




Maryland Department of Health and Mental Hygiene  
201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

**MARYLAND MEDICAL ASSISTANCE PROGRAM**  
**Waiver for Adults with Traumatic Brain Injury Transmittal No. 2**  
**April 23, 2007**

**To:** Waiver for Adults with Traumatic Brain Injury Providers

**From:**   
Susan J. Tucker, Executive Director  
Office of Health Services

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

**Re:** Waiver for Adults with Traumatic Brain Injury – Amended Regulations  
COMAR 10.09.46

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The Maryland Medical Assistance Program has adopted amendments to Regulations .01, .03 — .06, and .11 and new Regulation .09-1 under COMAR 10.09.46 Home and Community-Based Services Waiver for Adults with Traumatic Brain Injury, effective April 9, 2007.

The amendments as published in the January 19, 2007 issue of the Maryland Register are attached. Following is a summary of the amendments:

1. Adds or Amends Definitions

- Traumatic Brain Injury
- Commission on Accreditation of Rehabilitation Facilities (CARF)
- Family and Individual Support Services (FISS)
- Individual Support Services (ISS)

2. Participant Eligibility

- Eligible applicants include patients in Maryland licensed Special Hospitals for Chronic Disease that are CARF accredited for inpatient brain injury rehabilitation.
- Requires that a participant use at least one waiver service in a twelve-month period to retain waiver eligibility
- Allows a vacant slot to be filled prior to start of next waiver year

3. Conditions for Provider Participation

- Clarifies the following previously existing provider requirements:
  - Providers must demonstrate experience in the provision of services to individuals with TBI;
  - Providers' annual continuing education program must be provided to all staff working with individuals with traumatic brain injury
- Specifies requirements for providers of Individual Support Services
- Specifies that providers and their principals who owe Medicaid money are not eligible to enroll as providers

4. New Service- Individual Support Services

- Adds Individual Support Services to enable participants to receive support in their own homes

5. Limitations

- Limits Individual Support Services to a maximum of eight units of service per date of service
- Specifies Medicaid Program does not reimburse for Individual Support Services for a participant on the same day as residential habilitation or Family and Individual Support Services

Any questions regarding the content of this transmittal should be directed to the Chief of Long Term Care, Mental Hygiene Administration, at (410) 402-8477.

Attachment

cc: Mental Hygiene Administration

(c) A child committed to the custody of the Maryland Department of Juvenile Services may not be considered an inmate of a public institution if the child is living:

(i) With the child's parent, caretaker relative, or legal guardian;

(ii) In a group home serving no more than 16 residents; or

(iii) In a privately operated facility under the jurisdiction of the Maryland Department of Juvenile Services.

**C. Institution for Mental Disease (IMD).**

(1) An institutionalized individual younger than 65 years old who is admitted for residence in an institution for mental disease is not eligible for Medical Assistance, unless the applicant or recipient is:

(a) Younger than 22 years old; and

(b) Receiving inpatient psychiatric services for individuals younger than 21 years old.

(2) Inpatient psychiatric services for individuals younger than 21 years old may be provided:

(a) To individuals who are younger than 21 years old; or

(b) Until the earlier of the date that the individual:

(i) No longer requires the services; or

(ii) Is 22 years old, if the individual was receiving the services immediately before reaching 21 years old.

(3) Except as provided in §C(4) of this regulation, when an individual is on conditional release or convalescent leave from an IMD, the individual may not be considered institutionalized in the IMD.

(4) An individual who is receiving inpatient psychiatric services for individuals younger than 21 years old shall be considered an institutionalized individual until the earlier of the date that the individual:

(a) Is unconditionally released from the IMD; or

(b) Is 22 years old.

S. ANTHONY McCANN  
Secretary of Health and Mental Hygiene

**Subtitle 09 MEDICAL CARE PROGRAMS**

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

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

**Notice of Proposed Action**

[07-020-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01, .03 — .06, and .11 and adopt new Regulation .09-1 under COMAR 10.09.46 Home and Community-Based Services Waiver for Adults with Traumatic Brain Injury.

**Statement of Purpose**

The purpose of this action is to clarify certain terms and definitions; add a new waiver service and provider requirements; broaden technical eligibility criteria by adding individuals that qualify from Maryland licensed special hospitals for chronic disease that are CARF accredited for inpatient brain injury rehabilitation; provide specific requirements for demonstrating experience in the provision of services to individuals with traumatic brain injury (TBI). The amendments also require providers to have staff that

are licensed health care professionals with experience in serving individuals with TBI to supervise, train, or consult with other program staff. Additionally, the proposal clarifies licensure requirements for each type of service provided under waiver and requirement for annual staff continuing education program approved by the Mental Hygiene Administration (State operating agency for the waiver).

**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 amendments add a new covered service to the waiver which requires expenditure of general funds (with federal match) by the Department and increases Medicaid revenue to providers.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E+)	\$20,052
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	(+)	\$20,052
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. Two waiver participants will use the new individual support service (ISS) for the months of May and June 2007. Each participant will use 8 hours of ISS at \$22.38 per hour, 7 days per week for 8 weeks (\$179.04 × 7 days per week × 8 weeks × 2 participants = \$20,052).

D. Two waiver participants will use the new individual support service (ISS) for the months of May and June 2007. Each participant will use 8 hours of ISS at \$22.38 per hour, 7 days per week for 8 weeks (\$179.04 × 7 days per week × 8 weeks × 2 participants = \$20,052).

**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 has a positive impact on individuals with disabilities due to addition of new waiver service to assist individuals served by waiver to become more independent. Also, provider requirements increase accountability of providers to have qualified staff that receive annual training in serving individuals with TBI. The proposed action also broadens technical eligibility criteria so that applicants from Maryland licensed special hospitals for chronic disease with CARF accreditation for inpatient brain injury rehabilitation could be determined technically eligible to receive waiver services.

**Opportunity for Public Comment**

Comments may be sent to Michele Phinney, Director, Office of Regulations and Policy Coordination, DHMH, 201 W. Preston St., Room 512, Baltimore, MD 21201, or call 410-767-5623, or fax to 410-333-7687, or email to regs@dnhm.

state.md.us. Comments will be accepted through February 20, 2007. A public hearing has not been scheduled.

**.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) — (2) (text unchanged)

(3) "CARF" means the Rehabilitation Accreditation Commission, a not-for-profit 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.

[(3)] (4) — [(4)] (5) (text unchanged)

[(5)] "Commission on Accreditation of Rehabilitation Facilities (CARF)" means the independent, not for profit 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.]

(6) — (8) (text unchanged)

(9) "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.

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

(12) "Individual support services (ISS)" has the same meaning as "family and individual support services" which is defined in §B(9) of this regulation.

[(11)] (13) — [(20)] (22) (text unchanged)

[(21)] (23) "Traumatic brain injury (TBI)" means [a traumatic or blunt injury to an individual's brain, which is diagnosed in accordance with one of the following codes from the International Classification of Diseases, 9th Revision (ICD-9):

(a) 800.x — 804.x, except for 802;

(b) 850.2 — 850.5; or

(c) 851.x — 854.x.]

an injury to the head, affecting the brain, caused by an external physical force, resulting in residual deficits and disability in the areas of cognition, or physical, emotional, or behavioral functioning, as documented in the medical record.

[(22)] (24) — [(23)] (25) (text unchanged)

**.03 Participant Eligibility.**

A. (text unchanged)

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

(1) — (2) (text unchanged)

(3) Was 22 years old or older when the traumatic brain injury was [received] sustained;

(4) Is receiving:

(a) (text unchanged)

(b) Traumatic brain injury community placement funded by the MHA with all-State funds; [or]

(c) Care in a nursing facility owned and operated by the State or an out-of-State rehabilitation institution funded by the Program; or

(d) Care in a Maryland licensed special hospital for chronic disease accredited by CARF in brain injury inpatient rehabilitation;

(5) — (6) (text unchanged)

(7) Chooses directly, or a legal representative chooses on the individual's behalf, to receive waiver services as an alternative to services in a nursing facility or special hospital, and documents that choice on the consent form for TBI waiver services included in the approved waiver proposal; [and]

(8) Costs the Program no more in the community than what the individual would have cost the Program in the alternative institutional placement at the nursing facility level of care or special hospital level of care, as demonstrated on the waiver plan of care and by the Program's paid claims[.]; and

(9) Uses at least one waiver service in a 12 month period.

C. — E. (text unchanged)

F. Cause for Termination of a Participant's Waiver Enrollment.

(1) A participant shall be disenrolled from the waiver, as of the date established by the Department, if the participant:

(a) — (b) (text unchanged)

(c) Is an inpatient for more than 30 days in a State psychiatric hospital, nursing facility, or intermediate care facility for people with mental retardation or other related conditions;

(d) — (e) (text unchanged)

(2) Reentering the Waiver. If a participant is discharged from the waiver, the same individual may reenter the waiver during the same waiver year, if the individual meets all eligibility requirements of the waiver. [The slot may not be filled by another individual unless it remains vacant at the start of the next waiver year.]

(3) (text unchanged)

**.04 Program Model.**

A. (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 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) Clinically appropriate;]

[(b)] (a) — [(d)] (c) (text unchanged)

C. — D. (text unchanged)

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

General requirements for participation in the Medical Assistance Program as a provider of TBI waiver services are that the provider shall:

A. — C. (text unchanged)

D. Have demonstrated experience in the provision of services to individuals with TBI [;] as evidenced by:

(1) Having:

(a) A history of serving adults with traumatic brain injury for at least the past 2 years;

(b) A program of specialized services appropriate for the needs of individuals with traumatic brain injury; and

(c) Availability of licensed healthcare professionals with experiences in the provision of services to individuals with traumatic brain injury to supervise, train, or consult with program staff regarding the needs of waiver participants; or

(2) Accreditation by CARF for the provision of brain injury services;

[E. Employ appropriately credentialed staff to meet the participants' needs, with specialized training and experience in providing services to individuals with TBI;]

[F.] E. — [G.] F. (text unchanged)

[H. Provide a continuing education program, approved by MHA, to assure that direct care staff have ongoing training in the needs of individuals with TBI;]

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

(1) Types of brain injury;

(2) Behavioral, emotional, cognitive, and physical changes after brain injury; and

(3) Strategies for compensation and remediation of deficits caused by a brain injury;

[I.] H. Provide services in accordance with the requirements of Regulation .04 of this chapter and all applicable federal, State, and local laws and regulations; [and]

[J.] I. Agree to provide and bill MHA 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. Be ineligible to participate in the TBI Waiver if the provider or any of its principals were previously Medicaid providers, or its principals were principals of Medicaid providers that have overpayments that remain due and owing to the Department.

#### **.06 Conditions for Provider Participation — Specific.**

A. Provider of Residential Habilitation or Rehabilitation Services. To provide the services covered under Regulation .07 of this chapter, the provider agency shall:

(1) Operate a community-based program of residential habilitation or rehabilitation services that is[:

(a) Accredited by CARF for the provision of brain injury services; or

(b) Licensed] licensed by the Department's Office of Health Care Quality under COMAR 10.22.08 for the Community Residential Services Program;

(2) — (3) (text unchanged)

B. Provider of Day Habilitation Services. To provide the services covered under Regulation .08 of this chapter, the provider agency shall operate a community-based program of day habilitation services that is [:

(1) Accredited by CARF for the provision of brain injury services; or

(2) Licensed] licensed by the Department's Office of Health Care Quality under COMAR 10.22.07, Vocational and Day Services Program Service Plan.

C. Provider of Supported Employment Services. To provide the services covered under Regulation .09 of this chapter, the provider agency shall operate a community-based program of supported employment services that is:

[(1) Accredited by CARF for the provision of vocational or supported employment services;]

[(2)] (1) — [(3)] (2) (text unchanged)

D. Provider of Individual Support Services. To provide the services covered under Regulation .09-1 of this chapter, the provider agency shall operate a community-based program of individual support services that is licensed by the

Department's Office of Health Care Quality under COMAR 10.22.06 for Family and 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 home, excluding a community-based residential facility.

B. Individual support services shall assist participants to live as independently as possible in their own homes.

C. The provider shall provide services in collaboration with the participant's other TBI waiver services, clinical treatment, and health and medical services.

D. Individual support services shall be provided as pre-authorized by MHA in the waiver plan of care and provided in 1-hour units.

#### **.11 Limitations.**

A. — B. (text unchanged)

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

(1) — (2) (text unchanged)

(3) One unit of supported employment per day; [or]

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

(5) Eight units of individual support services for a date of service.

D. The Program does not cover the following:

(1) — (8) (text unchanged)

(9) Payment for residential habilitation on the same date of service as residential rehabilitation services as defined in COMAR 10.21.22; [or]

(10) Payment for supported employment on the same date of service as mental health vocational supported employment as defined in COMAR 10.21.28[.] ;

(11) Payment for individual support services on the same day as residential habilitation services as defined in Regulation .01B of this chapter; or

(12) Payment for individual support services on the same day as family and individual support services as defined in Regulation .01B of this chapter.

S. ANTHONY McCANN

Secretary of Health and Mental Hygiene

### **Subtitle 09 MEDICAL CARE PROGRAMS**

#### **10.09.54 Home/Community Based Services Waiver for Older Adults**

Authority: Health-General Article, §§2-104(b), 15-103, 15-105, and 15-132, Annotated Code of Maryland

#### **Notice of Proposed Action**

[07-027-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01 — .07, .10, .12, .13, .15, .19, .20, .22, .23, .26, .28, .29, .32 — .34 and repeal in their entirety Regulations .17 and .18 under **COMAR 10.09.54 Home/Community Based Services Waiver for Older Adults.**

#### **Statement of Purpose**

The purpose of this action is to clarify certain provider requirements, add definitions, and establish provider notice requirements to the Department for reasons of closure, relocation, change in ownership, business name, or tax identification number. The proposal adds a requirement for certain