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For Department of State Use Only

Sequence Number: 12-17-11
Rule ID(s): 5086
File Date (effective date): 12/20/11
End Effective Date: 06/17/2012

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:	Bureau of TennCare
Contact Person:	George Woods
Address:	310 Great Circle Road Nashville, Tennessee
Zip:	37243
Phone:	(615) 507-6446
Email:	George.Woods@tn.gov

Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment

New

Repeal

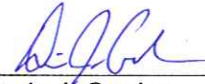
Statement of Necessity:

Pursuant to T.C.A. § 4-5-208, the Bureau of TennCare is authorized to adopt emergency rules in the event that the agency is required by enactment of the general assembly to implement rules within a prescribed period of time that precludes utilization of rulemaking procedures for promulgation of permanent rules.

The Appropriations Act, Public Chapter 473, effective July 1, 2011, requires the Bureau of TennCare to reduce expenditures for certain health care providers, including ICFs/MR, effective January 1, 2012, if the State does not receive reimbursement from the federal Medicare program of costs of the special disability workload (SDW). In October the Bureau of TennCare learned that the federal Department of Health and Human Services (DHHS) was notifying individual states that reimbursement of the SDW claims will not be made until federal legislation can be passed. DHHS has determined that a new federal law authorizing the Medicare program to directly reimburse states is required before DHHS can repay the states for services which should have been provided by Medicare. The timing of the passage of this needed federal legislation is as yet unknown, which precludes the reception of any of these funds by the Bureau prior to January 1, 2012. Current rules do not permit the adjustment of ICF/MR rates to contain them within budgetary limits.

I have made the finding that the attached amendment is required by the above-referenced enactment of the general assembly and the timely implementation of this amendment as mandated precludes promulgation through ordinary rulemaking procedures.

For a copy of this emergency rule contact: George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.



Darin J. Gordon
Director, Bureau of TennCare

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
1200-13-01	TennCare Long-Term Care Programs
Rule Number	Rule Title
1200-13-01-.30	TennCare ICF/MR 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>)

Subparagraph (a) of Paragraph (5) of Rule 1200-13-01-.30 TennCare ICF/MR Services is amended by adding two new sentences at the end of Subparagraph (a) so as amended Subparagraph (a) shall read as follows:

- (a) Private for-profit and private not-for-profit ICFs/MR shall be reimbursed at the lower of Medicaid cost or charges. An annual inflation factor will be applied to operating costs. The trending factor shall be computed for facilities that have submitted cost reports covering at least six (6) months of program operations. For facilities that have submitted cost reports covering at least three (3) full years of program participation, the trending factor shall be the average cost increase over the three-year (3-year) period, limited to the seventy-fifth (75th) percentile trending factor of facilities participating for at least three (3) years. Negative averages shall be considered zero (0). For facilities that have not completed three (3) full years in the program, the one-year (1-year) trending factor shall be the fiftieth (50th) percentile trending factor of facilities participating in the program for at least three (3) years. For facilities that have failed to file timely cost reports, the trending factor shall be zero (0). Capital-related costs are not subject to indexing. Capital-related costs are property, depreciation, and amortization expenses included in Section F.18 and F.19 of the Nursing Facility Cost Report Form. All other costs, including home office costs and management fees, are operating costs. Once a per-diem rate is determined from a clean cost report, the rate will not be changed until the next rate determination except for audit adjustments, correction of errors, or termination of a budgeted rate. Reimbursement is not to exceed the amount budgeted by the State for private ICF/MR reimbursement. The Comptroller's Office shall be authorized to adjust per diem rates up or down as necessary during the year.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 12/9/2011

Signature: D. J. Gordon

Name of Officer: Darin J. Gordon

Director, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration



Subscribed and sworn to before me on: 12/9/11

Notary Public Signature: Cheryl D. Kline

My commission expires on: 9/31/2012

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

Robert E. Cooper, Jr.
Attorney General and Reporter

12-19-11

Date

Department of State Use Only

Filed with the Department of State on: 12/20/2011

Effective for: 180 *days

Effective through: 06/17/2012

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

Tre Hargett
Secretary of State

RECEIVED
2011 DEC 20 PM 3:11
SECRETARY OF STATE
PUBLICATIONS

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)

There is no 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;

The promulgation of this rule permits the adjustment of ICF/MR rates to contain them within budgetary limits.

- (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;

The Rule is lawfully adopted by the Bureau of TennCare in accordance with T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

- (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;

The entities most directly affected by this Rule are TennCare providers. The governmental entities most directly affected by this Rule are the Comptroller of The Treasury and the Bureau of TennCare, Tennessee Department of Finance and Administration.

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

This Rule was approved by the Tennessee Attorney General. No additional opinion was given or requested.

- (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;

The promulgation of this rule is anticipated to decrease state annual expenditures by \$1,435,100.

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

Darin J. Gordon
Director, Bureau of TennCare

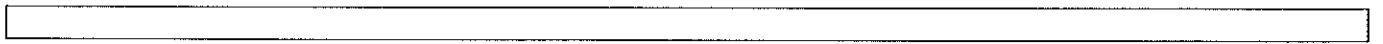
- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Darin J. Gordon
Director, Bureau of TennCare

- (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

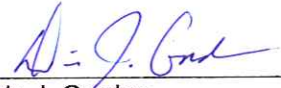
310 Great Circle Road
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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.



GW10211307dkt

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Darin J. Gordon
Director, Bureau of TennCare

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Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.