

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Independent Agencies  
Department of Disabilities  
(DLS Control No. 14-085)**

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**Overview and Legal and Fiscal Impact**

The proposed regulations will allow additional individuals to be eligible for the Attendant Care Program, which helps individuals with disabilities to maintain or gain employment, or avoid confinement in a nursing facility.

There is a potential issue of legal concern.

There is no fiscal impact on State or local agencies.

**Regulations of COMAR Affected**

**Independent Agencies: Department of Disabilities:**

Program Services: Attendant Care Program: COMAR 14.11.01.02-.04, .09, and .13

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**Legal Analysis**

**Summary of Regulations**

Under COMAR 14.01.11.01 changes are made to several definitions in the Attendant Care Program. A provision is added to the definition of “attendant care agreement” which would require the agreement to be signed at the time of initial enrollment and if circumstances change for the individual or the program. Under subsection B(6), the definition of “attendant care services” is altered in two ways. First, the determination of services needed by an individual is changed so that the determination is made by an attending physician or a certified nurse practitioner. Under the current provision, a registered nurse may determine what services are needed. The second change is that the current list of services is split into two categories of activities of daily living and instrumental activities of daily living. Other definitions are altered to reflect this change. A new definition of “review of financial eligibility” is added<sup>1</sup>. The definition of “time sheet” is altered to require start and stop times for services being rendered.

COMAR 14.01.11.03 establishes the eligibility criteria for participants in the program. Subsection A(3) is altered so that a certified nurse practitioner may determine an applicant has a severe chronic or permanent physical disability. A new provision allows for eligibility review if

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<sup>1</sup> As submitted, the new defined term “review of financial eligibility” did not appear in the proposed changes. Corrections being submitted by the Department of Disabilities should make changes so that the term is used under COMAR 14.01.11.04B.

an applicant's condition is likely to improve. The financial eligibility cutoff is raised from an annual adjusted gross income greater than \$53,522 to \$119,999. Section B is altered to require the program director to initiate an annual review of each participant's eligibility at least once every 12 months from the completion of the last review.

New Sections C, D, and E<sup>2</sup> are added under COMAR 14.01.11.04, which limits service and participation in the program. Under Section B, the programs demographic is required to be at least 50% participants who are employed, actively seeking employment, or are attending an institution of postsecondary, higher education, or apprenticeship training. The remaining participants need to be at risk of placement in a nursing home or are a resident of a nursing facility who is seeking transition into the community. The new Section C requires the program director to achieve the demographic required in Section B without a waiver from the Secretary of Disabilities. The new Section D imposes waiting periods on applicants found ineligible or properly disenrolled from the program. The new subsection E requires applicants to the program to be encouraged to apply for Medical Assistance.

COMAR 14.01.11.09A(7) is altered to require signed copies of attendant care agreements from a program participant at the initial eligibility determination and at the request of the Department at any time thereafter.

COMAR 14.01.11.13 establishes the sliding scale for participant reimbursements. Section C is changed so that a participant who is in the working demographic under Regulation .04B(1) shall pay a minimum of 2% of the cost of attendant care services. A new Section D is added requiring participants in the nursing demographic under Regulation .04B(2) shall pay a minimum of 5% of the cost of attendant care services.

## Legal Issue

The proposed regulations under COMAR 14.11.01.02B(6) alter the definition of "attendant care services" from services "which are certified as necessary by an attending physician or by a registered nurse" to services "which are deemed as necessary by an attending physician or by a certified nurse practitioner." The current regulatory provision is almost word-for-word the language found under § 7-401(b) of the Human Services Article, which is the statutory definition for "attendant care services."

The statute only requires that a *registered nurse* certify that the services are necessary, while the proposed change requires that a *certified nurse practitioner serving the individual* deem the services as necessary. A certified nurse practitioner is a registered nurse, and it may be the case that only certified nurse practitioners are making the determination that attendant care services are needed.<sup>3</sup> However, the statute indicates that a *registered nurse* may certify the need for services, and the proposed change limiting the determination of need to *certified nurse practitioners* is inconsistent with the current statute. If there are program participants with certifications for services from a registered nurse who is not a certified nurse practitioner, the

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<sup>2</sup> As submitted, only Sections C and D were added. Due to corrections submitted by the department, the content will be organized under Sections C, D, and E.

<sup>3</sup> § 7-404(a)(2) provides that an attending physician *or certified nurse practitioner* may certify that an individual is at risk of needing placement in a nursing facility if attendant care services are not received in the community. This provision could be used to infer that the determination of need should be with an attending physician or a certified nurse practitioner. However, the certification under § 7-404(a)(2)(ii) is for eligibility for receiving financial assistance, and not the determination of what services are actually needed by an individual.

proposed change would limit the universe of providers that can determine the services which program participants need.

### **Statutory Authority and Legislative Intent**

The Department of Disabilities cites §§ 7-401 through 7-406 of the Human Services Article as authority for the regulations. Section 7-401 provides the defined terms for the Attendant Care Program. Section § 7-401(b) defines “attendant care services” as services that are “certified as necessary by an attending physician or by a registered nurse.” Section 7-402 establishes the program and allows the department to establish a sliding payment scale for the categories of participants established under § 7-404. Section 7-404 outlines the eligibility criteria for participation in the Attendant Care Program, establishes that at least 50% of participants must be employed, seeking employment, or attending postsecondary or higher education, and also requires the department to limit participation in the program to the number of individuals who can be served with the funds appropriated in the State budget. Section 7-406 requires the department to adopt regulations for the operation of the program.

The statutory authority is correct and complete. Except as discussed under the “Legal Issue” section of this document, the proposed regulations comply with the legislative intent of the law.

### **Technical Corrections and Special Notes**

The department has submitted corrections for certain provisions which are technical and clarifying in nature. These are discussed under footnotes 1 and 2. Additional corrections are the removal of the use of “and/or” in various provisions, and an internal reference for clarity under Regulation .04C.

### **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

### **Agency Estimate of Projected Fiscal Impact**

The Department of Disabilities advises that the regulations have no material fiscal impact because the number of eligible individuals served by the Attendant Care Program is limited by the funds appropriated in the State budget. Further, the department advises that it does not anticipate that the regulations will significantly impact the number of qualified applicants. Thus, the regulations do not meaningfully impact the department’s workload or aggregate spending on the program. The Department of Legislative Services concurs.

### **Impact on Budget**

There is no impact on the State operating or capital budget.

## **Agency Estimate of Projected Small Business Impact**

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

### **Contact Information**

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