

MARYLAND REGISTER

**Proposed Action on Regulations**

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	06/17/2014	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

**1. Desired date of publication in Maryland Register: 7/25/2014**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

10 09 10 07, .07-1 and .17

**3. Name of Promulgating Authority**

Department of Health and Mental Hygiene

**4. Name of Regulations Coordinator Telephone Number**  
Michele Phinney 410-767-5623

**Mailing Address**

201 W. Preston Street

**City State Zip Code**  
Baltimore MD 21201

**Email**  
michele.phinney@maryland.gov

**5. Name of Person to Call About this Document Telephone No.**  
Michael Cimmino 410-767-0579

**Email Address**  
michael.cimmino@maryland.gov

**6. Check applicable items:**  
 New Regulations

**X- Amendments to Existing Regulations**

Date when existing text was downloaded from COMAR online: April 10, 2014 and April 16, 2014.

- Repeal of Existing Regulations
- Recodification
- Incorporation by Reference of Documents Requiring DSD Approval
- Reproposal of Substantively Different Text:

: Md. R  
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

**7. Is there emergency text which is identical to this proposal:**

Yes **X-** No

**8. Incorporation by Reference**

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

**9. Public Body - Open Meeting**

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

**10. Children's Environmental Health and Protection**

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

**11. Certificate of Authorized Officer**

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by David Lapp, Assistant Attorney General, (telephone #410-767-5292) on May 6, 2014. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Joshua M. Sharfstein, M.D.

**Title**

Secretary

**Date**

June 17, 2014

**Telephone No.**

410-767-6500

**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 Proposed Action**

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The Secretary of Health and Mental Hygiene proposes to amend Regulations .07, .07-1, and .17 under COMAR 10.09.10 Nursing Facility Services.

**Statement of Purpose**

The purpose of this action is to :

- (1) Extend the cost threshold of 10 percent for providers to request an interim rate change due to higher costs in the Administrative/Routine, Other Patient Care and Capital cost centers to December 31, 2014;
- (2) Maintain current reimbursement rates for nursing home providers for the period July 1, 2014 -December 31, 2014 consistent with the Program's budget for Fiscal Year 2015;
- (3) Extend the Interim Working Capital Fund for one year from May 1, 2014 to May 1, 2015; and
- (4) Classify costs incurred for legal services for establishing financial eligibility or to obtain representation or guardianship of nursing facility residents or their property as nonallowable costs.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.**

Maintaining current reimbursement rates for nursing home providers for the 6-month period July 1, 2014 through December 31, 2014 will result in a decrease of \$46,801,056 in forecasted payments. Extending the Interim Working Capital fund for 1 year will result in \$112,413 in lost interest income to the State.

<b>II. Types of Economic Impact.</b>	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(E-)	\$46,801,056
(2)	(R-)	\$112,413

B. On other State agencies: NONE  
 C. On local governments: NONE

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)	\$46,688,643
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(1). Maintaining current reimbursement rates for nursing home providers will eliminate a forecasted \$17.29 per day increase in nursing home rates for 2,706,828 projected days of care for the 6-month period July 1, 2014 – December 31, 2014, a total of \$46,801,056 in decreased expenditures.

A(2). The maximum outstanding Interim Working Capital fund is projected to be \$11,207,660 at 1.003 percent interest, resulting in \$112,413 in lost interest revenue to the State for 1 year.

D. Maintaining current reimbursement rates for nursing home providers will eliminate a forecasted \$17.29 per day increase in nursing home rates for 2,706,828 projected days of care for the 6-month period July 1, 2014 – December 31, 2014, a reduction of \$46,801,056. Interim Working Capital funds received by providers must be returned to the State, but providers will benefit by not incurring an interest expense of \$112,413 during the period that funds are held. The net cost to nursing home providers therefore totals \$46,688,643.

**Economic Impact on Small Businesses**

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

Thirty-eight nursing homes, which qualify as small businesses, are expected to account for 386,500 Medicaid days during the period July 1, 2014 – December 31, 2014. A loss in forecasted revenue of \$17.29 per day will result in \$6,682,585 in loss revenue during the six-month period.

Savings in interest expense related to the Interim Working Capital fund will have a minimum impact on nursing homes that qualify as 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 West Preston Street, Room 512, or call 410-767-6499, TTY:800-735-2258, or email to [dhmh.regs@maryland.gov](mailto:dhmh.regs@maryland.gov), or fax to 410-767-6483. Comments will be accepted through August 25, 2014. A public hearing has not been scheduled.

### Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 2015
- B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?
- C. If 'yes', state whether general, special (exact name), or federal funds will be used:
- D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:
- E. If these regulations have no economic impact under Part A, indicate reason briefly:
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.
- G. Small Business Worksheet:

Attached Document:

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## 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

*10.09.10.07 (April 10, 2014)*

#### **.07 Payment Procedures — Maryland Facilities.**

A. The Department shall pay the provider the sum of the rates calculated under the provisions of Regulations .08—.11 of this chapter. All interim per diem rates shall remain unchanged during the rate year unless documentation is submitted by the provider to the Department or its designee to demonstrate that a recalculation of the provider's interim per diem rate for the Administrative and Routine, Other Patient Care, or Capital cost center would change by 5 percent

(10 percent during the period July 1, 2009 through [June 30,] *December 31, 2014*), or more or unless otherwise authorized by the Department. A provider may request an interim rate change in the Nursing Service cost center by submitting documentation to the Department or its designee to demonstrate that a recalculation of the provider's interim per diem rate would change by 2 percent or more. For the cost of power wheelchairs or power wheelchair repairs, there is no requirement of a percent change in the Capital cost center. The revised interim per diem rates shall be applicable from the first whole month after submission of the request for revision to the end of the rate year. A provider may not request an interim rate change more than two times during the same rate year. Interim and maximum per diem rates shall be increased or decreased as necessary to the extent these adjustments are required by State law or Title XIX of the Social Security Act.

B.—C-2. (text unchanged)

*C-3. With the exception of interim rate changes allowed in accordance with §A of this regulation for services provided during the period July 1, 2014 through December 31, 2014, interim and maximum reimbursement rates shall remain unchanged from those in effect for the period July 1, 2013 through June 30, 2014.*

D. (text unchanged)

*10.09.10.07-1 (April 16, 2014)*

**.07-1 Interim Working Capital Fund.**

A.—H. (text unchanged)

I. The Interim Working Capital Fund expires on May 1, [2014] *2015*. Providers shall repay all outstanding funds to the Department by May 1, [2014] *2015*. The Department may grant repayment extensions of not longer than 60 days under extraordinary circumstances.

*10.09.10.17 (April 16, 2014)*

**.17 Selected Costs — Not Allowable.**

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

A.—U. (text unchanged)

V. A percentage of the legal, accounting, and other professional expenses related to an appeal as described in [§Q] §U of this regulation, based upon the proportion of additional reimbursement denied to the total additional reimbursement sought on appeal, if a facility prevails on some but not all issues raised in the appeal or action; [and]

W. Any charges assessed by the Department for recovery of overpayments[.]; *and*

X. *Costs incurred for legal services relating to establishing Medical Assistance Program financial eligibility for nursing facility services or obtaining representation or guardianship of nursing facility residents or their property.*

**JOSHUA M. SHARFSTEIN, M.D.**

**Secretary of Health and Mental Hygiene**