

**PROPOSAL**  
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**Title 10**  
**DEPARTMENT OF HEALTH AND MENTAL**  
**HYGIENE**

**Subtitle 09 MEDICAL CARE PROGRAMS**

**10.09.84 Community First Choice**

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

**Notice of Proposed Action**

[15-406-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01—.07, .13, .15, .20, and .22—.24 under **COMAR 10.09.84 Community First Choice**.

**Statement of Purpose**

The purpose of this action is to limit provision of personal assistance services to agencies that meet conditions of participation under this chapter and to adopt technical revisions consistent with the provisions of COMAR 10.09.20 Community Personal Assistance Services.

**Comparison to Federal Standards**

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

**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 an impact on individuals with disabilities as follows:

The proposed action affects providers of services to individuals with disabilities, but should have no significant impact on eligibility, access, or amount of services received by individuals.

**Opportunity for Public Comment**

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to [dhmh.regs@maryland.gov](mailto:dhmh.regs@maryland.gov), or fax to 410-767-6483. Comments will be accepted through January 27, 2016. A public hearing has not been scheduled.

**.01 Purpose.**

[A.] The purpose of Community First Choice is to provide certain home and community-based services and supports, as an alternative to institutional placements, to individuals who[

- (1) Are eligible for Medicaid under:
  - (a) A home and community-based services waiver; or
  - (b) The State Plan; and
- (2) Have] *have* been determined to require an institutional level of care.

[B. Community First Choice is designed as a system of personal assistance that:

- (1) Supports participants' ability to direct their own services;
- (2) Supports participants in the home with personal assistance and other services; and
- (3) Establishes adequate rates for provider reimbursement.]

**.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

- (1) (text unchanged)
- (2) "Applicant" means an individual who is applying to [participate in the Program and] receive services under this chapter.
- (3) "Assistance" means that another individual:
- (a)—(b) (text unchanged)
- (c) [Is present while the participant performs the activity] *Monitors the participant's performance of the activity in order to ensure health and safety*; or
- (d) (text unchanged)
- (4)—(5) (text unchanged)
- (6) "Certified medication technician (CMT)" means an individual, regardless of title, who:
- (a) Completes a [20-hour] course in medication administration approved by the Maryland Board of Nursing;
- (b) (text unchanged)
- (c) Performs medication administration tasks delegated by a nurse [monitor] in accordance with COMAR 10.27.11.
- (7)—(9) (text unchanged)
- (10) "[Conflict] *Conflicts* of interest" means [a] real or seeming incompatibility between one's private interests and one's public or fiduciary duties.
- (11) "Delegated nursing functions" means nursing services provided to a participant by an enrolled personal assistance [provider] *worker* under the supervision of a:
- (a)—(b) (text unchanged)
- (12) (text unchanged)
- [(13) "Family member" means:
- (a) A spouse;
- (b) A parent of a minor dependent child; or
- (c) An individual who has full and unrestricted powers of guardianship of person or property.
- (14) "Fiscal intermediary" means an agency that is under contract with the Department to provide certain services performed on behalf of the Department or the participant, or both, such as:
- (a) Employer-related payroll functions, including:
- (i) State and federal tax withholding;
- (ii) Withholding of union dues; and
- (iii) Social Security withholding; and
- (b) Verification of eligible services and providers to be reimbursed by the Program, including preauthorizations.]
- [(15)] (13)—[(16)] (14) (text unchanged)
- [(17)] (15) "Instrumental activities of daily living [(IADLs)]" means tasks or activities that include, but are not limited to:
- (a)—(i) (text unchanged)
- [(18) "Local health department" means the local agency which, in accordance with COMAR 10.09.30 and this chapter:
- (a) Assesses applicants;
- (b) Reassesses participants at least every 12 months, or upon a significant change of health status;
- (c) Participates on a multidisciplinary team to develop an applicant's plan of care; and
- (d) Participates on a multidisciplinary team to review, and revise as necessary, a participant's plan of care at least every 12 months.]
- [(19)] (16) (text unchanged)
- [(20)] (17) "Medically necessary" means that the service or benefit is:
- (a)—(c) (text unchanged)
- (d) Not primarily for the convenience of the participant, the participant's family, [or] the provider, *or the worker*.
- [(21)] (18)—[(24)] (21) (text unchanged)
- [(25) "Participant-employed" means a person employed by the participant who will render personal assistance services and meets requirements of Regulation .06 of this chapter.
- (26) "Person-centered" means that the plan reflects what is important to the individual, what is important for his or her health and welfare, and is developed with input from the individual and the individual's representative when applicable.]
- [(27)] (22) "Personal assistance provider agency" means a public or private agency that:
- (a) Employs or contracts with personal assistance [providers] *workers*; and
- (b) (text unchanged)
- [(28)] (23) (text unchanged)
- [(29)] (24) "Plan of service" means the written [person-centered support plan developed by the applicant or participant] *support plan that*:

(a) *Reflects what is important to the individual and what is important for his or her welfare; and*  
(b) *Is developed with support from the supports planner [and] with input from the individual and, when applicable, the individual's representative[, when applicable].*

[(30)] (25) ["Preauthorization"] "*Preauthorized*" means [an approval required from] *approved* by the Department or its designee before services can be rendered.

[(31)] (26)—[(35)] (30) (text unchanged)

[(36)] (31) "Representative" means [the]:

(a) *The person authorized by the individual, on the form provided by the Department, to serve as a representative in connection with the provision of Community First Choice services and supports[.]; or*

(b) *The individual who signs the plan of service on the participant's behalf.*

[(37)] "Self-direct" means a consumer-controlled method of selecting and providing services and supports that allows the individual maximum control of the home and community-based personal assistance services and supports, with the individual acting as the employer of record with necessary supports to perform that function, or the individual having a significant and meaningful role in the management of a provider of service when services are provided by an agency.]

[(38)] (32) "Supports planner" means an individual who coordinates services, including:

(a) Supporting development of a [person-centered] plan of service;

(b)—(c) (text unchanged)

[(39)] (33) "Telephonic timekeeping system" means a system developed by the Department for [providers] workers to time stamp the start and finish of services provided to a participant.

(34) "*Worker*" means an individual who is employed by or contracts with a personal assistance provider agency to provide personal assistance services.

### **.03 Requirements for Provider Licensing or Certification.**

[A.] The following health professionals providing services under this chapter shall be licensed to practice in the jurisdiction in which services are rendered:

[(1)] A.—[(10)] J. (text unchanged)

[B. A personal assistance provider who renders personal assistance services in his or her home shall be licensed under COMAR 10.07.14.]

### **.04 Participant Eligibility.**

A. To [be eligible for participation] *participate in the Program*, a participant shall [be determined by the Department to]:

(1) [Require] *Be determined by the Department to need* the level of care provided in a hospital, nursing facility, or an intermediate care facility for individuals with intellectual disabilities;

(2) Be eligible for Medicaid under an eligibility group defined in COMAR 10.09.24, *except for Regulations .02B(57), .03C, .03-1—03-3, and .05-3*; and

(3) (text unchanged)

B. To be eligible for participation, a participant shall have an active plan of service. The plan of service shall:

(1) (text unchanged)

(2) Address the applicant's or participant's *health and safety* needs;

(3) (text unchanged)

(4) Specify the [name of the personal assistance] provider [or] agency providing personal assistance services; and

(5) Include the signature of the [participant or]:

(a) *Participant or, when applicable, the individual's representative* [if applicable, the supports];

(b) *Supports planner*[, and the personal]; and

(c) *Personal assistance provider agency* listed within the plan of service.

C.—D. (text unchanged)

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

A. To participate as a provider of a service covered under this chapter, a provider:

(1) Shall meet all of the conditions for participation as a [Maryland Medical Assistance Program] *Medicaid* provider as set forth in COMAR 10.09.36, except as otherwise specified in this chapter;

(2) Shall obtain written verification of the qualifications of all individuals who render services on the provider's behalf[,] and provide a copy of the current license or credentials [upon] *on* request;

(3)—(4) (text unchanged)

(5) Shall agree to provide services, and to subsequently bill the Department in accordance with the reimbursement methodology specified in this chapter, for only those services covered under this chapter which have been:

(a) [Pre-approved] *Preauthorized* in the participant's plan of service;

(b)—(c) (text unchanged)

(6) Shall agree to maintain and have available written documentation of services, including dates and hours of services provided to participants, for a period of 6 years *from the date of service*, in a manner approved by the Department;

(7) Shall agree not to suspend, terminate, increase, or reduce services for an individual without authorization from the Department and only after consultation and [agreement] *input* from the participant or [a], *when applicable, the* participant's representative [when applicable];

(8) Shall submit a transition plan to the case manager or supports planner and participant or, *when applicable, the* participant's representative [when applicable] when suspending or terminating services;

(9)—(10) (text unchanged)

B. To participate as a provider of a service covered under this chapter, a provider or its principals may not, within the past 24 months, have:

(1) Had a license or certificate suspended or revoked as a health care provider, health care facility, or [provider of] direct care services *worker*;

(2)—(6) (text unchanged)

C. (text unchanged)

**.06 Specific Conditions for Provider Participation — Personal Assistance [Services].**

[A. To participate in the Program as a consumer-employed provider of personal assistance services under this chapter, unless otherwise exempted under §E of this regulation, a personal assistance provider shall:

(1) Be at least 18 years old;

(2) Be legally eligible for employment rendering personal assistance services in the State;

(3) Be able to communicate, read, write, and follow directions in English;

(4) Be currently certified by an organization accepted by the Department to provide training in the following areas:

(a) Cardiopulmonary resuscitation; and

(b) Basic first aid;

(5) Accept instruction on the personal assistance services required in the participant's plan of service from the following:

(a) The participant;

(b) The nurse monitor;

(c) The supports planner;

(d) A treating physician or nurse practitioner;

(e) Other involved professionals; and

(f) An individual from the Department;

(6) Be selected by the participant;

(7) Submit to a pre-employment criminal background investigation for which the prospective provider shall:

(a) Submit an application for a criminal history record check to the Criminal Justice Information System Office, Department of Public Safety and Correctional Services; and

(b) Direct the Department of Public Safety and Correctional Services to send the criminal history report to the Department;

(8) Agree to use a telephonic timekeeping system to:

(a) Document time; and

(b) Submit claims for payment;

(9) Understand and carry out the participant's plan of service;

(10) If performing delegated nursing functions, be supervised by a nurse monitor in accordance with COMAR 10.27.11; and

(11) Before rendering services to any participant, be determined by the nurse monitor to be competent to perform any delegated nursing tasks.

B. To participate in the Program as a participant-employed provider of personal assistance services, a personal assistance provider may not:

(1) Be the participant's family member;

(2) Be the participant's representative;

(3) Have been convicted of, received a probation before judgment for, or entered a plea of *nolo contendere* to, a felony or any crime involving moral turpitude or theft, or have any other criminal history that indicates behavior which is potentially harmful to participants; or

(4) Be cited on the Board of Nursing Alert or any other registries with a determination of abuse, misappropriation of property, financial exploitation, or neglect.

C. An agency that provides personal assistance services shall:]

A. *Personal assistance service providers shall:*

(1) (text unchanged)

(2) Employ a registered nurse who shall:

(a) (text unchanged)

(b) Participate in developing the [provider] *worker* instructions and in assigning appropriate personnel;

(c) (text unchanged)

(d) Participate in instructing the [individuals] *workers* who will provide the assistance, when indicated;

[(3) Employ individuals to provide personal assistance services who meet the conditions of §§A and B of this regulation;

(4) Either provide services directly through their employees or arrange for the provision of services under the direction of the individual receiving services;]

(3) *Employ workers who will accept instruction on the personal assistance services required in the participant's plan of service from the following:*

(a) *The participant or, when applicable, the participant's representative;*

(b) *The nurse monitor;*

(c) *A treating physician or nurse practitioner; or*

(d) *An individual from the Department;*

[(5)] (4) Allow participants to have a significant role [in the selection and dismissal of the providers of their choice, for the delivery of their specific care, and for the services and supports identified in their person-centered service plan;] *in the delivery of their specific care including:*

(a) *Directing the services and supports identified in their plan of service; and*

(b) *Exercising as much control as desired to select, train, schedule, determine duties, and dismiss the personal assistance worker in their home;*

[(6)] (5)—[(8)] (7) (text unchanged)

[(9)] (8) [Apply] *If applicable, apply* for a new license [if applicable,] whenever ownership is to be transferred from the person or organization named on the license to another person or organization in time to assure continuity of services;

[(10)] (9)—[(11)] (10) (text unchanged)

[D. A participant-employed or agency-employed provider of personal assistance services]

B. A worker who performs delegated nursing services in accordance with COMAR 10.27.11 shall:

(1)—(2) (text unchanged)

[E. Exemptions.

(1) Subject to approval by the Department, participant-employed providers of personal assistance services may be exempted from the qualifications of §§A(1),(3),(4), and B(3) of this regulation, if:

(a) The exemption is made at the request of the participant that the provider serves; and

(b) The exemption request is submitted in a format designated by the Department.

(2) Providers that have been exempted from any qualification may only serve the participant or participants who have requested the exemption.

(3) The Department may:

(a) Grant conditional exemptions; and

(b) Revoke exemptions for cause.

F. If requested by the agency or applicant to provide personal assistance services the Department may waive the provisions of §B(3) of this regulation if the agency or applicant demonstrates that:

(1) The conviction, probation before judgment, or a plea of nolo contendere to a felony or any crime involving moral turpitude or theft was entered more than 10 years before the date of the provider application; and

(2) The criminal history does not indicate behavior that is potentially harmful to participants.

G. A participant-employed provider may not be enrolled on or after July 1, 2015.]

C. *A personal assistance provider agency may not assign the participant's representative to provide services to that participant.*

#### **.07 Specific Conditions for Provider Participation — Supports Planning.**

To participate in the Program as a supports planning provider under Regulation .15 of this chapter, a provider shall:

A. *Be free from conflicts of interest;*

[A. Be identified by the Department through a solicitation process and agree]

B. *Agree* to be monitored by the Department; [or] *and*

C. *Be:*

(1) *Identified by the Department through a solicitation process; or*

[B.] (2) [Be the] *The area agency on aging that is enrolled to provide case management services under COMAR 10.09.54.*

#### **.13 Covered Services — General.**

The Program shall reimburse for the services specified in Regulations .14—.21 of this chapter, when, pursuant to the requirements of this chapter, these services have been [pre-approved] *preauthorized* by the Department in the participant's plan of service, billed in accordance with the payment procedures in Regulation .24 of this chapter, and documented as necessary to prevent institutionalization.

#### **.15 Covered Services — Supports Planning.**

A. (text unchanged)

B. Supports planning services shall:

(1)—(2) (text unchanged)

(3) Support the participant to self-direct services; and

(4) Allow participants to] *and* exercise as much control as desired to select, train, supervise, schedule, determine duties, and dismiss the personal assistance worker[.]; *and*

(4) *Ensure freedom of choice among any willing provider for all services.*

C. Supports planning services include time spent by a qualified provider conducting any of the following activities:

(1) Assisting the participant in developing a [person-centered] plan of service in consultation with the applicant or participant and any individual requested by the participant[.];

(2)—(7) (text unchanged)

#### **.20 Covered Services — Nurse Monitoring.**

A. (text unchanged)

B. The program covers the following services when provided by a nurse monitor:

[(1) Developing provider instructions for personal assistance;

(2) Instructing the individual providing personal assistance services concerning the services required under the participant's provider instructions and the conditions that should be brought to the attention of the supports planner, nurse monitor, or personal physician;

(3) Availability]

(1) *Being available* to give instruction and to answer questions;

[(4)] (2)—[(5)] (3) (text unchanged)

C. The Program covers nurse monitoring services according to the following schedule:

(1) (text unchanged)

(2) Additional nurse monitoring services in accordance with COMAR 10.27.09 and 10.27.11 at a frequency established in conjunction with the participant[, and the] *or, when applicable, the participant's* representative [when applicable], based on the participant's medical condition or clinical status.

D. Home and Workplace Visits.

(1) The nurse monitoring provider shall use the home or workplace visit for the following purposes:

(a) To assess the participant's condition;

[(b) To delegate nursing tasks to a CNA or CMT in accordance with COMAR 10.27.09 and 10.27.11;]

[(c)] (b) To assess the quality of personal assistance services; *and*

[(d) To provide instruction and training to the individual providing personal assistance services; and]

[(e)] (c) To determine the need for discharge from personal assistance services or referral to other services.

(2) The nurse monitor shall assess the quality of personal assistance services by:

(a) Reviewing [the provider instructions;] documentation related to the provision of personal assistance services; and

[(b) Observing the interactions and relationship between the participant and the individual providing personal assistance services;]

[(c)] (b) Observing the performance of the [individual providing personal assistance services; and] *worker, as appropriate.*

[(d) Evaluating the performance of individuals to whom nursing tasks have been delegated.]

#### **.22 Conditions for Reimbursement.**

The Program shall reimburse for the services specified in Regulations .14—.21 of this chapter, if provided in accordance with the requirements of this chapter and if the service:

A. (text unchanged)

B. Has been [pre-approved] *preauthorized* by the Department in the participant's plan of service;

C.—E. (text unchanged)

#### **.23 Limitations.**

A.—B. (text unchanged)

C. The Program does not cover the following services:

(1)—(3) (text unchanged)

(4) Expenses related to room and board for either the participant or the [personal assistance provider] *worker*;

(5) Transition services more than 60 days post transition; *or*

(6) Personal assistance services provided outside the State for more than 14 days per calendar year[; or].

[(7) Personal assistance services rendered by a participant-employed provider on or after October 1, 2015.]

[D. The Department may not accept or approve plans of service with participant-employed providers on or after August 1, 2015.]

D. *Payment for supports planning and nurse monitoring services shall be limited to direct services to the participant and may not be made for:*

(1) *Administrative overhead;*

(2) *Travel;*

(3) *Internal quality monitoring activities;*

(4) *Staff supervision, training, or consultation; or*

(5) *Services rendered by an individual supports planner or nurse monitor in excess of 7 hours per day unless preauthorized by the Department in writing.*

**.24 Payment Procedures.**

A. Request for Payment — Personal Assistance. To receive payment as a [provider of] personal assistance [services] *provider agency* under Regulation .14 of this chapter, a provider *and its workers* shall use the telephonic timekeeping system approved by the Department to:

(1)—(2) (text unchanged)

B.—C. (text unchanged)

D. Payments.

(1) Payments for services rendered to a participant shall be made[:

(a) Directly] *directly* to a qualified provider[; or

(b) Through a fiscal intermediary who shall:

(i) Verify that expenditures are allowable according to a participant's plan of service and budget; and

(ii) Deduct fees and taxes as appropriate;].

(2) [Providers] *A provider* shall be paid the lesser of:

(a) [Their] *The provider's* usual and customary charge to the general public *unless the service is free to individuals not covered by Medicaid*; or

(b) The rate established *under §E of this regulation or according to the fee schedule published by the Department.*

E. Rates.

(1) The rate of payment to [agencies for] personal assistance *provider agencies* shall be \$16.48 per hour; *and*

[(2) The rate of payment to participant-employed personal assistance providers shall be \$12.58 per hour, unless a participant chooses to self-direct their services in which case the participant may set the rate of payment at no less than \$11.75 and not more than \$14.63 per hour;]

(2) *Payment to personal assistance agencies for services provided by a personal assistance worker to each of two participants in the same residence shall be \$10.99 per hour.*

[(3) The Program's rate] *F. The rates in §E of this regulation shall increase on July 1 of each year, subject to the limitations of the State budget, by the lesser of:*

(a)—(b) (text unchanged)

VAN T. MITCHELL  
Secretary of Health and Mental Hygiene