level 1-4 homes with 1-4 persons. It adjusts down the money that can be added for special needs from \$60.00/day to \$35.00/day.

An amendment is made in (4) (a) which covers circumstances in which this special needs adjustment is utilized. It now gives examples of a significant behavioral or psychotic problem that may require additional resources.

In addition, 4 (d) in the current section is now removed in its entirety. This section currently allows special needs adjustment for a person who loses a roommate and needs an adjustment until a new one moves into the living space.

Authority is updated to reflect the latest citations.

0940-04-03-.07 Rate Setting Methodologies For Day Services.

This former section .06 is now .07. The only significant amendment is to the authority to update the latest citations.

0940-04-03-.08 Rate Setting Methodologies For Clinical Services.

This former section .07 is now .08. In (2) the unit for behavioral services is amended from an hour to one quarter (1/4) of an hour.

Authority is updated to reflect the latest citations.

0940-04-03-.09 Rate Setting Methodologies For Respite and Personal Assistance Services.

This former section .08 is now .09. This section is amended in its entirety. No longer will the unit for this type of service be calculated on an hourly rate, but will be calculated on one quarter (1/4) of an hour for one (1) staff person or a daily rate for one (1) staff person determined by DIDS. Reimbursement for two (2) staff to deliver services to one (1) service recipient at the same time is not covered under any circumstances.

In (2) through (4), further amendments describe how rates will be determined for each service in this section.

Authority is updated to reflect the latest citations.

0940-04-03-.10 Rate Setting Methodologies For Dental Services.

This former section .09 is now .10. Amended is authority, which is updated to reflect the latest citations.

0940-04-03-.11 Rate Setting Methodologies For Personal Emergency Response Systems.

This former section .10 is now .11. Amended is authority, which is updated to reflect the latest citations.

0940-04-03-.12 Rate Setting Methodologies For Specialized Medical Equipment and Supplies.

This former section .11 is now .12. Amended is authority, which is updated to reflect the latest citations.

0940-04-03-.13 Rate Setting Methodologies For Environmental Modifications.

This former section .12 is now .13. Amended is authority, which is updated to reflect the latest citations.

0940-04-03-.14 Rate Setting Methodologies For Vehicle Modifications.

This former section .13 is now .14. Amended is authority, which is updated to reflect the latest citations.

0940-04-03-.15 Rate Setting Methodologies For Vision Services.

This former section .14 is now .15. Current section is amended to reflect that TennCare sets Medicaid reimbursement for vision care. Amended is authority, which is updated to reflect the latest citations.

0940-04-03-.16 Rate Setting Methodologies for Independent Support Coordination Services

Current rates in this category are found at Rule 0620-06-03-.04(h) and were derived after consideration of provider input, resource availability as well as system service requirements. Future changes in amounts paid for this service will be made utilizing such tools as: consultation with stake-holder(s) (e.g. Independent Support Coordinators, Independent Support Coordination Agencies/Organizations), review of similar services in other states, market conditions, and system needs. Rates are always subject to DIDS funding/resource availability.

Authority Tenn. Code Ann. (T.C.A.) §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-2864900 Reg. 515; T.C.A. §§ 33-1-302 & 303, 4-5-208 et seq. and its applicable regulations concerning emergency rules; and the "Reimbursement Rate" for Medical Services under DIDS federal waiver(s) for provision of services as administered by TennCare.

0940-04-03-.17 Rate Setting Methodologies for services funded exclusively by the State [Non-Waiver; State Funded (NWSF) Services.

This section is a new section. Since state-funded services are not paid with matching Medicaid waiver monies, this section is needed to further clarify that such state-funded rates are discretionary and are based upon need, certain state and service requirements and funding availability.

2. These emergency rules for the Department of Finance and Administration, Division of Intellectual Disabilities Services are made pursuant to Tenn. Code Ann. §§ 33-1-309 (d).

3. These amendments to the rules of the Department of Finance and Administration, Division of Intellectual Disabilities Services, will, throughout the state, impact contracted service providers as they provide necessary services to service recipients with intellectual disabilities.

It is imperative that the Division's program expenditures remain within its approved fiscal limits and that of the budgetary limitations placed upon it by the legislature. These emergency rule amendments establish a rate formulation methodology to comport with and complete this process.

The delay in promulgating these amendments utilizing the ordinary rulemaking procedures as found in Title 4, Chapter 5 of the Tennessee Code Annotated, as well as Chapter 1360 of the O.C.R.R.S.T., could cause the loss of critical federal matching funding for these services. The legislature has only recently set the parameters for the coming fiscal year, leading to these rate making changes. Furthermore, without the rates resulting from this process, the Division will incur a significant deficit between its operating expenses and available funding and therefore unable to compensate its contracted providers. These persons and organizations furnish necessary - and in some cases critical services - to residents across the State of Tennessee who have needs for assistance due to intellectual disabilities.

The Division of Intellectual Disabilities Services will provide notice to those persons/organizations it believes will be effected by these rules as well as posting them on its website within ten (10) working days of the date their filing.

4. The Division is unaware of any opinion of the attorney general or any judicial ruling which directly relates to these rules.
5. These amendments will impact the rate structure and payment methodologies used by the Division to determine rates for services provided by contracted providers. There will be a fiscal impact upon the Division since such will implement new methodologies and determine payment for contracted services.
6. The Division of Intellectual Disabilities Services community services staff and the Division's Office of General Counsel have substantial knowledge and understanding of these rules.
7. The above will explain the rules at any scheduled meeting of the Government Operations Committee.
8. Division counsel may be reached at the Division of Intellectual Disabilities Services, Office of General Counsel, Andrew Jackson Building – 13th Floor, Nashville, TN 37243, (615) 253-2025.

If you require additional information, please do not hesitate to contact me.

Yours very truly,

A handwritten signature in blue ink, appearing to read 'Theresa Sloan', with a long horizontal flourish extending to the right.

Theresa Sloan
General Counsel
Division of Intellectual Disabilities Services

cc: James Finch, Deputy Commissioner of DIDS
Debbie Payne, Assistant Commissioner for Community Services
Kathleen Clinton, Assistant Commissioner
Richard Arnold, Director, Publications Division, Office of Secretary