**FINAL AND PROPOSAL**

**FINAL AAA**

**Maryland Register**

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**Title 10  
MARYLAND DEPARTMENT OF HEALTH**

**Subtitle 09 MEDICAL CARE PROGRAMS**

**10.09.46 Home and Community-Based Services Waiver for Individuals with Brain Injury**

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

**Notice of Final Action**

[20-037-F]

On April 28, 2020, the Secretary of Health adopted amendments to Regulations **.01**, **.03—.05**, **.07—.09-1**, and **.10—.12** under **COMAR 10.09.46 Home and Community-Based Services Waiver for Individuals with Brain Injury**. This action, which was proposed for adoption in 47:2 Md. R. 93—96 (January 17, 2020), has been adopted with the nonsubstantive changes shown below.

**Effective Date: May 18, 2020.**

**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 .09-1A: In response to comments received and in order to ensure coverage in all home and community settings, the Program will delete language excluding provider owned or controlled residential facilities from being considered qualified community settings for individual support service delivery.

Regulation .09-1B: In response to comments received and in order to align with waiver requirements, the Program will amend language to include the development of strategies to compensate for cognitive deficits and job development as covered services offered under Individual Support Services.

**.09-1 Covered Services — Individual Support Services.**

A.Individual support services, as defined in Regulation .01B of this chapter, shall be provided in a **[[**community setting, including the**]]**participant’s *own*home**[[**, excluding a *provider owned or controlled*residential facility**]]***or their community*.

B.*The covered services may include but are not limited to assistance with:*

*(1)—(10)*(proposed text unchanged)

*(11) Volunteering and working;***[[***and***]]**

*(12)**The coordination of medical care, public resources, and community supports***[[**.**]]***; and*

*(13) Development of strategies to compensate for cognitive deficits.*

C.—D. (proposed text unchanged)

ROBERT R. NEALL  
Secretary of Health

**PROPOSAL**

**Maryland Register**

**Issue Date: January 17, 2020**

**Volume 47 • Issue 2 • Page 93-96**

**Title 10  
MARYLAND DEPARTMENT OF HEALTH**

**Subtitle 09 MEDICAL CARE PROGRAMS**

**10.09.46 Home and Community-Based Services Waiver for Individuals with Brain Injury**

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

**Notice of Proposed Action**

[20-037-P]

     The Secretary of Health proposes to amend Regulations **.01**, **.03—.05**, **.07—.09-1**, and **.10—.12** under **COMAR 10.09.46 Home and Community-Based Waiver for Individuals with Brain Injury**.

**Statement of Purpose**

The purpose of this action is to update Home and Community-Based Waiver for Individuals with Brain Injury regulations to align with approved waiver application and ensure regulations reflect approved methods and language. Specifically, the proposed action:

(1) Updates the formal name of the operating State agency and the accrediting entity and their associated acronyms where they appear in regulations;

(2) Removes the word “traumatic” from the required diagnosis of a brain injury;

(3) Amends the service definition of individual supports services;

(4) Changes the billable increment for individual supports services from 1 hour to 15 minutes, and adjusts the permitted quantity of service units accordingly; and

(5) Increases the maximum number of units per week the Program may reimburse for supported employment and day habilitation.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.**In order to align with the CMS-approved 1915(c) Home and Community-Based Services Waiver for Individuals with Brain Injury renewal application, the proposed action changes the billable increment for individual supports services (ISS) from 1 hour to 15 minutes and increases the maximum number of units of supported employment and day habilitation per week. The purpose of this change is to provide flexibility for participants.

|  |  |  |
| --- | --- | --- |
|  | Revenue (R+/R-) |  |
| **II. Types of Economic Impact.** | Expenditure (E+/E-) | Magnitude |
|  |  | |
|  |  |  |
| A. On issuing agency: | NONE | Indeterminable |
| B. On other State agencies: | NONE |  |
| C. On local governments: | NONE |  |
|  | | |
|  | Benefit (+) Cost (-) | Magnitude |
|  |  | |
|  |  |  |
| D. On regulated industries or trade groups: | (-) | Indeterminable |
| E. On other industries or trade groups: | NONE |  |
| F. Direct and indirect effects on public: | NONE |  |
| **III. Assumptions.**(Identified by Impact Letter and Number from Section II.) | | |
| A. The proposed action changes the billable increment for individual supports services (ISS) from 1 hour to 15 minutes. The Program anticipates a slight cost savings because providers will be able to bill for services rendered in smaller, more precise increments. Additionally, the proposed action increases the maximum number of units per week of supported employment and day habilitation for which the Program may reimburse. The Program anticipates a slight cost increase due to this change should participants decide to utilize the two additional units (days) of support employment or day habilitation each week. Overall, the economic impact is indeterminable because, while the Program will save money through more accurate billing for ISS, it is unable to estimate potential increases in utilization of supported employment and day habilitation services. | | |
| D. See D. above. | | |

**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 800-735-2258), or email to mdh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through February 18, 2020. A public hearing has not been scheduled.

**.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1)—(2) (text unchanged)

*(3) “Behavioral Health Administration (BHA)” means the administration of the Department that:*

*(a) Is charged with the responsibility for providing services to individuals with behavioral health conditions as defined by Health-General Article, Title 10, Annotated Code of Maryland;*

*(b) Is designated as the State’s lead agency for service delivery to individuals with brain injury; and*

*(c) Manages the BI waiver, in collaboration with the Program and in accordance with a memorandum of agreement signed with the Program.*

**[**(3)**]***(4)* (text unchanged)

**[**(4)**]***(5)* “CARF” means the **[**Rehabilitation Accreditation Commission, a not-for-profit**]***Commission on Accreditation of Rehabilitation Facilities, a nonprofit* accrediting body which promotes quality, value, and optimal outcomes of services through a consultative accreditation process that centers on enhancing the lives of individuals receiving services.

**[**(5)**]***(6)*—**[**(9)**]**(*10*) (text unchanged)

**[**(10) “Family and individual support services (FISS)” means assistance provided to an individual to enable participation in the community, which may include, but are not limited to, supports involving:

(a) Budgeting;

(b) Medication administration;

(c) Counseling;

(d) Helping an individual to access and complete the individual's education;

(e) Participating in recreational and social activities;

(f) Accessing community services;

(g) Grocery shopping;

(h) Behavioral and other services and supports needed by the family of the individual; and

(i) Developing relationships.**]**

(11)—(12) (text unchanged)

(13) “Individual support services (ISS)” **[**has the same meaning as “family and individual support services” which is defined in §B(9) of this regulation**]***means individual supports provided to a participant to support independence in the participant’s own home or community*.

(14) (text unchanged)

**[**(15) “Mental Hygiene Administration (MHA)” means the administration of the Department that:

(a) Is charged with responsibility for providing services to mentally ill individuals as defined by Health-General Article, Title 10, Annotated Code of Maryland;

(b) Is designated as the State's lead agency for service delivery to individuals with brain injury; and

(c) Manages the BI waiver, in collaboration with the Program and in accordance with a memorandum of agreement signed with the Program.**]**

**[**(16)**]***(15)*—**[**(18)**]***(17)* (text unchanged)

**[**(19)**]***(18)* “Provider” means an individual or an agency that:

(a) Is approved by the **[**MHA**]***BHA* and the Program as meeting the conditions for waiver participation specified in Regulations .05 and .06 of this chapter; and

(b) (text unchanged)

**[**(20)**]***(19)*—**[**(26)**]***(25)* (text unchanged)

**.03 Participant Eligibility.**

A. Medical Eligibility for the Waiver.

(1) (text unchanged)

(2) Every 12 months, or more frequently if determined necessary by the **[**MHA**]***BHA* or Program due to a significant change in the participant's condition or need, a participant's medical need for nursing facility level of care or special hospital level of care shall be reevaluated by the Program's utilization control agent.

B. Technical Eligibility for the Waiver. An applicant or participant shall be determined by the **[**MHA**]***BHA*, using the form for determination of eligibility for BI waiver services, to meet the waiver's technical eligibility criteria if the individual:

(1) (text unchanged)

(2) Is diagnosed with **[**traumatic**]** brain injury as defined in Regulation **[**.01B(21)**]** *.01B(4)* of this chapter by a qualified physician;

(3) (text unchanged)

(4) Is receiving:

(a) (text unchanged)

(b) Brain injury community placement funded by the **[**MHA**]***BHA* with all-State funds;

(c)—(d) (text unchanged)

(5)—(9) (text unchanged)

C.—D. (text unchanged)

E. Overall Waiver Eligibility.

(1) Using the form for determination of eligibility for BI waiver services, if an applicant is determined by the **[**MHA**]***BHA*:

(a) To meet all of the criteria specified **[**above**]** in §§A—C of this regulation, the **[**MHA**]***BHA* or its authorized representatives shall sign and date the form to certify waiver eligibility and establish the effective date for waiver enrollment; or

(b) Not to meet all of the criteria specified in §§A—C of this regulation:

(i) The **[**MHA**]***BHA* or its authorized representatives shall sign and date the form to certify waiver ineligibility determination and specify in writing the reason or reasons for the determination; and

(ii) (text unchanged)

(2) Every 12 months, or more often if there is a significant change in the participant's condition or needs:

(a) The **[**MHA**]***BHA* and the Program's utilization control agent shall reevaluate whether the participant remains eligible for the waiver by meeting all of the criteria specified in §§A—C of this regulation;

(b) The **[**MHA**]***BHA* or its authorized representatives shall sign and date the form for determination of eligibility for BI waiver services to certify the redetermination of waiver eligibility; and

(c) If the **[**MHA**]***BHA* determines that the participant no longer meets all of the eligibility criteria specified in §§A—C of this regulation, the:

(i) Participant's eligibility shall be terminated, as of the effective date established by the **[**MHA**]***BHA*; and

(ii) (text unchanged)

F. (text unchanged)

**.04 Program Model.**

A. The program services and supports shall:

(1)—(2) (text unchanged)

(3) Provide services that are:

(a)—(b) (text unchanged)

(c) Coordinated by **[**MHA’s**]***BHA’s* administrative case manager with other medical rehabilitation, mental health, and primary care services that the individual is receiving; and

(4) (text unchanged)

B. Development of the Initial Waiver Plan of Care. Before the start of waiver services:

(1)—(2) (text unchanged)

(3) The **[**MHA’s**]***BHA’s* authorized representative shall review the initial waiver plan of care and sign to indicate approval if the plan of care is determined to be:

(a)—(c) (text unchanged)

C. Waiver Plan of Care.

(1) The participant's waiver plan of care:

(a)—(e) (text unchanged)

(f) Is subject to the **[**MHA’s**]***BHA’s* approval.

(2) (text unchanged)

D. Periodic Review of the Waiver Plan of Care.

(1) At least every 12 months or more frequently if determined necessary by the **[**MHA**]***BHA*:

(a)—(b) (text unchanged)

(c) The **[**MHA**]***BHA* or its authorized representative shall review the revised waiver plan of care, and if the plan of care is determined to meet all of the criteria specified in §C(3) of this regulation, sign to indicate approval.

(2) (text unchanged)

**.05 Conditions for Provider Participation — General.**

General requirements for participation in the Medical Assistance Program as a provider of BI waiver services are that the provider, with the exception of a medical day care provider, shall:

A. Be approved by the **[**MHA**]***BHA* as meeting the requirements and able to provide the services specified in this chapter;

B.—F. (text unchanged)

G. Provide an annual continuing education program approved by **[**MHA**]***BHA* for all staff working with waiver participants on the needs of individuals with BI that may include:

(1)—(3) (text unchanged)

H. (text unchanged)

I. Agree to provide and bill **[**MHA**]***BHA* or its authorized representative for only those services covered under this chapter which have been preauthorized in the participant's waiver plan of care; and

J. (text unchanged)

**.07 Covered Services — Residential Habilitation Services.**

A.—C. (text unchanged)

D. Levels of Service.

(1) Services provided in a residential program shall be provided and reimbursed at one of three levels of service, as preauthorized in the participant's waiver plan of care approved by the **[**MHA**]***BHA*.

(2)—(4) (text unchanged)

**.08 Covered Services — Day Habilitation Services.**

A.—E. (text unchanged)

F. Levels of Service.

(1) Services provided in a day habilitation program shall be provided and reimbursed at one of three levels of service, as preauthorized in the participant's waiver plan of care approved by the **[**MHA**]***BHA*.

(2)—(4) (text unchanged)

G. (text unchanged)

**.09 Covered Services — Supported Employment Services.**

A.—B.  (text unchanged)

C. Levels of Service.

(1) Services shall be provided and reimbursed at one of three levels of service, as preauthorized in the participant's waiver plan of care approved by the **[**MHA**]***BHA*.

(2)—(4) (text unchanged)

D.—E. (text unchanged)

**.09-1 Covered Services — Individual Support Services.**

A. Individual support services, as defined in Regulation .01B of this chapter, shall be provided in a community setting, including the participant's home, excluding a **[**community-based**]***provider owned or controlled* residential facility.

B. **[**Individual support services shall assist participants to live as independently as possible in their own homes.**]***The covered services may include but are not limited to assistance with:*

*(1) Activities of daily living;*

*(2) Budgeting and money management;*

*(3) Completing homework;*

*(4) Preparing meals;*

*(5) House cleaning, chores, and laundry;*

*(6) Grocery shopping;*

*(7) Using public transportation;*

*(8) Attending school or social events;*

*(9) Participating in any form of recreation or leisure activities;*

*(10) Participating in organized worship or spiritual activities;*

*(11) Volunteering; and*

*(12) The coordination of medical care, public resources, and community supports.*

C. (text unchanged)

D. Individual support services shall be provided as pre-authorized by **[**MHA**]***BHA and included* in the waiver plan of care and provided in **[**1-hour**]***15-minute*units.

**.10 Conditions for Reimbursement.**

The Department shall reimburse for services covered under this chapter if the services are:

A. (text unchanged)

B. Preauthorized in the participant's waiver plan of care by the **[**MHA**]***BHA*, as being reasonable and medically necessary to prevent institutionalization;

C.—D. (text unchanged)

**.11 Limitations.**

A.—B. (text unchanged)

C. The Program shall reimburse for a participant not more than:

(1)—(3) (text unchanged)

(4) A combined maximum of **[**five**]***seven* units of supported employment and day habilitation per week; or

(5) **[**Eight**]***32* units of individual support services for a date of service.

D. (text unchanged)

**.12 Payment Procedures.**

A. Request for Payment.

(1) An approved provider, with the exception of a medical day care provider, shall submit requests for payment to **[**MHA**]***BHA* or its authorized representative for the services covered under this chapter, according to procedures set forth in COMAR 10.09.36.04 or otherwise established by the Department. Medical day care providers shall submit requests for payment to the Department in accordance with COMAR 10.09.07.08.

(2) (text unchanged)

B.—C. (text unchanged)

ROBERT R. NEALL  
Secretary of Health