**EMERGENCY REGULATION PUBLICATION FORMS (Revised 7/17)**

**Title 10**

**MARYLAND DEPARTMENT OF HEALTH Subtitle 22 DEVELOPMENTAL DISABILITIES**

**10.27.17 Fee Payment System for Licensed Residential and Day Programs**

**Authority: Health-General Article, §§2-104(b), 7-306.1, 7-307, 7-910(c), 15-105, 15-107, and 16-201, Annotated Code of Maryland**

**Date Requested for Emergency Status**

**Begin Date:**

1/1/2022

**Expiration Date:**

3/31/21

**Agency Will Take the Following Actions on These Emergency Regulations (Check one option)**

Promulgate them in accordance with State Government Article, §§10-101—10-126

or

\_X

Allow them to expire.

**Is There Proposed Text Which Is Identical To The Emergency Text:**

Yes \_X No

**Is There An Incorporation By Reference Document Associated With This Emergency?**

Yes

X\_ No

**Does This Emergency Include An Increase Or Decrease In A Fee?**

Yes, complete (1)—(8) No, skip (1)—(8) and proceed to Justification/Reason

1. Explain/justify why an increase or decrease is necessary:
2. How much money is needed to operate effectively or to eliminate an operating fund deficit?
3. In what year was the most recent fee increase?
4. Is the fee revenue retained by the Proposing Unit or passed through to a national organization that administers a uniform licensing exam?
5. Describe any measures taken to mitigate the need for increased revenue:
6. Describe any special circumstances that have had an adverse impact on the Proposing Unit’s operating expenses.
7. Describe any consideration given by the Proposing Unit as to the hardship a fee increase may have on the regulated profession.
8. Describe any efforts to solicit the opinions of licensees regarding the Proposing Unit’s effectiveness and performance.

**Justification/Reason for Request for Emergency Status (Complete both sentences)**

The purpose of this action is to permit flexibilities in the minimum service hours for meaningful day services provided and billed for, consistent with DDA’s Appendix K, temporarily amending requirements in DDA’s Medicaid Waiver programs during the public health emergency. In addition this action amends the minimum service hours requirements to accommodate the new 15-minute service units to be implemented under DDA’s LTSS*Maryland* electronic software system under its new rates and fee-for-service model.

\_X

**Comparison to Federal Standards (Check one option)**

There is no corresponding federal standard to this emergency action.

or

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

The corresponding federal standard is:

**EXPLAIN** why the emergency action **is not** more restrictive or stringent than the corresponding federal standard:

or

In compliance with Executive Order 01.01.1996.03, this emergency action is more restrictive or stringent than corresponding federal standards as follows:

1. Regulation citation and manner in which it is more restrictive than the applicable federal standard:
2. Benefit to the public health, safety or welfare, or the environment:
3. Analysis of additional burden or cost on the regulated person:
4. Justification for the need for more restrictive standards:

**Impact Statements Part A**

**(check one option)**

**Estimate of Economic Impact**

The emergency action has no economic impact.

or

X\_ The emergency action has an economic impact. (Complete the following form in its entirety)

1. Summary of Economic Impact.

DDA residential providers that support individuals who are absent from services for more than 18 days per calendar year will have a fiscal impact.

1. Types of Revenue (R+/R-)

Economic Impact. Expenditure (E+/E-) Magnitude

* 1. On issuing agency: (E-) $1,424,250
  2. On other State agencies: NONE
  3. On local governments: NONE Benefit (+)

Cost (-) Magnitude

* 1. On regulated industries or trade groups: (-) $2,848,500
  2. On other industries or trade groups: NONE
  3. Direct and indirect effects on public: NONE

AAssumptions. (Identified by Impact Letter and Number from Section II.)

A. With a decrease in payments to providers in the amount of $2,848,500. The state will save $1,424,250 in expenditures from state funds.

B. DDA residential providers that support individuals who are absent from services for more than 18 days per calendar year will have a fiscal impact. Based on analysis of FY2020, both before and during the Public Health Emergency, the total estimated cost to providers would be approximately $2,848,500 or an average of $929 per provider.

D.

**Part B**

**Economic Impact on Small Businesses (check one option)**

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

or

X\_ The emergency action has a meaningful economic impact on small businesses. An analysis of this economic impact follows.

Impact on Individuals with Disabilities

(check one option)

 \_\_\_ The proposed action has no impact on individuals with disabilities.

or

\_X\_\_ The proposed action has an impact on individuals with disabilities as follows:

 (Agency to complete this assessment)

Individuals with intellectual and developmental disabilities supported by a DDA provider will receive at least one or more hours of meaningful day services while re-acclimating to community services after the end of the public health emergency and while providers are reopening their programs.

Opportunity for Public Comment

Comments may be sent to Jason Caplan, 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 (leave blank). A public hearing has not been scheduled.

**Part C**

**(For legislative use only; not for publication)**

1. Fiscal Year in which regulations will become effective: FY2022
2. Does the budget for fiscal year in which regulations become effective contain funds to implement the regulations?

\_X\_ Yes No N/A

1. If “yes”, state whether general, special (exact name), or federal funds will be used:

DDA residential providers that support individuals who are absent from services for more than 18 days per calendar year will have a fiscal impact. Based on analysis of FY2020, both before and during the Public Health Emergency, the aggregate cost to providers who support individuals in excess of 18 days is approximately $2,848,500, or an average of $929 per provider. There are a total of 816 of such providers. The range of impact is approximately $121 - $16,076.

1. If “no”, identify the source(s) of funds necessary for implementation of these regulations:
2. If these regulations have no economic impact under Part A, indicate reason briefly:
3. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason.

10.22.17.02 (7/15/2021)

**.02 Definitions.**

1. (text unchanged)
2. Terms Defined.

(1)—(4) (text unchanged)

1. “Attendance day” means, for:
   1. Day habilitation and vocational services *billed under the Administration’s prospective payment system in accordance with Health-General Article, §7-306.1, Annotated Code of Maryland*, when the individual is present in the program for at least 4 hours a day during a regularly scheduled period of operation, with 6 to 8 hours per day as the service goal, and with Administration approval of fewer than 6 hours per day provided the individual plan indicates this lower level of service is necessary;
   2. Residential programs *billed under the Administration’s prospective payment system in accordance with Health-General Article, §7-306.1, Annotated Code of Maryland*, as of October 1, 2001, when the individual is present for at least 6 hours in the home or spends the night in the home, which is the primary residence for the individual; and
   3. Supported employment *billed under the Administration’s prospective payment system, in accordance with Health-General Article, §7-306.1, Annotated Code of Maryland*, when the individual is engaged in supported employment for at least 4 hours a day, with 6 to 8 hours per day as the service goal, and with Administration approval of fewer than 6 hours per day provided the individual plan indicates this lower level of service is necessary.
2. —(35) (text unchanged)

(36) “Unit of service” means:

1. (text unchanged)
2. For residential programs:

(i) For awake direct support services, **[**1hour**]** *1 hour*; (ii)—(iii) (text unchanged)

1. (text unchanged)

(37)—(38) (text unchanged)

**10 Payment for Services Reimbursed by Rates.**

A.—B. (text unchanged)

C. Reimbursement for Attendance Days of Day Habilitation, Vocational Services, and Supported Employment with Fewer than the Hours as Defined in Regulation .02 of this Chapter.

**(1) [**The**]** *Except as provided in §C(3) of this regulation, for day habilitation, vocational services, and supported employment billed under the Administration’s prospective payment system in its PCIS2 electronic software system,* **[**The**]** *the* Administration may:

(a)—(c) (text unchanged)

(2) (text unchanged)

*(3) In accordance with the individual's individual plan approved by the Administration, the Administration may approve payment to providers for fewer than the minimum hours otherwise required for meaningful day services in either of the following circumstances:*

* 1. *In the event of a public health emergency or state of emergency, as further provided in §L of this regulation; or*
  2. *The provider bills for meaningful day services including day habilitation, vocational services, and supported employment under the Administration's fee-for-service payment system in its electronic data management system as further provided in Health-General Article,*

*§7-308, Annotated of Maryland, other applicable laws and regulations, and the Department’s*

*policies, procedures, and guidance.*

D.—F. (text unchanged)

G. Absences and Vacancies.

1. **[As of July 1, 2011]** *Except in the event of a public health emergency or state of emergency as provided in §L of this regulation,* the Department shall only reimburse providers for [33] *18* days of absences or vacancies per year per individual when the individual is unable to be in residential services due to illness, vacation, home visits, medical appointments, or other circumstances.
2. (text unchanged)

H. The Administration shall reimburse day and supported employment programs an additional

$2,000 per year per individual for transportation to and from day habilitation and vocational

programs or to and from supported employment for individuals who, because of their disabilities,

must use wheelchairs or motorized scooters [,] if the:

1. *Provider bills for day habilitation, vocational services, or supported employment under the Administration's prospective payment system, in accordance with Health-General Article, §7-306.1, Annotated Code of Maryland; and*
2. [payments] *Payments* are consistent with the requirements under COMAR 10.09.26 and 10.09.19.

I.—K. (text unchanged)

*L. The Administration may approve payment to providers in the event of a public health emergency or state of emergency, federal or State, in accordance with applicable disaster relief authority for:*

1. *Fewer than the minimum hours otherwise required for meaningful day services as provided in §C of this regulation; or*
2. *Additional retainer days as provided in §G(1) of this regulation.*

**DENNIS R. SCHRADER**

**Secretary of Health**