

**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****Home Health Transmittal No. 46****July 28, 2006**

**TO:** Home Health Agencies

**FROM:** Mark A. Leeds, Director  
Long Term Care and Community Support Services

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

**RE:** Proposed Amendments to COMAR 10.09.04 Home Health Services

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**Action:**  
Proposed Regulations

**PROPOSED EFFECTIVE DATE:**  
July 1, 2006

**WRITTEN COMMENTS TO:**  
Michele Phinney  
201 West Preston Street, Room 538  
Baltimore, Maryland 21201  
FAX: 410-767-6843 or call  
410-767-6499 or  
1-877-4MD- DHMH extension 6499

**PROGRAM CONTACT PERSON:**  
Nancy Cutair, Division Chief  
Division of Nursing Services  
410-767-1448 or  
1-877-4MD-DHMH extension 1448

**Comment Period Expires: August 21, 2006**

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The Maryland Medical Assistance Program is promulgating proposed amendments to Regulations .01, .04 — .07 and removal of .08—.09 under COMAR 10.09.04 Home Health Services.

These amendments adjust the payment methodology and eliminate all annual cost report requirements for home health services. Annual rate adjustments will become effective on the same date as Medicare's rate adjustment (currently January). The amendments will also add new and clarify existing definitions, add a newborn's early discharge assessment under covered services, establish limitations and specify reimbursement for this coverage. These proposed amendments, as published in the Maryland Register, are attached. Any questions regarding this transmittal should be directed to the Home Health Staff Specialist at (410) 767-1448.

Attachment



~~(4) Suspend or revoke the license if the Secretary determines that the licensee has violated a condition or requirement of an imposed sanction. **[[[.11]]] Direct the licensee to establish certain conditions for continued operation, including time limits for compliance.**~~

~~[[[.11]]] .10 (originally proposed text unchanged)~~

S. ANTHONY McCANN  
Secretary of Health and Mental Hygiene

**Subtitle 09 MEDICAL CARE PROGRAMS**

**10.09.04 Home Health Services**

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

**Notice of Proposed Action**

[06-184-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01 and .04 — .07, repeal Regulations .08 and .09, and recodify Regulations .10 — .13 to be Regulations .08 — .11 under COMAR 10.09.04 Home Health Services.

**Statement of Purpose**

The purpose of this action is to: (1) amend certain terms; (2) add new definitions for benefits; (3) provide for a newborn's early discharge assessment under covered services; (4) add limitations to the coverage of a newborn's early discharge assessment; (5) adjust the payment methodology; (6) eliminate all annual cost report requirements; and (7) specify reimbursement for the newborn early discharge assessment visit.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The Department proposes to change the annual adjustment of home health services rates from the beginning of the State's fiscal year to the effective date on which the Centers for Medicare and Medicaid Services (CMS) adjusts Medicare rates, by the same factor used by CMS in adjusting Medicare's prospective payment system rates limited to a maximum of 5 percent. In addition, the Department proposes to add a newborn's early discharge assessment as a covered service.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency: DHHM	(E-)	Undeterminable
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups: Home Health Agency Providers	(-)	Undeterminable
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 Department will save \$32,290 for the first 6 months of FY 2007 by delaying the rate change effective date from July 1, 2006 to the effective date on which CMS adjusts its Medicare home health rates (January 1). This figure was calculated by using the fiscal year 2005 actual expenditures for home health (\$2,690,829) and adjusting it by the average rate adjustment factor of the last two fiscal years (2.4 percent) divided by 2 (for 1/2 year). Calculation is as follows: \$2,690,829 × .024 = \$64,580 year ÷ 2 = \$32,290. Fifty percent of the expected reduction is State General Funds and 50 percent is federal funds. Almost all of these savings will be realized during a requested period of emergency status, prior to adoption of the proposed amendment on a permanent basis. The addition of a newborn's early discharge assessment as a covered service will not result in an additional expense to the Medicaid Program nor increase revenue to home health agencies. This is because the newborn early discharge assessment had been provided by these agencies under COMAR 10.09.53 which is being amended to delete this as a covered service.

D. The providers of home health services will experience a delay in the rate increase as noted in IIIA, above.

**Economic Impact on Small Businesses**

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

Changing the effective date of the rate adjustment from the beginning of the State's fiscal year to the effective date the Centers for Medicare and Medicaid Services changes its Medicare rates will result in a delay in the provider's payment adjustment.

**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@dhhm.state.md.us. Comments will be accepted through August 21, 2006.

**.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) — (2) (text unchanged)

[(3) "Appropriate" means an effective service or services that can be provided, taking into consideration the particular circumstances of the recipient and the relative cost of alternative services which could be used for the same purpose.]

[(4)] (3) — [(6)] (5) (text unchanged)

[(7) "Department's fiscal year" means the period that begins on July 1 of any given calendar year and ends on June 30 of the next calendar year.]

[(8)] (6) — [(14)] (12) (text unchanged)

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

(a) Directly related to diagnostic, preventive, curative, palliative, rehabilitative, or ameliorative 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 consumer, family, or provider.*

[(15)] (14) — [(17)] (16) (text unchanged)

[(18) "Necessary" means directly related to diagnostic, preventive, curative, palliative, or rehabilitative treatment.]

(17) *"Newborn early discharge assessment" means a visit to the newborn infant and postpartum mother to observe and assess the health status of both the newborn and the mother.*

[(19)] (18) — [(32)] (31) (text unchanged)

#### .04 Covered Services.

A. — C. (text unchanged)

D. *The Program covers a provider's newborn early discharge assessment visit to a recipient when the assessment:*

(1) *Is 4 hours or less;*

(2) *Is ordered by a physician, certified nurse midwife, or nurse practitioner;*

(3) *Is delivered to a recipient and a recipient's mother who have been discharged within 48 hours after delivery;*

(4) *Occurs within 36 hours after discharge;*

(5) *Includes:*

(a) *An evaluation of the presence of immediate problems of dehydration, sepsis, infection, jaundice, respiratory distress, cardiac distress, or other adverse physical symptoms of the infant;*

(b) *An evaluation of the presence of immediate problems of dehydration, sepsis, infection, bleeding, pain, or other adverse physical symptoms of the mother;*

(c) *Collection of a blood specimen for newborn screening as described in COMAR 10.52.12.02;*

(d) *An evaluation of risk factors that identify biological factors for the infant, maternal health behaviors, psychosocial environmental problems, or any other concerns or problems perceived by the nurse that are identified on a form specified by the Department; and*

(e) *Referrals for any continuing health care services, including services for postpartum women and children under COMAR 10.09.38.04, skilled nursing services under COMAR 10.09.53, or home health services under this chapter; and*

(6) *Is conducted by a registered nurse.*

#### .05 Limitations.

The Program does not cover the following:

A. — S. (text unchanged).

T. *Services specified in Regulation .04 of this chapter which duplicate or supplant services performed by the recipient and those services rendered by the recipient's family; [or]*

U. *Services which are covered by other insurance or entitlement programs[.];*

V. *Newborn early discharge services provided more than one time to a recipient; and*

W. *A newborn early discharge visit provided on the same day as services billed under COMAR 10.09.38 or another skilled nursing visit billed under this chapter.*

#### .06 Preauthorization Requirements.

A. — B. (text unchanged)

C. *Preauthorization may be:*

(1) *Issued by telephone when the provider submits to the Department or its designee adequate documentation demonstrating that the service or services are medically necessary [and appropriate as defined in Regulation .01 of this chapter].*

(2) (text unchanged)

#### .07 Payment Procedures.

A. — D. (text unchanged)

E. *Payment Rates.*

(1) — (2) (text unchanged)

[(3) *The Department shall pay for skilled nursing, home health aide, physical therapy, occupational therapy, and speech therapy services according to a fee schedule as follows:*

(a) *For providers located in the following geographic areas, rates shall be established in accordance with Medicare's cost-per-visit limitation for each service at the rate set effective for Medicare cost reporting periods beginning on or after October 1, 1997, as published in the Federal Register:*

(i) *Baltimore Urban Area — Anne Arundel County, Baltimore City, Baltimore County, Carroll County, Harford County, Howard County, and Queen Anne's County;*

(ii) *Washington D.C. Urban Area — Calvert County, Charles County, Frederick County, Montgomery County, Prince George's County, and Washington, D.C.;*

(iii) *Wilmington Urban Area — Cecil County; and*

(iv) *Cumberland Urban Area — Allegany County;*

(b) *For providers located and serving recipients in the following geographic areas, rates shall be established in accordance with Northern Virginia's Medicaid rate for each service at the rate set effective January 1, 2000:*

(i) *Garrett County; and*

(ii) *Washington County;*

(c) *For providers located and serving recipients in the following geographic areas, rates shall be established in accordance with Delaware's First Choice Medicaid rate for each service, except home health aide service, for which payment shall be at a rate of \$45.24 per visit, at the rate set effective July 1, 1999:*

(i) *Somerset County;*

(ii) *Wicomico County; and*

(iii) *Worcester County; and*

(d) *For providers located and serving recipients in the following geographic areas, rates shall be established in accordance with Delaware's Kent General Hospital's Medicaid rate for each service, except home health aide service, for which payment is \$45.24 per visit, at the rate set effective July 1, 1999:*

(i) *Caroline County;*

(ii) *Dorchester County;*

(iii) *Kent County;*

(iv) *St. Mary's County; and*

(v) *Talbot County.]*

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

[(6) *Effective July 1, 2001, the fee schedule rates shall be adjusted by the Health Care Financing Administration's home health market basket index for federal fiscal year ending September 30, 2001. These rates shall be applicable for the remainder of the State's fiscal year.]*

[(7) (5) *Effective July 1 [2002] 2006, the fee schedule rates shall be adjusted annually by the [projected home health market basket index as published in the Federal Register less any reductions to the index used by the Health Care Financing Administration] same factor used by the Centers for Medicare and Medicaid Services in updating Medicare's prospective payment system rates. The annual*

fee schedule rate adjustment shall be limited to a maximum of 5 percent and be effective the date on which Medicare's rate changes are implemented. [These rates shall be applicable for the State's entire fiscal year.]

F. — G. (text unchanged)

H. Payment to a provider of newborn early discharge services may not exceed the rate for one skilled nursing visit.

S. ANTHONY McCANN
Secretary 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 Proposed Action

[06-185-P]

The Secretary of the Department of Health and Mental Hygiene proposes to amend Regulations .01, .03, .04, and .07 under COMAR 10.09.20 Personal Care Services.

Statement of Purpose

The purpose of this action is to, consistent with fiscal year 2007 budget, increase the Personal Care Services Program's rate of payment effective July 1, 2006, and include language which will allow for an annual rate adjustment each fiscal year thereafter. Nonsubstantive technical corrections to regulatory language are proposed as well.

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 2007 includes \$2,084,640 to increase rates paid to certain providers of personal care services. Approximately 1/2 of these funds will be expended during the remainder of FY 2007.

II. Types of Economic Impact.

Table with 3 columns: Description, Revenue/Expenditure/Benefit/Cost, and Magnitude. Rows include: A. On issuing agency: Medical Assistance Program; B. On other State agencies; C. On local governments; D. On regulated industries or trade groups: Personal care providers; E. On other industries or trade groups; F. Direct and indirect effects on public.

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

A. The Program will pay to providers increased rates for current Level 1, Level 2, Level 2B, and Level 3 personal care services. Level 1 rate will increase from \$11 per day to \$12 per day. Level 2 rates will increase from \$22 per day to \$24 per day. Level 2B rates will increase from \$30 per day to \$36 per day. Level 3 rates will increase from \$50 per day to \$52 per day. With a projected 519,150 days of services, the total fiscal impact will be approximately \$1,042,320 during the remainder of the State fiscal year. 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 \$1,042,320 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 an impact on individuals with disabilities as follows:

The proposed action will affect rates paid to providers of services to individuals with disabilities. Rate increases are intended to improve access and availability of services.

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@dhmh.state.md.us. Comments will be accepted through August 21, 2006.

.01 Definitions.

- A. (text unchanged)
B. Terms Defined.
(1) — (7) (text unchanged)
(8) "Family member" means a spouse, child, parent, or sibling of the recipient, including the "in-law" status and "step" status of these relationships or any legally responsible individual.

[(8-1)] (9) — [(9-1)] (11) (text unchanged)
[(10)] (12) "Level 1 personal care" means those services, described in Regulation .04B and C of this chapter, that would be required by a recipient who has been preauthorized to receive personal care, and for whom the necessity of Level 2, Level 2B, or Level 3[, or Level 4] personal care services has not been documented.

[(11)] (13) — [(15)] (17) (text unchanged)
[(16)] "Orders" means written instructions from a physician for medically necessary services which are appropriate to meet the needs of the recipient.]

[(17)] (18) — [(24)] (25) (text unchanged)
[(25)] (26) "Provider" means a case monitoring agency, personal care provider, or personal care provider agency[, or Level 4 personal care provider agency] which has an agreement with the Department to provide covered services and which is identified as a Program provider by the issuance of an individual account number.

[(26)] (27) — [(31)] (32) (text unchanged)

.03 Conditions for Participation.

A. To Participate in the Program, the personal care provider shall

- (1) — (11) (text unchanged)
(12) Submit to a criminal background investigation conducted by: