**FINAL AND PROPOSAL**

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**Title 10
MARYLAND DEPARTMENT OF HEALTH**

**Subtitle 09 MEDICAL CARE PROGRAMS**

**10.09.04 Home Health Services**

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105, Annotated Code of Maryland

**Notice of Final Action**

[20-180-F]

On May 12, 2021, the Secretary of Health adopted amendments to Regulations **.01** and **.03—.07** under **COMAR 10.09.04 Home Health Services**. This action, which was proposed for adoption in 47:23 Md. R. 984—986 (November 6, 2020), has been adopted with the nonsubstantive changes shown below.

**Effective Date: June 14, 2021.**

**Attorney General’s Certification**

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the Attorney General certifies that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:

Regulation .01B(4): The Maryland Department of Health (the Department) will add certified nurse midwives as practitioners who may order home health services. As such, the Department is including a definition for certified nurse midwives to this regulation.

Regulation .01B(19): The Department is permitting additional practitioners to order home health services. As such, the Department is modifying language to clarify that the nonphysician practitioner works in collaboration with or under the supervision of the ordering practitioner.

Regulation .03B(7): To align with provisions of the CARES Act and guidance issued by the Maryland Board of Physicians, and after further review of practitioners’ scopes of practice, the Department will add physician assistants and certified nurse midwives to the list of providers whose written plan of treatment must be secured by a participating home health agency.

Regulation .03B(8): To align with provisions of the CARES Act and guidance issued by the Maryland Board of Physicians, and after further review of practitioners’ scopes of practice, the Department will add physician assistants and certified nurse midwives to the list of providers whose written plan of treatment may inform a home health agency’s plan of care. Additionally, the Department is changing the term “patient” to “participant’s” to improve clarity and maintain consistency of terminology throughout the chapter.

Regulation .03C(2): To align with provisions of the CARES Act and guidance issued by the Maryland Board of Physicians, and after further review of practitioners’ scopes of practice, the Department will add physician assistants and certified nurse midwives to the list of providers eligible to review, update, and sign a participant’s plan of treatment.

Regulation .03C(3): To align with provisions of the CARES Act and guidance issued by the Maryland Board of Physicians, and after further review of practitioners’ scopes of practice, the Department will add physician assistants and certified nurse midwives to the list of providers who may sign the participant’s initial plan of treatment and document the required face-to-face encounter between the attending physician, or nonphysician practitioner, and the participant.

Regulation .04A(1): To align with provisions of the CARES Act and guidance issued by the Maryland Board of Physicians, and after further review of practitioners’ scopes of practice, the Department will add physician assistants and certified nurse midwives to the list of practitioners permitted to order home health services.

Regulation .04B(3)(b): To align with provisions of the CARES Act and guidance issued by the Maryland Board of Physicians, and after further review of practitioners’ scopes of practice, the Department will add physician assistants and certified nurse midwives to the list of practitioners whose written plan of treatment may be used to authorize medically necessary physical therapy services.

Regulation .04B(3)(c): To align with provisions of the CARES Act and guidance issued by the Maryland Board of Physicians, and after further review of practitioners’ scopes of practice, the Department will add physician assistants and certified nurse midwives to the list of practitioners whose assessments may be used to justify diagnostic, rehabilitative, or therapeutic nature services.

Regulation .04B(5): To align with provisions of the CARES Act and guidance issued by the Maryland Board of Physicians, and after further review of practitioners’ scopes of practice, the Department will add physician assistants and certified nurse midwives to the list of practitioners whose assessments may be used to justify coverage for speech-language pathology services.

Regulation .04C(2): To align with provisions of the CARES Act and guidance issued by the Maryland Board of Physicians, and after further review of practitioners’ scopes of practice, the Department will add physician assistants and certified nurse midwives to the list of practitioners who may order a newborn early discharge assessment visit to a participant.

Regulation .07D(3): To align with provisions of the CARES Act and guidance issued by the Maryland Board of Physicians, and after further review of practitioners’ scopes of practice, the Department will reimburse for medical and other supplies used during a covered home health visit as part of treatment ordered by physician assistants, certified nurse midwives, in addition to physicians and certified nurse practitioners.

**.01 Definitions.**

A. (proposed text unchanged)

B. Terms Defined.

(1)—(3) (proposed text unchanged)

*(4) “Certified nurse midwife (CNM)” means an individual who meets licensure requirements and conditions for participation as a certified nurse midwife set forth in COMAR 10.09.01.*

**[[***(4)***]]** *(5)*—**[[***(16)***]]***(17)* (proposed text unchanged)

**[[***(17)***]]** *(18)*“Nonphysician practitioner” means an individual who:

(a) (proposed text unchanged)

(b) Works in collaboration with or under the supervision of the **[[**attending physician*or certified nurse***]]** *ordering practitioner.*

**[[***(18)***]]** *(19)*—**[[***(31)***]]** *(32)* (proposed text unchanged)

**.03 Conditions for Participation.**

A. (proposed text unchanged)

B. To participate in the Program, the home health agency shall:

(1)—(6) (proposed text unchanged)

(7) Secure from the *participant’s* physician*, physician assistant, certified nurse midwife, or certified nurse practitioner*a written plan of treatment which relates the items and services to the *participant’s*medical condition;

(8) Maintain a **[[**patient**]]** participant’s plan of care based on the physician’s*, physician assistant’s, certified nurse midwife’s, or certified nurse practitioner’s* plan of treatment for the *participant*;

(9)—(13) (proposed text unchanged)

C. Plan of Treatment.

(1) (proposed text unchanged)

(2) The plan of treatment shall be reviewed, updated*,* and signed at least every 60 days by the *participant’s*physician*, physician assistant, certified nurse midwife, or certified nurse practitioner*, in consultation with the registered nurse or the case coordinator.

(3) The physician*, physician assistant, certified nurse midwife, or certified nurse practitioner*shall:

(a)—(b) (proposed text unchanged)

(4)—(5) (proposed text unchanged)

D. (proposed text unchanged)

**.04 Covered Services.**

A. The Program covers the services listed in §§B and C of this regulation when the services are:

(1) Provided upon the written order of *a* physician*, physician assistant, certified nurse midwife, or certified nurse practitioner*;

(2)—(11) (proposed text unchanged)

B. The Program covers the following services:

(1)—(2) (proposed text unchanged)

(3) Physical therapy services, provided by a physical therapist:

(a) (proposed text unchanged)

(b) When the services are directly related to the physician’s*, physician assistant’s, certified nurse midwife’s, or certified nurse practitioner’s*plan of treatment, which specifies:

(i)—(iv) (proposed text unchanged)

(c) When the services are of a diagnostic, rehabilitative, or therapeutic nature and:

(i) Are provided with the expectation, based on the assessment made by *a*physician*, physician assistant, certified nurse midwife, or certified nurse practitioner,* that a *participant* will improve significantly in physical functioning in a reasonable and generally predictable period of time; or

(ii) (proposed text unchanged)

(4) (proposed text unchanged)

(5) Speech-language pathology services performed by a licensed speech-language pathologist when the:

(a) Services are of a diagnostic, rehabilitative, or therapeutic nature and:

(i) Are provided with the expectation, based on the assessment made by *a*physician*, physician assistant, certified nurse midwife, or certified nurse practitioner*, that a *participant* will improve significantly in a reasonable and generally predictable period of time; or

(ii) (proposed text unchanged)

(b) (proposed text unchanged)

C. The Program covers a provider’s newborn early discharge assessment visit to a *participant* when the assessment:

(1) (proposed text unchanged)

(2) Is ordered by a physician*, physician assistant, certified nurse midwife, or certified nurse practitioner*;

(3)—(6) (proposed text unchanged)

**.07 Payment Procedures.**

A.—C. (proposed text unchanged)

D. Payment Rates.

(1)—(2) (proposed text unchanged)

(3) The Department shall pay home health providers for medical and other supplies which are used during a covered home health visit as part of the treatment ordered by the *participant’s* physician*, physician assistant, certified nurse midwife, or certified nurse practitioner*at a rate that is the lesser of the:

(a)—(b) (proposed text unchanged)

(4) (proposed text unchanged)

E.—I. (proposed text unchanged)

DENNIS R. SCHRADER
Secretary of Health

**PROPOSAL**

**Maryland Register**

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**Title 10
MARYLAND DEPARTMENT OF HEALTH**

**Subtitle 09 MEDICAL CARE PROGRAMS**

**10.09.04 Home Health Services**

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105, Annotated Code of Maryland

**Notice of Proposed Action**

[20-180-P]

The Secretary of Health proposes to amend Regulations **.01** and **.03—.07** under **COMAR 10.09.04 Home Health Services**.

**Statement of Purpose**

The purpose of this action is to expand the provider types permitted to order home health services to include nurse practitioners. Additionally, the proposed action changes instances of the term “recipient” to “participant” throughout the chapter.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Jake Whitaker, Acting Director, Office of Regulation and Policy Coordination, Maryland Department of Health, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-225), or email to mdh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through December 7, 2020. A public hearing has not been scheduled.

**.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2)“Attending **[**physician**]**” means **[**a person who is licensed to practice medicine in the jurisdiction in which the service is provided and**]** *the role of an individual* who establishes the plan of treatment and certifies the necessity for home health services for a **[**recipient**]** *participant following a hospitalization*.

(3) “Case coordinator” means a licensed health professional designated by a home health agency to coordinate the care of a **[**recipient**]***participant*.

*(4) “Certified nurse practitioner” means an individual who meets the licensing requirements and conditions for participation as a nurse practitioner set forth in COMAR 10.09.01.*

**[**(4)**]***(5)*(text unchanged)

**[**(5)**]***(6)*“Health team” means the **[**attending**]** physician*or nonphysician practitioner*and the home health agency personnel who render services listed in Regulation .04B of this chapter to a **[**recipient**]***participant*.

**[**(6)**]***(7)* “Home” means the place of residence occupied by the **[**recipient**]***participant*, including a domiciliary level facility, but other than a hospital, nursing facility, or other medical institution.

**[**(7)**]***(8)*—**[**(15)**]** *(16)* (text unchanged)

**[**(16)**]***(17)*“Nonphysician practitioner” means an individual who:

(a) Is licensed as a *certified*nurse practitioner, clinical nurse specialist, a certified nurse-midwife,or a physician assistant in the jurisdiction in which the service is provided; and

(b) Works in collaboration with or under the supervision of the attending physician *or certified nurse practitioner.*

**[**(17)**]** *(18)*(text unchanged)

*(19) “Participant” means a person who is certified as eligible for and is receiving Medical Assistance benefits.*

**[**(18)**]** *(20)*—**[**(19)**]** *(21)* (text unchanged)

*(22) “Physician” means an individual who meets the licensure requirements and conditions for participation set forth in COMAR 10.09.02.*

*(23) “Physician assistant” means an individual who meets license requirements and conditions for participation set forth in COMAR 10.09.55.*

**[**(20)**]** *(24)* (text unchanged)

**[**(21)**]** *(25)* “Progress note” means a dated, written notation by a member of the health team which summarizes facts about the care given and the patient’s response during a given period of time, specifically addresses the established goals of treatment, is consistent with the patient plan of care, is written immediately following each visit, and is part of the provider’s permanent record for the **[**recipient**]** *participant*.

**[**(22)**]** *(26)* “Provider” means a person or an organization who meets the requirements of Regulations .03 and .04 of this chapter and who, through an appropriate agreement with the Department, has been identified as a Program provider by the issuance of an individual account number.

**[**(23) “Recipient” means a person who is certified as eligible for, and is receiving Medical Assistance benefits.**]**

**[**(24)**]** *(27)*—**[**(25)**]***(28)* (text unchanged)

**[**(26)**]** *(29)*“Support system” means a family member, friend, neighbor, or any person who renders services, which would otherwise be covered under Regulation .04 of this chapter, to the **[**recipient**]** *participant*.

**[**(27)**]** *(30)*“Visit” means the time spent rendering a covered service to a **[**recipient**]***participant* at home by an individual employed by a home health agency.

**[**(28)**]** *(31)*“Witness” means a person who on behalf of the **[**recipient**]***participant* is able to personally verify at the time of service that the **[**recipient**]***participant* received home health care.

**.03 Conditions for Participation.**

A. (text unchanged)

B. To participate in the Program, the home health agency shall:

(1)—(6) (text unchanged)

(7) Secure from the **[**recipient’s attending**]***participant’s* physician*or certified nurse practitioner*a written plan of treatment which relates the items and services to the **[**recipient’s**]** *participant’s*medical condition;

(8) Maintain a patient plan of care based on the **[**attending**]** physician’s*or certified nurse practitioner’s* plan of treatment for the **[**recipient**]***participant*;

(9) (text unchanged)

(10) Verify the **[**recipient’s**]***participant’s* eligibility;

(11) Place no restriction on a **[**recipient’s**]***participant’s* right to select his choice of providers under this subtitle;

(12) Agree that if the Program denies payment or requests repayment on the basis that an otherwise covered service was not medically necessary, the provider may not seek payment for that service from the **[**recipient**]***participant*; and

(13) Agree that if the Program denies payment due to late billing, the provider may not seek payment from the **[**recipient**]***participant*.

C. Plan of Treatment.

(1) The plan of treatment under **[**§C(8)**]** *§B(8)* shall include:

(a)—(p) (text unchanged)

(2) The plan of treatment shall be reviewed, updated*,* and signed at least every 60 days by the **[**attending**]** *participant’s*physician*or certified nurse practitioner*, in consultation with the registered nurse or the case coordinator.

(3) The **[**attending**]** physician*or certified nurse practitioner*shall:

(a) (text unchanged)

(b) Document that the **[**attending**]** physician **[**or nonphysician practitioner**]***or nonphysician practitioner*, who is not employed by the home health agency, has had a face-to-face encounter with the **[**recipient**]***participant* no more than 90 days before the home health start of care date or within 30 days of the start of the home health care, including the date of the encounter.

(4) For **[**recipients**]***participants* admitted *immediately* to home health upon discharge from a hospital or post-acute setting, the attending acute or post-acute physician **[**or nonphysician practitioner*,***]**shall document the clinical findings of the face-to-face encounter.

(5) The plan of treatment shall be part of the provider’s permanent record for the **[**recipient**]***participant*.

D. Plan of Care.

(1)—(2) (text unchanged)

(3) The plan of care is a part of the provider’s permanent record for the **[**recipient**]***participant*.

**.04 Covered Services.**

A. The Program covers the services listed in §§B and C of this regulation when the services are:

(1) Provided upon the written order of **[**the attending**]** *a*physician*or certified nurse practitioner*;

(2)—(3) (text unchanged)

(4) Consistent with the current diagnosis and treatment of the **[**recipient’s**]** *participant’s* condition;

(5) (text unchanged)

(6) Required by the medical condition rather than the convenience or preference of the **[**recipient**]***participant*;

(7) Considered under accepted standards of medical practice to be a specific and effective treatment for the **[**recipient’s**]***participant’s* condition;

(8) (text unchanged)

(9) Rendered in the **[**recipient’s**]***participant’s* home*, or other setting when normal life activities take the participant outside the home,* by an approved provider;

(10) Received by the **[**recipient**]***participant* as documented by the **[**recipient’s**]***participant’s* signature or the signature of the **[**recipient’s**]***participant’s* witness on the home health agency’s official forms; and

(11) (text unchanged)

B. The Program covers the following services:

(1)  Skilled nursing services provided by a licensed nurse when the complexity of the services, or the condition of a **[**recipient**]***participant*, requires the judgment, knowledge, and skills of a licensed nurse;

(2) Home health aide services provided by a home health aide, that include:

(a)—(b) (text unchanged)

(c) Reporting of the **[**recipient’s**]***participant’s* condition and needs; and

(d) (text unchanged)

(3) Physical therapy services, provided by a physical therapist:

(a) When the condition of a **[**recipient**]***participant* requires the judgment, knowledge, and skills of a licensed or registered physical therapist;

(b) When the services are directly related to the **[**attending**]** physician’s*or certified nurse practitioner’s*plan of treatment, which specifies:

(i)—(iv) (text unchanged)

(c) When the services are of a diagnostic, rehabilitative, or therapeutic nature and:

(i) Are provided with the expectation, based on the assessment made by **[**the attending**]** *a*physician*or certified nurse practitioner,* that a **[**recipient**]***participant* will improve significantly in physical functioning in a reasonable and generally predictable period of time; or

(ii) (text unchanged)

(4) Occupational therapy services, provided by an occupational therapist:

(a) When the condition of the **[**recipient**]***participant* requires the judgment, knowledge, and skills of a licensed occupational therapist;

(b) When the services are provided with the expectation that there will be a significant practical improvement in a **[**recipient’s**]***participant’s* level of physical functioning within a reasonable period of time; and

(c) When the services fall within one or more of the following categories:

(i) Evaluation and reevaluation of a **[**recipient’s]*participant’s* level of functioning by administering diagnostic and prognostic tests;

(ii)—(v) (text unchanged)

 (5) Speech-language pathology services performed by a licensed speech-language pathologist when the:

(a) Services are of a diagnostic, rehabilitative, or therapeutic nature and:

(i) Are provided with the expectation, based on the assessment made by **[**the attending**]** *a*physician*or certified nurse practitioner*, that a **[**recipient**]***participant* will improve significantly in a reasonable and generally predictable period of time; or

(ii) (text unchanged)

(b) (text unchanged)

C. The Program covers a provider’s newborn early discharge assessment visit to a **[**recipient**]***participant* when the assessment:

(1) (text unchanged)

(2) Is ordered by a physician*or certified nurse practitioner*;

(3) Is delivered to a **[**recipient**]** *participant*and a **[**recipient’s**]** *participant’s*mother who have been discharged within 48 hours after delivery;

(4)—(6) (text unchanged)

**.05 Limitations.**

The Program does not cover the following:

A.—D. (text unchanged)

E. Home health aide services unless biweekly supervisory visits by a registered nurse in the **[**recipient’s**]***participant’s* home are made, every second visit of which shall include observations of the delivery of services by the aide to the **[**recipient**]***participant*;

F. Home health aide services rendered to **[**recipients**]***participants* with chronic conditions when those **[**recipients**]***participants* require only assistance with activities of daily living as defined in Regulation .01B of this chapter unless preauthorized as specified in Regulation .06 of this chapter;

G.—L. (text unchanged)

M. A service not documented as received by the **[**recipient**]** *participant*as indicated by the **[**recipient’s**]** *participant’s*signature or the signature of a witness on the home health agency’s official form;

N.—O. (text unchanged)

P. Services provided for the convenience or preference of the **[**recipient**]***participant* or primary caregiver rather than as required by the **[**recipient’s**]***participant’s* medical condition;

Q. Services specified in Regulation .04 of this chapter which duplicate or supplant services performed by the **[**recipient**]***participant* and those services rendered by the **[**recipient’s**]***participant’s* family;

R. (text unchanged)

S. Newborn early discharge services provided more than one time to a **[**recipient**]***participant*;

T.—U. (text unchanged)

**.06 Preauthorization Requirements.**

A. (text unchanged)

B. Preauthorization may be:

(1) (text unchanged)

(2) Denied when the Department, after taking into consideration the particular circumstances of the **[**recipient**]***participant*, determines the payments to the provider for any service or combination of services rendered during any 30-day period would exceed the cost to the program of any alternative services which could be used for the same purpose.

**.07 Payment Procedures.**

A.—C. (text unchanged)

D. Payment Rates.

(1)—(2) (text unchanged)

(3) The Department shall pay home health providers for medical and other supplies which are used during a covered home health visit as part of the treatment ordered by the **[**recipient’sattending**]***participant’s* physician*or certified nurse practitioner*at a rate that is the lesser of the:

(a)—(b) (text unchanged)

(4) (text unchanged)

E.—G. (text unchanged)

H. The Department shall reimburse for preauthorized home health services upon verification that a face-to-face encounter with the **[**recipient**]***participant* was performed as described under Regulation .03C of this chapter.

I. (text unchanged)

ROBERT R. NEALL
Secretary of Health