

**Maryland Department of Health and Mental Hygiene**

201 W. Preston Street • Baltimore, Maryland 21201

Robert L. Ehrlich, Jr., Governor – Michael S. Steele, Lt. Governor – S. Anthony McCann, Secretary

**MARYLAND MEDICAL ASSISTANCE PROGRAM
Personal Care Services Transmittal No. 42**

October 17, 2005

TO: Personal Care Case Monitoring Agencies
Personal Care Provider Agencies

FROM: Susan J. Tucker, Executive Director
Office of Health Services – Medical Care Programs

NOTE: Please ensure that appropriate staff members in your organization are informed of the contents of this transmittal

RE: Adoption of Amendments to COMAR 10.09.20 Personal Care Services

The Maryland Medical Assistance Program has adopted amendments to Regulations .01 and .03 - .07 under COMAR 10.09.20 effective August 29, 2005. The adopted amendments with non-substantive changes were published in the Maryland Register, Vol. 32, Issue 17, August 19, 2005. The proposed amendments were originally published in the Maryland Register, Vol. 32, Issue 11, May 27, 2005.

Specifically, the adopted changes to COMAR 10.09.20 eliminate the requirement that a recipient's personal physician authorize personal care services. In the past, a recipient's personal physician provided orders for personal care services and signed the required plans of care. The adopted changes, however, allow the RN case monitors to preauthorize services based on their assessment of the recipient's condition and their need for assistance with activities of daily living without seeking physician orders and sign-off of the required plans of care. Please keep in mind that all other regulatory requirements must still be met when authorizing services.

Regulations referencing Level 4 personal care services were eliminated as well. The Department developed Level 4 personal care services to address the needs of recipients with infectious medical conditions that required assistance with activities of daily living. Despite the trend indicating a growing population with such conditions and needs, requests for the service never occurred.



Finally, the adopted changes establish a rate increase for Level 1, Level 2 and a day of training for personal care services and initiate a new level of service: Level 2B personal care services. Per diem rates are \$11, \$22 and \$30 for Level 1, 2 and 2B services, respectively, and \$11 for a day of training. The rate of payment for Level 3 personal care services remains unchanged. The new Level 2B services are preauthorized when recipients require assistance for three meal periods per day or constant assistance is necessary to assure safety while family members or their unpaid care givers maintain full time employment. Please note only a small fraction of recipients currently receiving personal care services qualify for Level 2B services and the three meal periods for which care is provided must be consecutive.

Attached are copies of the adopted and proposed amendments as published in the Maryland Register.

Questions regarding these amendments may be directed to the Personal Care Services' Staff Specialist at (410) 767- 1444.

Attachments

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.20 Personal Care Services

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

Notice of Proposed Action

(05-110-P)

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01 and .03 — .07 under COMAR 10.09.20 Personal Care Services.

Statement of Purpose

The purpose of this action is to increase the Personal Care Program's rate structure and revise criteria regarding authorization, provision, and payment of services, all consistent with the Fiscal Year 2006 budget.

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

I. Summary of Economic Impact. The Medical Assistance Program budget for Fiscal Year 2006 includes approximately \$2,039,000 to increase rates paid to certain providers of personal care services.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency: Medical Assistance Program	(E+)	\$2,039,000
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups: Personal care providers	(+)	\$2,039,000
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 Program will pay increased rates for current Level 1 and Level 2 providers. Level 1 rates will increase from \$10 per day to \$11 per day. For an estimated 95 percent of current Level 2 services, rates will increase from \$20 per day to \$22 per day. For an estimated 5 percent of current Level 2 services, rates will increase from \$20 per day to \$30 per day. Level 3 rates will remain unchanged. With a projected 138,573 days at Level 1 and 791,844 days at the current Level 2, the total impact will be approximately \$2,039,000. Fifty percent of this amount will be State general funds and 50 percent will be federal funds.

D. Personal care providers will receive increased payments totaling approximately \$2,039,000 as calculated in §A, 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 Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 521, Baltimore, Maryland 21201, or call (410) 767-6499 or 1-877-4MD-DHMH, extension 6499, or fax to (410) 333-7687, or email to regs@dnhmh.state.md.us. Comments will be accepted through June 27, 2005.

.01 Definitions.

- A. (text unchanged)
- B. Terms Defined.

- (1) — (8-1) (text unchanged)
- (9) Home.

- (a) (text unchanged)

(b) "Home" includes "alternative living unit" as defined in [COMAR 10.22.03.01B(4)] COMAR 10.22.01.01B(2).

- (9-1) — (11) (text unchanged)

(12) "Level 2B personal care" means those services, described in Regulation .04 of this chapter, that may be preauthorized for a recipient for whom:

(a) Assistance is needed for three meal periods per day; or

(b) Constant assistance is necessary to assure safety while family members or other unpaid caregivers maintain full-time employment.

- [(12)] (13) (text unchanged)

[(13)] "Level 4 personal care" means those services, described in Regulation .04E of this chapter, that may be preauthorized for a recipient whose medical condition is such that constant assistance and supervision are necessary, for at least 16 and up to 24 hours a day, and for whom family assistance or other supportive resources are not realistically available, and who has been diagnosed as having a terminal disease that is infectious and requires special procedures in infection control.

(14) "Level 4 personal care provider agency" means an organization which, through appropriate agreement with the Department, has been identified, by the issuance of an individual account number, as a Program provider, and is authorized to render Level 4 personal care services to recipients through use of specially trained personal care aides.]

- [(15)] (14) (text unchanged)

(15) "Medically necessary" means that the service or benefit is:

(a) Directly related to diagnostic, preventive, curative, ameliorative, palliative, or rehabilitative treatment of an illness, injury, disability, or health condition;

(b) Consistent with current accepted standards of good medical practice;

(c) The most cost efficient service that can be provided without sacrificing effectiveness or access to care; and

(d) Not primarily for the convenience of the recipient, the recipient's family, or the provider.

- (16) — (20) (text unchanged)

(21) "Personal physician" means a person who is currently authorized to practice medicine in the state in which service is provided and who accepts primary medical responsibility for a recipient [by establishing a plan of medical treatment which may include a plan of personal care]

- (22) — (31) (text unchanged)

.03 Conditions for Participation.

A. — B. (text unchanged)

[C. To participate in the Program, the Level 4 personal care provider agency shall:

- (1) Comply with the requirements of §B of this regulation;
- (2) Instruct and supervise the personal care aide in procedures for infection control.]

[D.] C. To participate in the Program, the case monitoring agency shall:

- (1) (text unchanged)
- (2) Be a local health department or meet the following criteria:
 - (a) Be a nonprofit or governmental agency[.];
 - (b) Be administered by a physician licensed in Maryland who has a Master of Public Health degree[.]; and
 - (c) (text unchanged)
 - (3) — (5) (text unchanged)
 - (6) Maintain a clinical record on each recipient case monitored, which includes as a minimum:

- (a) An initial standard assessment of functional capability and all subsequent reassessments[.];
- (b) Medical information from the personal physician, including medical history, chronic illnesses, principal and significant diagnosis, prognosis, and assessment of the participant's physical and mental status specifying the general type of activities the recipient can and cannot do, prescribed medications, special diets, and allergies[.];
- (c) Written progress notes for both recipient and personal care aide[.];

- (d) General information including the recipient's name, address, telephone number, age and sex, the responsible person to contact in case of emergency, the name and telephone number of the personal physician, and the name, address, and telephone number of the personal care provider or personal care provider agency[.];
- (e) Copies of other written correspondence or information obtained concerning the recipient's health, medical condition, or treatment[.];
- (f) The current and the past plans for personal care, signed by the personal physician and the case monitor[.];
- (g) Referrals to other services[.];
- (h) (text unchanged)
- (7) — (10) (text unchanged)

[E.] D. To participate in the Program, the recipient shall:

- (1) — (2) (text unchanged)
- [(3) Have orders for personal care services from the recipient's personal physician based on a physician visit within 6 months of the date of assessment;]
- [(4)] (3) — [(6)] (5) (text unchanged)

.04 Covered Services.

A. — D-1. (text unchanged)

[E. The Program covers Level 4 personal care services in the recipient's home. This care includes any of the following services rendered by personal care aides employed by or under contract with a Level 4 personal care provider agency:

- (1) The services described in §§B and C of this regulation;
- (2) Delivery of pharmacy prescriptions to the recipient;
- (3) Reporting to the case monitor weekly on the recipient's condition;
- (4) Performing necessary infection control procedures.

F. The Program will pay for Level 4 personal care services at a fee determined under Regulation .07D(2) of this chapter for each approved 8-hour shift when the covered services are:

(1) Rendered by a personal care aide employed by or under contract with a Level 4 personal care provider agency;

(2) Rendered to a recipient who has been preauthorized for Level 4 personal care services;

(3) Performed according to, and in fulfillment of, the recipient's plan of personal care and these regulations.]

.05 Limitations.

A. (text unchanged)

B. A personal care provider may not render care to more than one active case in 1 day unless it is determined by the case monitor that the requirements in the recipients' plan of personal care will not be jeopardized by that arrangement, subject to the following conditions:

- (1) — (3) (text unchanged)
- (4) The provider may render care to two recipients, one or both of whom require *Level 2B* or *Level 3* personal care services, if both recipients share a single residence.

C. — F. (text unchanged)

.06 Preauthorization.

A. (text unchanged)

B. Preauthorization is issued when the case monitor submits to the Department adequate documentation demonstrating that the level of service to be preauthorized is *medically necessary* [and appropriate ("necessary" means directly related to diagnostic, preventive, curative, palliative, rehabilitative, or maintenance treatment; "appropriate" means an effective service that can be provided taking into consideration the particular circumstances of a recipient and the relative cost of any alternative services which could be used for the same purpose)].

C. — D. (text unchanged)

.07 Payment Procedures.

A. (text unchanged)

B. Payment to personal care providers shall:

- (1) — (2) (text unchanged)
- (3) Be made according to the following fee schedule for personal care services:

Description	Maximum Fee
Day of Personal Care — Level 1	\$[10] 11
Day of Personal Care — Level 2	[20] 22
Day of Personal Care — Level 2B	30
Day of Personal Care — Level 3	50
Day of Training	[10] 11

(4) — (6) (text unchanged)

C. Payments to personal care provider agencies shall be:

- (1) — (2) (text unchanged)
- (3) Made according to the following fee schedule:

Description	Maximum Fee
Day of Personal Care (Agency) — Level 1	\$[10] 11
Day of Personal Care (Agency) — Level 2	[20] 22
Day of Personal Care (Agency) — Level 2B	30
Day of Personal Care (Agency) — Level 3	50
(4) — (5) (text unchanged)	

[D. Payments to Level 4 provider agencies shall be:

- (1) Based upon preauthorization by the Department for Level 4 personal care services;
- (2) Limited to the maximum number of days each recipient is certified eligible for Level 4 personal care services, and subject to the number of days each recipient actually receives Level 4 services;

(3) Made according to the following fee schedule:

Description	Maximum Fee
Day of Level 4 Personal Care — Shift 1	\$30
Day of Level 4 Personal Care — Shift 2	30
Day of Level 4 Personal Care — Shift 3	30

(4) Made only to qualified Level 4 personal care provider agencies. Payment may not be made to a recipient or to a nonqualified individual or agency.]

[E.] D. (text unchanged)

S. ANTHONY McCANN
Secretary of Health and Mental Hygiene

Title 13A STATE BOARD OF EDUCATION

Subtitle 09 NONPUBLIC SCHOOLS

13A.09.10 Educational Programs in Nonpublic Schools and Child Care and Treatment Facilities

Authority: Education Article, §§2-205, 2-206, 2-304, 7-301, 7-403, 7-405, and 8-406;

Family Law Article, Title 5, Subtitles 5 and 7;
Annotated Code of Maryland

Notice of Proposed Action

[05-106-P]

The State Board of Education proposes to repeal existing Regulations .01 — .15 and adopt new Regulations .01 — .20 under COMAR 13A.09.10 Educational Programs in Nonpublic Schools and Child Care and Treatment Facilities.

Statement of Purpose

The purpose of this action is to bring educational programming standards in these institutions into alignment with revisions in educational programming standards for public schools made in response to the requirements of the No Child Left Behind Act of 2002 and revisions in the Individuals with Disabilities Education Act.

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 new chapter ensures that State and federal requirements for education students with disabilities are in place for nonpublic schools providing special education.

Opportunity for Public Comment

The State Board of Education will hold a hearing concerning the proposed action on June 28 — 29, 2005, at 2 p.m. in the 7th Floor Board Room, Maryland State Education Building, 200 West Baltimore Street, Baltimore, Maryland 21201. Persons wishing to testify must call Leigh Rutter at (410) 767-0408 by 4:30 p.m. on Friday, June 24, 2005, to sign up to testify. Sign up will be on a first-come, first-serve basis. Comments may be sent to Virginia Cieslicki, Chief, Nonpublic School Approval Branch, Division of Certification and Accreditation, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, or fax to (410) 333-8963, or email to lrutter@msde.state.md.us, or call (410) 767-0408. These comments must be received not later than June 29, 2005.

Open Meeting

Action on the regulations proposed below will be considered by the State Board of Education during a public meeting to be held on July 19 — 20, 2005, in the 7th Floor Board Room of the State Education Building, 200 West Baltimore Street, Baltimore, Maryland, notice of which is given pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

.01 Purpose and Scope.

A. This chapter is established to set standards for issuing an approval document by the State Board of Education to an entity, excluding the federal government or any State, county, or municipal agency, or division of these, which is responsible for governing and operating a school that provides a Type I, Type II, or Type III educational program, or any combination of these, as defined in this chapter, in a facility licensed by a unit of State government to provide treatment or care, or both.

B. This chapter also applies to educational programs that provide special education to children placed in a nonpublic school in accordance with Education Article, §8-406, Annotated Code of Maryland.

.02 Definitions.

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

B. Terms Defined.

(1) "Adult basic education" means an educational program provided by a teacher to qualified students who do not meet the pre-GED program entry criteria and for whom it is anticipated that entry into a GED TESTS preparation program will be the appropriate means for earning a high school diploma.

(2) "ALT/MSA" means assessments designed to measure the performance of students with the most significant cognitive disabilities who are unable to participate in the general education/assessments used by the local school systems, even with accommodations, as determined by the IEP team of the student.

(3) "Annual report" means the report a legal authority of a school is required to file each year with the Department by which the chief officer of the legal authority certifies the status of the compliance of the school with the requirements of this chapter.

(4) "Approval document" means a Letter of Tentative Approval or a Certificate of Approval issued by the State Board to a legal authority responsible for the governance and operation of an educational program.

(5) "Career development educational program" means an organized program of instruction consisting of a sequence

Final Action On Regulations

Symbol Key

- Roman type indicates text already existing at the time of the proposed action.
- *Italic type* indicates new text added at the time of proposed action.
- Single underline, italic indicates new text added at the time of final action.
- Single underline, roman indicates existing text added at the time of final action.
- ~~[[Double brackets]]~~ indicate text deleted at the time of final action.

Title 08 DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

08.02.05 Fish

Authority: Natural Resources Article, §§4-704 and 4-711,
Annotated Code of Maryland

Notice of Final Action [05-147-F]

On August 9, 2005, the Secretary of Natural Resources adopted amendments to Regulation .01 under COMAR 08.02.05 Fish. This action, which was proposed for adoption in 32:13 Md. R. 1118 — 1119 (June 24, 2005), has been adopted as proposed.

Effective Date: August 29, 2005.

C. RONALD FRANKS
Secretary of Natural Resources

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.20 Personal Care Services

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

Notice of Final Action [05-110-F]

On July 29, 2005, the Secretary of Health and Mental Hygiene adopted amendments to Regulations .01 and .03 — .07 under COMAR 10.09.20 Personal Care Services. This action, which was proposed for adoption in 32:11 Md. R. 990 — 992 (May 27, 2005), has been adopted with the nonsubstantive changes shown below.

Effective Date: August 29, 2005.

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:

Regulations .01 and .03: Amended to eliminate reference to the requirement that a plan of care be signed by a recipi-

ent's personal physician. The proposed regulations contemplated the elimination of this requirement by amending the definition of "Personal Physician" in Regulation .01 to eliminate the reference to the physician's establishment of a plan of care. These changes eliminating other references to the physician's responsibility for signing the plan of care are consistent with the Program's intent in amending the regulations and impose no new burdens on or diminution of the rights of affected parties.

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (21) (proposed text unchanged)

(22) "Plan of personal care" means a written plan,

which:

(a) (proposed text unchanged)

~~[(b)]~~ Is approved, signed, and dated by the personal physician;

~~[(c)]~~ (b) — ~~[(d)]~~ (c) (proposed text unchanged)

(23) — (31) (proposed text unchanged)

.03 Conditions for Participation.

A. — B. (proposed text unchanged)

C. To participate in the Program, the case monitoring agency shall:

(1) — (5) (proposed text unchanged)

(6) Maintain a clinical record on each recipient case monitored, which includes as a minimum:

(a) — (e) (proposed text unchanged)

(f) The current and the past plans for personal care, signed by ~~[[the personal physician and]]~~ the case monitor;

(g) — (h) (proposed text unchanged)

(7) — (10) (proposed text unchanged)

D. (proposed text unchanged)

S. ANTHONY McCANN
Secretary of Health and Mental Hygiene

Subtitle 10 LABORATORIES

Notice of Final Action [05-142-F]

On August 10, 2005, the Secretary of Health and Mental Hygiene adopted amendments to Regulation .01 under COMAR 10.10.02 Medical Laboratories — General and Regulation .02 under COMAR 10.10.03 Medical Laboratories — Licenses. This action, which was proposed for adoption in 32:13 Md. R. 1119 — 1120 (June 24), has been adopted as proposed.

Effective Date: August 29, 2005.

S. ANTHONY McCANN
Secretary of Health and Mental Hygiene