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STATE OF MARYLAND
DHMH
Maryland Department of Health and Mental Hygiene
201 W. Preston Street • Baltimore, Maryland 21201
Robert L. Ehrlich, Jr., Governor - Michael S. Steele, Lt. Governor - Nelson J. Sabatini, Secretary

Office of Health Services
Medical Care Programs

MARYLAND MEDICAL ASSISTANCE PROGRAM
Nursing Home Transmittal No. 197

January 6, 2006

TO: Nursing Home Administrators

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

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

RE: Fiscal Year 2006 Amendments to Nursing Facility Services Regulations and State Plan

The Maryland Medical Assistance Program, working in conjunction with nursing home provider group representatives, established, via the regulatory process, nursing home reimbursement parameters for two distinct periods during Fiscal Year 2006. The first period was July 1, 2005 through August 31, 2005. The second period is the balance of the fiscal year, September 1, 2005 through June 30, 2006.

Regulations in Effect July 1, 2005 Through August 31, 2005

Reimbursement system changes effective July 1, 2005 were based on amendments to COMAR 10.09.10.01, .04, .08, .09, .10, .11, .16, .17, .20, .21 and .23 Nursing Facility Services. The amendments were published in the *Maryland Register* on September 16, 2005.

Specifically, the COMAR amendments:

- Maintained the occupancy standard used to determine providers' allowable costs at the average Statewide occupancy plus 1.5 percent;
- Increased the net capital value rental rate in the Capital cost center from 7.57 percent to 7.82 percent for the period July 1, 2005 – August 31, 2005;
- Improved the manner in which nursing home costs are indexed;

- Changed the implementation date for the recalibration of nursing time based on a work measurement study;
- Updated owner administrator compensation limits;
- Established non-owner administrator compensation limits;
- Established central office personnel compensation limits; and
- Made minor corrections to the definitions and covered services chapters.

Amendments to the Medicaid State Plan

Effective July 1, 2005, amendments to Attachment 4.19B, Supplement 1 of the Medicaid State Plan changed payment for Part A coinsurance days for dually eligible nursing home recipients from the current coinsurance per diem rate established by the Centers for Medicare and Medicaid Services (CMS) to the difference between the amount that Medicare paid and the Medicaid per diem statewide average payment for nursing facility services up to a maximum of the CMS-established coinsurance per diem rate. New billing procedures for Medicare Part A coinsurance are described in Nursing Home Transmittal No.195, dated July 14, 2005.

Regulations in Effect September 1, 2005

Proposed amendments have been adopted, effective September 1, 2005, incorporating the provisions of the emergency amendments with the following changes under COMAR 10.09.10.08, .10 and .11. These changes reflect reimbursement parameters negotiated with the State by nursing home provider groups. These negotiated parameters resulted in a cost neutral revision of amendments originally submitted and published in the *Maryland Register* on August 19, 2005.

These changes impact reimbursement parameters as follows, effective September 1, 2005:

- The ceilings in the Administrative/Routine cost center increase from 112 percent of the median cost to 112.25 percent of the median cost;
- The net capital value rental rate increases from 7.82 percent to 8.22 percent;
- Providers whose nursing service costs are less than the standard per diem Medicaid reimbursement rates may retain 60 percent of the difference between their costs and the rates, subject to a maximum of 3.15 percent of the standard per diem rates.

All of the above parameters (as well as the ceilings in the Other Patient Care cost center of 118 percent of the median cost, and the efficiency allowance of 40 percent in the Administrative/Routine cost center) have a sunset provision of June 30, 2007. The sunset date for the occupancy standard (i.e., average Statewide occupancy plus 1.5 percent) has been removed.

As noted above, a portion of these changes were based on negotiations that took place after the original amendments were published in the *Maryland Register*. Because the subsequent changes are determined to be non-substantive in nature, the Department was required to submit only the portion of the text that changed.

Attached to this transmittal are the amendments effective for the period July 1, 2005 through August 31, 2005, as published in the *Maryland Register*. Also attached are the amendments effective September 1, 2005. In the interest of clarity, the text for this later period shows only those provisions which differ from those in effect during the prior period.

Any questions regarding this transmittal should be directed to the Nursing Home Section of the Division of Long Term Care Services at 410 767-1736.

SJT:seh
Attachments

cc: Nursing Home Liaison Committee

Emergency Action On Regulations

Symbol Key

- Roman type indicates text existing before emergency status was granted.
- *Italic type* indicates new text.
- [Single brackets] indicate deleted text.

Emergency Regulations

Under State Government Article, §10-111(b), Annotated Code of Maryland, an agency may petition the Joint Committee on Administrative, Executive, and Legislative Review (AELR), asking that the usual procedures for adopting regulations be set aside because emergency conditions exist. If the Committee approves the request, the regulations are given emergency status. Emergency status means that the regulations become effective immediately, or at a later time specified by the Committee. After the Committee has granted emergency status, the regulations are published in the next available issue of the Maryland Register. The approval of emergency status may be subject to one or more conditions, including a time limit. During the time the emergency status is in effect, the agency may adopt the regulations through the usual promulgation process. If the agency chooses not to adopt the regulations, the emergency status expires when the time limit on the emergency regulations ends. When emergency status expires, the text of the regulations reverts to its original language.

Title 10
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.10 Nursing Facility Services

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

Notice of Emergency Action

[05-242-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulations **.01, .04, .08, .09, .10, .11, .16, .17, .20, .21,** and **.23** under **COMAR 10.09.10 Nursing Facility Services.**

Emergency status began: July 1, 2005.

Emergency status expires: August 31, 2005.

Comparison to Federal Standards

There is no corresponding federal standard to this emergency action.

Economic Impact on Small Businesses

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

Thirty-eight nursing homes, which qualify as small businesses, are expected to account for 96,575 patient days during the 2-month period of emergency status. At an average decrease in interim payments of $2.98 per day, the impact to small businesses is estimated at $287,794.

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (42) (text unchanged)

(43) "Reimbursement class" means the type of provider for which a separate maximum per diem rate or standard per diem rate will be prepared in the [Administration] *Administrative* and Routine, Other Patient Care, and Nursing Service cost centers based on [facility bed size and] geographic location.

[(44) "Related party of the owner" means that the organization furnishing the services to a significant extent is associated or affiliated with, or has control of, or is controlled by, the owner.]

(44) "Relative of the owner" means the owner's husband, wife, natural parent, natural child, sibling, adopted child, adoptive parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild.

(45) — (56) (text unchanged)

.04 Covered Services.

The Program covers routine care and the following supplies, equipment, and services when appropriate to meet the needs of the recipient:

A. — D. (text unchanged)

E. Administrative days approved by the Department or its designee according to the conditions set forth in Regulation [.16F] *.16E* of this chapter.

F. — AA. (text unchanged)

.08 Rate Calculation — Administrative and Routine Costs.

A. (text unchanged)

B. The final per diem rate for administrative and routine costs in each reimbursement class is the sum of:

(1) (text unchanged)

(2) An efficiency allowance equal to the lesser of 50 percent (40 percent for the period January 1, 2004 through [June 30, 2005] *August 31, 2005*) of the amount by which the allowable per diem costs in §B(1) of this regulation are below the maximum per diem rate for this cost center, or 10 percent of the maximum per diem rate for the cost center.

C. — D. (text unchanged)

E. Maximum per diem rates for administrative and routine costs in each reimbursement class shall be established according to the following:

(1) (text unchanged)

(2) [The] *Effective July 1, 2005, the* provider's current interim per diem costs in §E(1) of this regulation shall be projected to represent indexed current interim per diem costs according to the following procedures:

(a) Determine the monthly value of the indices relating to each item of the cost center for March of the current year and each of the prior [20] *26* months from the sources indicated under Regulation .20 of this chapter[,];

[(b) Index forward the current interim per diem cost items to March of the current year by multiplying each current interim per diem cost item by the ratio of its index value in March of the current year to its index value for the midpoint of the comprehensive care facility's fiscal year for which the current interim per diem costs in §E(1) of this regulation are applicable,

(c) Project the results from §E(2)(b) of this regulation forward by 9 months to December of the current calendar year, the midpoint of the fiscal year for which the new rate is being established, by multiplying each cost item by the mean of the annual percentage changes in its index for each of the previous 9 months and raising the result to the $^{9}/_{12}$ power;]

(b) Calculate the average monthly rate of change for each index for each of the 2 calendar years before the current year;

(c) Calculate the average monthly rate of change for each index for the 12 months ending March of the current year;

(d) Index forward the interim per diem cost items from the most recent desk-reviewed uniform cost reports to December of the current year, which is the midpoint of the fiscal year for which the new rate is being established, by multiplying:

(i) Each cost item by the average monthly rate of change for the calendar year that is 2 years before the current year, by the number of months from the midpoint of the provider's cost report period to the end of the calendar year, if applicable;

(ii) The results by the rate of change for the calendar year that is 1 year before the current year, 12 times or by the number of months from the midpoint of the provider's cost report period to the end of the calendar year, whichever is less; and

(iii) The results by the rate of change calculated in §E(2)(c) of this regulation, 12 times;

(3) — (4) (text unchanged)

(5) The maximum per diem rate for each reimbursement class shall be 114 percent (112 percent for the period January 1, 2004 through [June 30, 2005] *August 31, 2005),* of the lowest aggregate indexed current interim per diem cost, from §E(1) of this regulation, which is equal to the aggregate indexed current interim per diem costs associated with at least 50 percent of the paid Medical Assistance days in the reimbursement class.

F. — G. (text unchanged)

.09 Rate Calculation — Other Patient Care Costs.

A. — D. (text unchanged)

E. Maximum per diem rates for Other Patient Care costs in nursing facilities shall be established using the provisions described in Regulation .08E of this chapter except that 120 percent (118 percent for the period January 1, 2004 through [June 30, 2005] *August 31, 2005)* of the lowest aggregate indexed current interim per diem cost which is equal to the aggregate indexed current interim costs associated with at least 50 percent of the paid Medical Assistance days in the reimbursement class shall be used instead of the percentage expressed in Regulation .08E(5) of this chapter and except that the table of monthly indices listed under Regulation .21 of this chapter shall be used instead of that presented in Regulation .20 of this chapter.

F. — G. (text unchanged)

.10 Rate Calculation — Capital Costs.

A. — F. (text unchanged)

G. The net capital value rental for those facilities which are subject to rate determination under §C of this regulation is determined through the following steps:

(1) — (8) (text unchanged)

(9) The value of net capital from §G(7) of this regulation shall be multiplied by 0.089 [(0.0757 for the period January 1, 2004 through June 30, 2005)] *(0.0782 for the period July 1, 2005 through August 31, 2005)* in order to generate the net capital value rental.

H. — M. (text unchanged)

.11 Rate Calculation — Nursing Service Costs.

A. — B. (text unchanged)

C. The final Medical Assistance reimbursement for nursing services is the lesser of:

(1) (text unchanged)

(2) The sum of the:

(a) Providers allowable Nursing Service costs[,];

(b) Amount of the reimbursements calculated under §B(1) of this regulation multiplied by 0.05 (0.040 for the period January 1, 2004 through [June 30, 2005;] *August 31, 2005);*

(c) Amount of the adjustments resulting from the application of the provisions of §G(9)(e) — (g) of this regulation[,]; and

(d) (text unchanged)

D. — F. (text unchanged)

G. The resident-specific standard reimbursement rates shall be determined by the following steps:

(1) — (6) (text unchanged)

(7) Multiply the hourly wages plus benefits applicable to each reimbursement class by procedure and activity times using the weights associated with each personnel category to determine the nursing service unadjusted standard per diem reimbursement rates for each reimbursement class. Current procedure and activity times and personnel category weights are established by the table under Regulation .25B of this chapter, and shall be recalibrated as follows:

(a) Effective [July 1, 2005] *July 1, 2006*, and at subsequent 7-year intervals, procedure and activity times and personnel category weights shall be recalibrated based on a work measurement study of nursing procedures in nursing homes. The work measurement study sample may not include:

(i) — (v) (text unchanged)

(b) [In any year that procedure] *Procedure* and activity times and personnel category weights [are not recalibrated based upon a work measurement study, times and weights] shall be revised based on annual wage survey data modified to exclude those providers which during the wage survey period met any of the criteria referenced in §G(7)(a) of this regulation.

(8) — (9) (text unchanged)

H. — T. (text unchanged)

.16 Selected Costs — Allowable.

A. — E. (text unchanged)

F. Bed Occupancy.

(1) The per diem cost determined for a provider, or a distinct part thereof in a multilevel facility, shall be calculated at the actual occupancy of the nursing facility beds or at the Statewide average occupancy of nursing facility beds, based on the cost reports used to set the current interim rates, plus 0.5 percent (1.5 percent for the period July 1, 2003 through [June 30, 2005] *August 31, 2005),* whichever is higher, for the calculation of ceilings, current interim

costs, and final costs in the cost centers of Administrative and Routine, and Other Patient Care.

(2) The per diem cost determined for a provider, or a distinct part of it in a multilevel facility, shall be calculated at the actual occupancy of the nursing facility beds or at the Statewide average occupancy of nursing facility beds, based on the cost reports used to set the current interim rates, plus 0.5 percent (1.5 percent for the period July 1, 2003 through [June 30, 2005] *August 31, 2005),* whichever is higher, for all Capital cost items exclusive of the net capital value rental.

(3) The per diem rate determined for a provider, or a distinct part of it in a multilevel facility, shall be calculated at the actual occupancy of the nursing facility beds plus 95 percent of licensed capacity of the non-nursing facility beds, or at the Statewide average occupancy of nursing facility beds, based on the cost reports used to set the current interim rates, plus 0.5 percent (1.5 percent for the period July 1, 2003 through [June 30, 2005] *August 31, 2005),* plus 95 percent of licensed capacity of the non-nursing facility beds, whichever is higher, for the net capital value rental.

(4) — (8) (text unchanged)

.17 Selected Costs — Not Allowable.

The following costs are not allowable in establishing interim and final per diem payment rates:

A. — L. (text unchanged)

M. Administrator compensation for any owner, or [related party] *relative* of the owner, in excess of the [maximum compensation for the appropriate licensed bed size category as reflected in the 1974 health Care Financing Administration (HCFA) survey for the Philadelphia region in accordance with the Medicare Provider Reimbursement Manual, HCFA Publication 15-1, §905, updated from 1974 on a calendar year basis by the percentage of the annual increase or decrease in the All Items category of the Consumer Price Index for All Urban Consumers (CPI-U);] *limits established based on the results of the 2001 nonowner administrator compensation survey, trended forward based on the percentage of the annual increase or decrease in the All Items category of the Consumer Price Index for All Urban Consumers (CPI-U), as follows:*

(1) For facilities with 1 — 74 beds, the media compensation from that group;

(2) For facilities with 75 — 199 beds, the median compensation from that group;

(3) For facilities with 200 or more beds, the median compensation from all facilities with 200 or more beds;

N. Compensation for any administrator, who is not an owner, or relative of the owner, in excess of the limits established based on the results of the 2001 nonowner administrator compensation survey, trended forward based on the percentage of the annual increase or decrease in the All Items category of the Consumer Price Index for All Urban Consumers (CPI-U), as follows:

(1) For facilities with 1 — 74 beds, the 75th percentile compensation from that group plus 15 percent;

(2) For facilities with 75 — 199 beds, the 75th percentile compensation from that group plus 15 percent;

(3) For facilities with 200 — 299 beds, the 75th percentile compensation from all facilities with 200 or more beds plus 15 percent;

(4) For facilities with 300 or more beds, 15 percent more than the limit established in §N(3) of this regulation for the facilities with 200 — 299 beds;

[N.] *O.* Assistant administrator compensation for any owner, or [related party] *relative* of the owner, in excess of 80 percent of the maximum administrator compensation for the facility established in accordance with §M of this regulation;

P. Compensation for any assistant administrator, who is not an owner, or relative of the owner, in excess of 80 percent of the maximum administrator compensation for the facility established in accordance with §N of this regulation;

Q. Central office employee compensation for any owner, or relative of the owner, in excess of the amount established in accordance with §M of this regulation, for the bed size category determined as the sum of beds if multiple facilities, plus 10 percent;

R. Compensation for any central office employee, who is not an owner, or relative of the owner, in excess of the amount established in accordance with §N of this regulation, for the bed size category determined as the sum of beds if multiple facilities, plus 10 percent;

[O.] *S.* — [R.] *V.* (text unchanged)

.20 Table of Indices — Administrative and Routine Costs.

Cost Category	Associated Price Index
Salaries [and], wages *and employee benefits* — Administrative Medical records Inservice training	Consumer Price Index for All Urban Consumers (CPI-U), All Items, Baltimore, from U.S. Department of Labor, Bureau of Labor Statistics, CPI Detailed Report, Table 16.
[Administrative employee benefits]	[Effective for services rendered on or after July 1, 1993, indexing is based upon the ratio of total benefits to total wages for administrative and office personnel from providers' desk-reviewed annual cost reports. The proportional change in the ratio is converted to a proportional change in benefits by taking the sum of the proportional ratio change, the proportional salary index change, and the product of the two.]
Administrative supplies — Auto loans (text unchanged)	
Salaries [and], wages, *and employee benefits* — Dietary Laundry Housekeeping Plant operations and maintenance Contracted services — Dietary Laundry Housekeeping	CPI-U, All Items, Baltimore, from CPI Detailed Report, Table 16.

Cost Category	Associated Price Index
[Routine employee benefits]	[Effective for services rendered on or after July 1, 1993, indexing is based upon the ratio of total benefits to total wages for dietary, laundry, housekeeping, and maintenance personnel from providers' desk-reviewed annual cost reports. The proportional change in the ratio is converted to a proportional change in benefits by taking the sum of the proportional ratio change, the proportional salary index change, and the product of the two.]
Routine supplies — Utilities (text unchanged	

.21 Table of Indices — Other Patient Care Costs.

Cost Category	Associated Price Index
Salaries [and], wages, *and employee benefits* — Physician care Patient care consultant Contracted services — Physician care Patient care consultant	CPI-U, physicians' services component from CPI Detailed Report, Table 4.
Salaries [and], wages, *and employee benefits* — All remaining other patient care Contracted services — All remaining other patient care	CPI-U, All Items, Baltimore, from CPI Detailed Report, Table 16.
[Employee benefits]	[Effective for services rendered on or after July 1, 1993, indexing is based upon the ratio of total benefits to total wages for salaried other patient care personnel from providers' desk-reviewed annual cost reports. The proportional change in the ratio is converted to a proportional change in benefits by taking the sum of the proportional ratio change, the proportional salary index change, and the product of the two.]
Supplies—Raw food (text unchanged)	

.23 Table of Indices — Nursing Service Costs.

Cost Category	Associated Price Index
Salaries [and], wages, *and employee benefits* — Registered nurses/ directors of nursing Licensed practical nurses Nurse aides/certified medication aides	Mean hourly mean wages for nursing personnel in Maryland Medicaid nursing home providers for each reimbursement class from the Medical Care Programs Annual Wage Survey.
[Employee benefits]	[Effective for services rendered on or after July 1, 1993, indexing is based upon the ratio of total benefits to total wages for nursing personnel from providers' desk-reviewed annual cost reports. The proportional change in the ratio is converted to a proportional change in benefits by taking the sum of the proportional change in the ratio, the proportional salary index change, and the product of the two.]
Supplies — Adjustments not related to specific accounts (text unchanged)	

S. ANTHONY McCANN
Secretary of Health and Mental Hygiene

Regulation Changes Effective September 1, 2005

.08 Rate Calculation—Administrative and Routine Costs.

B. (2) An efficiency allowance equal to the lessor of 50 percent (40 percent for the period *September 1, 2005 through June 30, 2007)* of the amount by which the allowable per diem costs in §B(1) of this regulation are below the maximum per diem rate for this cost center, or 10 percent of the maximum per diem rate for the cost center.

E. (5) The maximum per diem rate for each reimbursement class shall be 114 percent (*112.25* percent for the period *September 1, 2005 through June 30, 2007*), of the lowest aggregate indexed current interim per diem cost, from §E(1) of this regulation, which is equal to the aggregate indexed current interim per diem costs associated with at least 50 percent of the paid Medical Assistance days in the reimbursement class.

.09 Rate Calculation—Other Patient Care Costs.

E. Maximum per diem rates for Other Patient Care costs in nursing facilities shall be established using the provisions described in Regulation .08E of this chapter except that 120 percent (118 percent for the period *September 1, 2005 through June 30, 2007*) of the lowest aggregate indexed current interim per diem cost which is equal to the aggregate indexed current interim costs associated with at least 50 percent of the paid Medical Assistance days in the reimbursement class shall be used instead of the percentage expressed in Regulation .08E(5) of this chapter and except that the table of monthly indices listed under Regulation .21 of this chapter shall be used instead of that presented in Regulation .20 of this chapter.

.10 Rate Calculation—Capital Costs.

G. (9) The value of net capital from §G(7) of this regulation shall be multiplied by 0.089 (*0.0822* for the period *September 1, 2005 through June 30, 2007)* in order to generate the net capital value rental.

.11 Rate Calculation—Nursing Service Costs.

C. (2) (b) *One hundred percent (60 percent for the period September 1, 2005 through June 30, 2007) of the difference between the amount of the reimbursements calculated under §B(1) of this regulation and the amount of the costs under §C(2)(a) of this regulation, subject to a maximum* of the reimbursements calculated under §B(1) of this regulation multiplied by 0.05 (*0.0315* for the period *September 1, 2005 through June 30, 2007*);

.16 Selected Costs—Allowable.

F. Bed Occupancy.

(1) *For services on or after September 1, 2005, the* per diem cost determined for a provider, or a distinct part thereof in a multilevel facility, shall be calculated at the actual occupancy of the nursing facility beds or at the Statewide average occupancy of nursing facility beds, based on the cost reports used to set the current interim rates, plus *1.5* percent, whichever is higher, for the calculation of ceilings, current interim costs, and final costs in the cost centers of Administrative and Routine, and Other Patient Care.

(2) *For services on or after September 1, 2005, the* per diem cost determined for a provider, or a distinct part of it in a multilevel facility, shall be calculated at the actual occupancy of the nursing facility beds or at the Statewide average occupancy of nursing facility beds, based on the cost reports used to set the current interim rates, plus *1.5* percent, whichever is higher, for all Capital cost items exclusive of the net capital value rental.

(3) *For services on or after September 1, 2005, the* per diem rate determined for a provider, or a distinct part of it in a multilevel facility, shall be calculated at the actual occupancy of the nursing facility beds plus 95 percent of licensed capacity of the non-nursing facility beds, or at the Statewide average occupancy of nursing facility beds, based on the cost reports used to set the current interim rates, plus *1.5* percent, plus 95 percent of licensed capacity of the non-nursing facility beds, whichever is higher, for the net capital value rental.

(4)—(8) (text unchanged)