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Sequence Number: 05-01-10  
Rule ID(s): 4713  
File Date (effective date): 05/06/2010  
End Effective Date: 11/02/2010

## Emergency Rule Filing Form

*Emergency and Public Necessity 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:** Stephen O. Tepley, General Counsel or Marilyn A. Tucker, Assistant General Counsel  
**Address:** 500 Deaderick Street, Suite 1310, Nashville, TN  
**Zip:** 37243  
**Phone:** (615) 253-2025  
**Email:** [Steve.Tepley@tn.gov](mailto:Steve.Tepley@tn.gov) or [Marilynn.Tucker@tn.gov](mailto:Marilynn.Tucker@tn.gov)

**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.

Pursuant to an agreement between the Division of Intellectual Disabilities Services (DIDS, Division) and the Bureau of TennCare, these 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.

The rates generated by this methodology are required as a condition of the Division's funding waivers from the Center for Medicaid/Medicare Services (CMS) and also to remain within its budgetary limitations under its Delegated Purchase Authority to secure procurement of services for those persons to whom DIDS provides supports and assistance. These waivers are the means by which the Division receives via the Federal Medicaid (TennCare) Program up to seventy percent (70%) of its monetary resources.

The current rules being amended herein were promulgated and became effective in January 2006 and are being utilized for payment methodology to providers *until* the new rules under Chapter 0620-06-01 et seq., become effective according to law and applicable rulemaking rules. The aforementioned rulemaking rules went to a public hearing in January 2010. Until these rulemaking rules become effective, the current rules do not contain provisions for payment methodology concerning special needs adjustments and changes in medical residential

services rates. Once these changes are in effect as amendments, the current rules will then be applicable to any and all payment methodology and will remain so until the rulemaking rules become effective and replace the current rules.

The rates provided for in this schedule, as amendments, are maximum rates, meaning that they are the ceiling or highest level of reimbursement permitted for DIDS' program services. Therefore, the Division believes that it has the authority to pay less than these amounts when necessary. These specific amendments now being filed as emergency rules are needed to successfully continue this process.

The delay in promulgating these emergency rules by 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 federal funding for these particular services and open DIDS to potential claims for contractual damages. Furthermore, without the rates resulting from this process, the Division will incur cost by expending funds that are currently unbudgeted. Failure to adopt the rates as provided herein for special needs adjustments and medical residential services could leave the Division without the means to pay these providers as currently budgeted or unable to provide for the special needs required by the clients served. Special needs are critical needs and anything that would jeopardize these services from being timely provided could cause imminent harm or jeopardy to those served. Both amendments for special needs adjustments and medical residential rates, therefore, bring the current rules into compliance with actual needs and costs.

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

For a copy of this 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) 253-2025.

**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)

<b>Chapter Number</b>	<b>Chapter Title</b>
0940-04-03	Methodology Utilized To Determine Payments To Service Providers (Rate Structure)
<b>Rule Number</b>	<b>Rule Title</b>
0940-04-03-.01	Purpose
0940-04-03-.02	Scope
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 & 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

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

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)

0940-04-03-.01 "Purpose" is amended by deleting the current language and substituting the following therefore:

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 Intellectual Disabilities Services.

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. § 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" is amended by deleting the current language and substituting the following therefore:

0940-04-03-.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 Intellectual Disabilities 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: 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. § 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.

- (10) "Uniform Cost Report" is amended by deleting the prior definition in full and substituting the following therefore,
- (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 in the manner and in a format required by the Division.

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. § 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 Is amended by adding a new section that has language concerning the medical residential services rate methodology as found below to provide payment for this service which was previously incorporated in Residential and Supported Living rates:

(The remaining paragraphs will be renumbered accordingly)

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

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. A minimum of 4.2 Full Time Equivalents (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. Allowable Hourly direct support staff wage 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: 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. § 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 Is amended under "Authority" by deleting the current language and substituting therefore:

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. § 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 Is amended by deleting section (1) in its entirety and substituting the following therefore:

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, and;

Deleting the current language under "Authority" and substituting therefore:

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. § 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 Is amended under "Authority" by deleting the current language and substituting therefore:

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. § 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 Is amended by deleting section (2) in its entirety and substituting the following therefore:

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

- (2) The Unit for behavioral services is one quarter (1/4) of an hour, and;

Deleting the current language under "Authority" and substituting therefore:

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. § 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 Is amended by deleting section (1) and (2) in their entirety and substituting the following therefore:

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 or of one day of allowable direct service costs and a percentage for administrative costs, and;

Deleting the current language under "Authority" and substituting therefore:

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. § 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 Is amended under "Authority" by deleting the current language and substituting therefore:

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. § 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 Is amended under "Authority" by deleting the current language and substituting therefore:

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. § 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 Is amended under "Authority" by deleting the current language and substituting therefore:

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. § 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 Is amended under "Authority" by deleting the current language and substituting therefore:

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. § 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 Is amended under "Authority" by deleting the current language and substituting therefore:

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. § 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 Is amended under "Authority" by deleting the current language and substituting therefore:

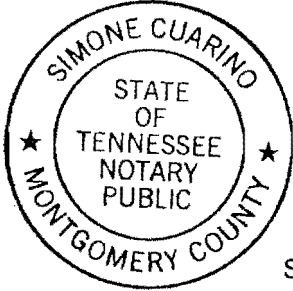
Authority: Tenn. Code Ann. (T.C.A.) §§ 33-1-309 (d); 33-1-204; Executive Orders of the State of Tennessee Nos. 9, 10, 21 & 34 dated February 7, 1996, October 14, 1996, July 29, 1999, and October 19, 1999 respectively; State of Tennessee Delegated Purchase Authority DP 10-28649-00 Reg. 515; T.C.A. § 4-5-208 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: 4/27/2010

Signature: [Handwritten Signature]

Name of Officer: James R. Finch

Title of Officer: Deputy Commissioner

Subscribed and sworn to before me on: 4/27/2010

Notary Public Signature: [Handwritten Signature]

My commission expires on: 02/19/2013

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  
4-30-10  
 Date

Department of State Use Only

Filed with the Department of State on: 5/6/10

Effective for: 180 \*days

Effective through: 11/2/10

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

[Handwritten Signature]  
 Tre Hargett  
 Secretary of State

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**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. 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 rate adjustments in special needs and medical residential rate changes for payment to service providers.

- (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 its 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;

Without the amendments, it could cost DIDS \$6,469,625 annually in unbudgeted expenditures since it will affect the 709 individuals that need the extra amount for special needs adjustments. The medical residential rate amendment merely reflects the up-to-date changes in the rate amount.

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

Lucia Beiler, Melinda Lanza, Fred Hix, Debbie Payne.

- (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, 15<sup>th</sup> Floor, Nashville, TN 37243, (615) 532-6538, Fred Hix, Assistant Commissioner for Administrative Services, 500 Deaderick Street, 15<sup>th</sup> Floor, Nashville, TN 37243, (615) 253-6710.

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

None at this time.