

MARYLAND REGISTER

Proposed Action on Regulations

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

1. Desired date of publication in Maryland Register: 9/5/2014

2. COMAR Codification

Title Subtitle Chapter Regulation

07 03 07 02-.03,.09,.12

3. Name of Promulgating Authority

Department of Human Resources

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6. Check applicable items:

New Regulations

DEPARTMENT OF HUMAN RESOURCES

Subtitle 03 FAMILY INVESTMENT ADMINISTRATION

07.03.07 Public Assistance to Adults

Authority: Human Services Article, §§5-205(a), 5-207(a), 5-403—5-407, and 5-409, Annotated Code of Maryland

Notice of Proposed Action

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The Secretary of the Department of Human Resources proposes to amend Regulations .02, .03, .09 and .12 under COMAR 07.03.07, Family Investment Program.

Statement of Purpose

The purpose of this action is to amend the definitions in regulations .02 and .03 for the Public Assistance to Adults Program to ensure appropriate PAA-funded assisted living placements. To amend regulation .09 for the Public Assistance to Adults program to help ensure appropriate and responsible representative payees are appointed as appropriate for Public Assistance to Adults recipients. To amend regulation .12 for the Public Assistance to Adults program to ensure that timely notice is sent except when the local department has factual information that the recipient and the assistant living operator are using the program funds in a fraudulent manner.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

A sustained rise in assistance payments for Public Assistance to Adults-Assisted Living prompted the Department of Human Resources' (DHR) review of case records and an investigation by the DHR Office of the Inspector General (OIG). Our findings raised concerns about program integrity in the Assisted Living category of Public Assistance to Adults (PAA). We decided to resolve our concerns through the regulatory process with clearer definitions and a formal process for determination of need.

We expect the regulatory changes to result in savings of State General Funds because of the PAA caseload declining to the historical levels found prior to Fiscal Year (FY) 2010. The cost of care for customers placed in PAA-Assisted Living facilities is expensive, currently \$976 per month for those who do not receive federal retirement or disability benefits. In contrast, the assistance payment standard for the Temporary Disability Assistance Program (TDAP), which serves potentially disabled, often indigent State residents, is \$185 per month.

The proposed regulations revise the determination process for the medical appropriateness of PAA-Assisted Living placements, which will help reduce unnecessary assisted living placements. Therefore, overall assistance payment expenditures for DHR will decrease when some of the current PAA-Assisted Living population returns to the community where they may take advantage of the TDAP program. We estimate \$1,434,885 in potential savings annually from clearer PAA-Assisted Living regulations. The change potentially affects 175 recipients over the course of a year.

There is no economic impact from regulations .09 or .12.

II. Types of Economic Impact.	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
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A. On issuing agency:		
Expenditures	(E-)	175 individuals
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
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D. On regulated industries or trade groups:		
Impact on regulated industries	(-)	\$1,434,885 million annually
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. We assume lower expenditures for the Program due to a decrease in the number of people who are receiving assisted living benefits under PAA.

We assume the expenditures will decrease an estimated \$1,434,885 savings annually or an average of \$119,573.75 per month.

D. An estimated 175 individuals may no longer qualify for PAA-Assisted Living payments as their justification for residency in assisted living facilities will fall short of a medically necessary standard. However, they may qualify for TDAP.

Economic Impact on Small Businesses

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

A majority of the assisted living facilities that actively seek PAA recipients are for-profit entities that may meet the definition of small business. Therefore, the proposed

regulations could impact a narrow sector of the small business community. Some facilities impacted may find it harder to attract residents, while others will see a gain in revenue if PAA cost of living increases resume.

Impact on Individuals with Disabilities

The proposed action has an impact on individuals with disabilities as follows: First, we do not anticipate an impact on disabled persons who need assistance in performing the activities of daily living or instrumental activities of daily living. Traditional assisted living residents meeting this definition are either infirm, elderly persons or profoundly disabled individuals who are unable to manage activities associated with daily living as described in COMAR 10.07.14.02B(2)(b) However, the proposed action will possibly impact PAA-Assisted Living applicants or recipients with the following characteristics:

- Individuals who claim disabilities but who do not receive a federal disability or retirement payment, and/or
- Individuals who cannot provide clear evidence that placement into an assisted living facility is medically justified.

Amendments regulation .09 help to ensure that an appropriate and responsible representative payee is appointed, as necessary in the PAA recipient's best interest.

Opportunity for Public Comment

Comments may be sent to Andrea Shuck, Regulations Coordinator, Department of Human Resources, 311 West Saratoga Street, Room 249, Baltimore, MD 21201, or call 410-767-2149, or email to andrea.shuck@maryland.gov, or fax to 410-333-0637. Comments will be accepted through October 7, 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?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

100% State General funds

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:

E. The Department will re-purpose staff from its existing Disabilities Services Operations unit to process determinations of medical necessity for PAA-Assisted Living placements. Therefore, costs are within DHR's baseline budget for FY 2015 and subsequent years.

G.

1a. Intended Beneficiaries.

The intended beneficiaries of the proposed regulations are individuals either infirm and elderly or profoundly disabled persons who are unable to perform activities of daily living for themselves without assistance. The changes clarify existing regulations to enable case managers to consistently implement and enforce program rules Statewide.

Are these intended beneficiaries primarily households or businesses?

Households are primary beneficiaries.

1b. Intended Beneficiaries:

We estimate that the proposed action will increase the purchasing power of PAA-Assisted Living recipients from the population described above as "traditional" assisted living residents. Sharp growth in the PAA-Assisted Living population pushed the program into a deficit, thereby leaving insufficient funding for a cost of living increase in FY 2014. The proposed action intends to return the program to serving its core constituency, concurrently returning the program to budget levels. That in turn should enable us to resume cost of living increases, thereby raising the amount of payments available to assisted living providers and facilitating a broader choice for PAA-Assisted Living applicants and their families.

We do not anticipate a disproportionate impact on small businesses. Our estimates show a potential revenue reduction on the very small group of assisted living facilities that primarily recruit PAA-Assisted Living applicants who are younger and who have less severe disabilities. Conversely, we see a potential revenue increase for a broader group of assisted living facilities that currently have PAA-Assisted Living residents who are infirm and elderly or who are non-elderly but have profound disabilities and well-established medical justification for placement in a protected living environment.

1c. Intended Beneficiaries: Businesses.

If businesses are the intended beneficiaries, identify the businesses by industry or by types of business activities.

The PAA-Assisted Living program primarily focuses on low-income elderly or disabled State residents (households).

How will businesses be impacted?

Please see our response to 1b.

Are these Maryland establishments' disproportionately small businesses?

We are not aware if disproportionate amount of the assisted living industry meets the definition of a small business.

If so, how will these Maryland small businesses be affected?

Can you identify or estimate the present number of small businesses affected?

No.

Can you estimate the present total payroll or total employment of small businesses affected?

No.

2a. Other Direct or Indirect Impacts: Adverse.

Businesses may not be the intended beneficiaries of the proposal. Instead, the proposal may direct or otherwise cause businesses to incur additional expenses of doing business in Maryland.

Does this proposal require Maryland businesses to respond in such a fashion that they will incur additional work-time costs or monetary costs in order to comply?

No

Describe how Maryland establishments may be adversely affected.

Please see section 1b for potential indirect impacts.

Can you estimate the possible number of Maryland small businesses adversely affected? (Note that small business compliance costs in the area of regulation are the sum of out-of-pocket (cash) costs plus time costs — usually expressed as payroll, akin to calculations for legislative fiscal notes. Precise compliance costs may be difficult to estimate, but the general nature of procedures that businesses must accomplish to comply can be described.)

No.

2b. Other Direct or Indirect Impacts: Positive.

Maryland businesses may positively benefit by means other than or in addition to changed consumer spending patterns. How may Maryland businesses be positively impacted by this initiative?

There is no positive impact on Maryland business. There will be no or potentially some adverse affect as indicated above on specific businesses.

Will Maryland small businesses share proportionately or disproportionately in these gains?

Disproportionately because of the change affects a specific industry.

Can you estimate the possible number of Maryland small businesses positively affected?

No.

3. Long-Term Impacts.

There are instances where the longer run economic impact effects from regulations differ significantly from immediate impact. For example, regulations may impose immediate

burdens on Maryland small businesses to comply, but the overall restructuring of the industry as a consequence of monitoring and compliance may provide offsetting benefits to the affected small businesses in subsequent years.

Can you identify any long run economic impact effects on Maryland small businesses that over time (a) may compound or further aggravate the initial economic impact described above, or (b) may mitigate or offset the initial economic impact described above?

No

4. Estimates of Economic Impact.

State Government Article, §2-1505.2 requires that an agency include estimates, as appropriate, directly relating to: (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency in production and marketing; (5) capital investment, taxation, competition, and economic development; and (6) consumer choice.

The PAA-Assisted Living population numbered only 719 Statewide in March 2014, so it is a very small group. Furthermore the proposed changes primarily clarify rules and apply a consistent standard rather than significantly alter the program's historical mission..

Attached Document:

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) "Assisted living" means [care given] *services provided in a licensed protective institutional environment as described in COMAR 10.07.14* to an individual who is aged or disabled, or both, [in a licensed protective institutional environment as described in COMAR 10.07.14] *and who cannot manage activities of daily living as described in COMAR 10.07.14.02B(2) (b).*

(3) "CARE home" means a home that provides supervised residential alternatives to an individual who, due to physical or mental disability, cannot live unsupervised in the community and is at risk for institutionalization as described in COMAR [07.06.15]07.02.19.

(4)—(6) (text unchanged)

(7) "*Protected living arrangement*" means a residential environment that provides care to vulnerable adults who are aged, disabled, or both, and who cannot manage activities of daily living as described in COMAR 10.07.14.02.(B)(2)(b).

[(7)] (8) (text unchanged)

.03 Eligibility Criteria.

A. An individual is eligible when, in any month, the individual:

(1) (text unchanged)

[(2) Is either receiving Social Security Disability Insurance (SSDI), Supplemental Security Income (SSI), or other cash benefits, or not receiving them through no acts or omissions of the individual;]

(2) *Is receiving a federal benefit for age, blindness or disability; or*

(3) *[Is in an assisted living program, in a CARE home, or in a DHMH rehabilitative residence; and] If not receiving a federal retirement or disability benefit, has filed an application for Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI), in accordance with §B. of this regulation;*

(4) [Meets the need requirements for income and resources as described in this chapter.] *Is in an assisted living program, in a CARE home or in a DHMH rehabilitative residence; and*

(5) *The individual continues to cooperate with all technical and financial requirements of eligibility.*

B. *Applicants who are not receiving a federal retirement or disability benefit shall fully cooperate with the Social Security Administration (SSA) application and appeals processes; failure to cooperate shall render the applicant or recipient ineligible and result in application denial or case closure.*

C. *If SSA makes a final unfavorable decision, the customer is no longer eligible for assisted living benefits from the PAA program, unless:*

(1) *Good cause exists for continued PAA eligibility, which the DHR Appointing Authority or its designee shall determine following a review; or*

(2) *Disability Services Operations (DSO) decides that the person meets the definition of disabled following a consultative exam or coordination with the State Disability Determination Services Agency.*

D. *The Department of Human Resources shall establish a process through DSO to determine when medical justification for placement into a protected living environment is sufficient to support an individual's eligibility for the PAA-Assisted Living program, and:*

(1) *This provision does not apply to individuals participating in PAA-CARE homes; or*

(2) *PAA-DHMH rehabilitative residences.*

[B.] E. *Temporary Absence from Maryland.*

(1)—(2) (text unchanged)

[C.] F. *An individual shall:*

(1) [Verify that the individual is not receiving Social Security, SSI, or other cash benefits through no acts or omissions of the individual] *Provide all necessary information needed for initial or continued program eligibility provided the information is true, correct and complete and the individual and/or the authorized representative is subject to the requirements in COMAR 07.03.14 if they provide false information;*

(2) [Apply for the benefits as described in §C(1) of this regulation; and] *Cooperate with the Agency in all aspects of program administration.*

[3] *Provide written verification that the individual has filed appropriate applications.]*

[D.] G. *After meeting all other program requirements, [An] an individual is eligible for Public Assistance to Adults:*

(1) (text unchanged)

(2) *After the application for other benefits is denied if the individual [can provide written verification from the benefit source that the denial is not due to any acts or omissions by the individual.] meets the conditions described in COMAR 07.03.07.03A(3).*

[E.] H. (text unchanged)

.09 Amount of Grant and Payee.

A.—B. (text unchanged)

C. *Protective payments may be made on behalf of a recipient to an agency-appointed representative payee if:*

(1) (text unchanged)

(2) *There is available to act as representative payee, a responsible and dependable individual ,other than the assistant living home operator or staff to receive the check on behalf of a recipient and handle the money for the recipient's interest and well-being;*

(3)—(4) (text unchanged)

(5) *Full needs by assistance standards are met; and*

(6) *The decision and plan are reviewed at least once in 6 months. [; and]*

[(7)] D. *Protective payments are terminated immediately when:*

(1) *The recipient is considered able to manage funds[.];*

(2) *Judicial appointment is made of a guardian or other legal representative as serving the best interest of the recipient[.]; or*

(3) *The agency learns that the representative payee has a conflict of interest or is handling the recipient's funds in a fraudulent or exploitative manner.*

[D.] E. (text unchanged)

F. *Any program payments that are obtained or used in a fraudulent manner shall be considered an overpayment and shall be subject to recoupment in accordance with COMAR 07.03.07.13.*

.12 Advance Notice of Termination or Reduction.

A.—B. (text unchanged)

C. *The local department may dispense with timely notice but shall send adequate notice no later than the date of action, when:*

(1)—(3) (text unchanged)

(4) *A recipient has been accepted for assistance in a new jurisdiction and that fact has been established by the jurisdiction previously providing assistance; [or]*

(5) The local department has factual information confirming that the recipient was admitted to a public institution; *or*

(6) *The local department has confirmed that the recipient and assistant living operator are using the program funds in fraudulent manner.*

D.— E. (text unchanged)