**PROPOSAL**

**Maryland Register**

**Issue Date: January 3, 2020**

**Volume 47 • Issue 1 • Page 24-26**

**Title 10
MARYLAND DEPARTMENT OF HEALTH**

**Subtitle 12 ADULT HEALTH**

***10.12.06 Increased Supports for Working Individuals with Disabilities Program***

*Authority: Ch. 447, Acts of 2018*

**Notice of Proposed Action**

[20-003-P]

The Secretary of Health proposes to adopt new Regulations **.01—.10** under a new chapter **COMAR 10.12.06 Increased Supports for Working Individuals with Disabilities Program**. At this time the Secretary of Health is also withdrawing the proposal to adopt new Regulations **.01—.09** under a new chapter, **COMAR 10.12.06 Increased Supports for Working Individuals with Disabilities Program**, that was published in 46:2 Md. R. 62—64 (January 18, 2019).

**Statement of Purpose**

The purpose of this action is to outline the eligibility, covered health care services, and other components of the State-funded demonstration program, as required by Ch. 447, Acts of 2018. The demonstration program will provide health care services limited to private duty nursing services for a limited number of eligible individuals who are enrolled in Maryland Medical Assistance through the Employed Individuals with Disabilities program.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.**The proposed action has an economic impact of $500,000 in State general fund expenditures to the Department in FY2020. The Department is structuring the demonstration program so the cost of services provided under the program will not exceed the budgeted amount.

|  |  |  |
| --- | --- | --- |
|   | Revenue (R+/R-) |   |
| **II. Types of Economic Impact.** | Expenditure(E+/E-) | Magnitude |
|   |  |
|  |  |  |
| A. On issuing agency: | (E+) | $500,000 |
| B. On other State agencies: | NONE |  |
| C. On local governments: | NONE |  |
|   |
|   | Benefit (+)Cost (-) | Magnitude |
|   |  |
|  |  |  |
| D. On regulated industries or trade groups: | NONE |  |

|  |  |  |
| --- | --- | --- |
| E. On other industries or trade groups: | (+) | $500,000 |
| F. Direct and indirect effects on public: | NONE |  |
| **III. Assumptions.** (Identified by Impact Letter and Number from Section II.) |
| A. The program is a new pilot program which will provide health services not covered under the Medicaid State plan. Non-Medicaid State funds must be utilized to support these services for individuals with disabilities. The funding will cover the cost of administering the program and reimbursement to providers. |
| E. Agencies that manage nurses (RN, LPN) who provide direct care in the community will be reimbursed using the same hourly rates that Medicaid has established for these services. However, the total amount of funding to be expended on reimbursement is still to be determined because there is no expenditure history for this new pilot program. A portion of the total program funding will be used to administer it. |

**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 “Increased Supports for Working Individuals with Disabilities Program” is a 3-year demonstration program that will use State-only funds to provide private duty nursing services in the community for a limited number of eligible individuals with disabilities who are enrolled in Maryland Medical Assistance under the Employed Individuals with Disabilities program. For individuals for whom private duty nursing services are not covered under the Maryland Medicaid State Plan, this demonstration program will provide medically necessary supports to allow the participants to maintain their employment.

**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 3, 2020. A public hearing has not been scheduled.

***.01 Scope and Effective Dates.***

*A. The Increased Supports for Working Individuals with Disabilities Program is a State demonstration program established within the Maryland Department of Health to provide private duty nursing services in the community for individuals:*

*(1) Enrolled in the Maryland Medical Assistance Program as employed individuals with disabilities; and*

*(2) Who meet the eligibility criteria as outlined in Regulation .03 of this chapter.*

*B. This demonstration program is in effect for a period of 3 years beginning June 1, 2018, through May 31, 2021.*

***.02 Definitions.***

*A. In this chapter, the following terms have the meanings indicated.*

*B. Terms Defined.*

*(1) “Authorized representative” means an individual or organization with legal authority to act on behalf of the Program applicant or participant, including:*

*(a) An individual or organization designated in writing by the applicant or participant;*

*(b) The applicant’s or participant’s legal guardian, if one has been appointed, or a person who has in good faith filed an application to be appointed the applicant’s or participant’s legal guardian but who has not yet been appointed the applicant’s or participant’s legal guardian;*

*(c) An individual appointed to make legal or medical decisions on behalf of the applicant or recipient pursuant to a validly executed power of attorney; and*

*(d) An attorney retained by the individual.*

*(2) “Department” means the Maryland Department of Health.*

*(3) “Employed Individuals with Disabilities” has the meaning stated in COMAR 10.09.41.02C.*

*(4) “Employment” means the condition of having paid work.*

*(5) “Evaluation” means a determination of the health status of a participant in a participant’s home or any other appropriate setting by a licensed professional for the purpose of determining the medical necessity and quantity of private duty nursing services that will promote optimal functional ability for the participant.*

*(6) “Medical Assistance” means the program administered by the State under Title XIX of the Social Security Act which provides comprehensive medical and other health-related care for categorically eligible and medically needy individuals.*

*(7) “Medically necessary” has the meaning stated in COMAR 10.09.36.01.*

*(8) “Private duty nursing” has the meaning stated in COMAR 10.09.69.02B.*

*(9) “Program” means the Increased Supports for Working Individuals with Disabilities Program, which is the demonstration program to provide private duty nursing services for certain individuals and is:*

*(a) Authorized under this chapter;*

*(b) Funded entirely through State general funds; and*

*(c) Administered by the Department.*

*(10) “Secretary” means the Secretary of Health or the Secretary’s designee.*

***.03 Participant Eligibility.***

*A. General Requirements.*

*(1) A participant enrolled in the Program shall meet the conditions §§B and C of this regulation.*

*(2) A participant’s eligibility for services under the Program shall be reevaluated by the Department every 12 months or more frequently if needed due to a significant change in the participant’s condition, needs, or financial status.*

*(3) A participant shall first seek coverage for services available under Medical Assistance, Medicare, or another insurer.*

*B. Technical Eligibility. A participant shall be:*

*(1) Enrolled in the Medical Assistance Employed Individuals with Disabilities Program;*

*(2) At least 21 years old or older, but younger than 65 years old; and*

*(3) Employed for an average of at least 20 hours a week.*

*C. Medical Eligibility. A participant shall:*

*(1) Be determined by the Department to need the level of care provided in a nursing facility as defined by the Department;*

*(2) Need medically necessary private duty nursing services in order to allow the participant to live in the community and to maintain employment; and*

*(3) Have one or more of the qualifying conditions as outlined in the Medical Assistance Rare and Expensive Case Management program under COMAR 10.09.69.17.*

*D. A participant’s enrollment in the Program shall be terminated if the participant:*

*(1) No longer meets the eligibility requirements in §§B and C of this regulation;*

*(2) Is without services for 30 consecutive days;*

*(3) Voluntarily chooses to disenroll from the Program; or*

*(4) Moves to another state.*

*E. A participant shall notify the Department within 10 working days of changes that may affect eligibility.*

***.04 Application Process.***

*A. The application review process shall be based on a first-come, first-served basis.*

*B. The application process may include:*

*(1) Review of medical records; and*

*(2) A nursing evaluation.*

*C. The Department shall give the applicant written notice of the decision to approve or deny Program services.*

***.05 Covered Services.***

*A. The Program may cover private duty nursing services:*

*(1) Not covered by Medical Assistance, another insurer, or any other State or federal program; and*

*(2) Medically necessary as determined by a nursing evaluation conducted by the Department.*

*B. A participant’s eligibility for services covered under the Program shall be reevaluated by the Department every 12 months or more frequently:*

*(1) If needed due to a change in the participant’s clinical status; or*

*(2) If one or more of the conditions in Regulation .03D of this chapter are met.*

*C. The Department shall provide the participant written notice of the reevaluation decision.*

*D. The services provided under the Program may not supplant or augment services covered under Medical Assistance.*

***.06 Conditions for Provider Participation.***

*A. A provider of services under the Program:*

*(1) Shall be approved and enrolled as a provider in the Medical Assistance Program;*

*(2) Shall comply with all State and federal laws and regulations that are applicable to the services the provider is licensed by the Department to provide; and*

*(3) Shall ensure compliance with all the Medical Assistance provisions under COMAR 10.09.53.03.*

*B. An immediate family member of the participant or an individual who ordinarily resides with the participant may not render services under this Program.*

***.07 Limitations.***

*The Department shall limit enrollment and services provided based on available State funding.*

***.08 Payment Procedures.***

*The Program shall reimburse a Program provider:*

*A. Based on rates established in COMAR 10.09.53.07; and*

*B. Contingent on submission of documentation required by the Department.*

***.09 Cause for Provider Suspension or Removal and Imposition of Sanctions.***

*Cause for suspension or removal and imposition of sanctions are as set forth under Medical Assistance regulations under COMAR 10.09.36.08.*

***10 Appeal Procedures.***

*A. An applicant for Program services**, or a participant in Program services, individually or by an authorized representative, may request a hearing before the Secretary to appeal the denial, reduction, or termination of Program services in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.*

*B. The procedures set forth in COMAR 10.01.03 shall apply to all hearings requested under §A of this regulation.*

*C. An appeal shall be postmarked, delivered in person, or sent by electronic mail or facsimile to the Department within 30 days after the applicant or participant receives notice of the Department’s decision to deny the application for Program services, or reduce or terminate Program services.*

*D. Notice of the Department’s decision is presumed to have been received 3 days after the date of the notice.*

*E. The Secretary may deny a request for hearing if the reason for the appeal is to contest a denial of services due to lack of available budgeted funds.*

*F. The applicant has the burden of proof by a preponderance of the evidence in an appeal under this regulation.*

*G. If the recipient files the hearing request on or before the effective date of termination or reduction in services, then services will continue pending the issuance of a final agency decision.*

*H. The decision of the Secretary is the final administrative decision for purposes of judicial review pursuant to State Government Article, §10-222, Annotated Code of Maryland.*

ROBERT R. NEALL
Secretary of Health