

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Department of Health and Mental Hygiene  
(DLS Control No. 14-213)**

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**Overview and Legal and Fiscal Impact**

The proposed regulations include Medicaid coverage of respite care offered in enrolled nursing facilities and assisted living facilities under the Home and Community-Based Options Waiver.

The regulations do not present any legal issues of concern.

There is no fiscal impact on State or local agencies.

**Regulations of COMAR Affected**

**Department of Health and Mental Hygiene:**

Medical Care Programs: Home/Community Based Services Waiver for Older Adults:  
COMAR 10.09.54.10-1, .18-1, and .21

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**Legal Analysis**

**Background**

Covered assisted living services under the Home and Community -Based Options Waiver are established under COMAR 10.09.54.13. They include services in the home setting such as assistance with activities of daily living, supervision, transportation, assistance with medication, and recreational and social activities, among others.

“Nursing facility services” is defined under COMAR 10.09.10.01B(41) as “services provided to individuals who do not require hospital care, but who, because of their mental or physical condition, require skilled nursing care and related services, rehabilitation services, or, on a regular basis, health-related care and services (above the level of room and board) which can be made available to them only through institutional facilities.”

**Summary of Regulations**

The proposed new regulation 10.09.54.10-1 requires a provider of respite care services under the Medicaid program to be enrolled as a provider of assisted living services under COMAR 10.09.54 or nursing facility services under COMAR 10.09.10.

The proposed new regulation 10.09.54.18-1 lists the covered respite care services. A “unit of service” is defined as a day of service. Respite care services shall be provided to

Medicaid participants who are unable to care for themselves. The services are of short-term basis for the absence or need for relief of an individual who normally provides care, and are intended to provide a period of rest and renewal to contribute to maintaining the participant at home in the community. The services include supervising participant's with cognitive impairments to ensure the individual's safety, assisting participants with activities of daily living, and nursing functions.

COMAR 10.09.54.21 is amended to prohibit reimbursement for combinations of services on the same day including assisted living services and respite care, or respite care and personal assistance services covered under COMAR 10.09.20 (personal care services) or 10.09.84 (Community First Choice).

### **Legal Issue**

The regulations do not present any legal issues of concern.

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

The Department of Health and Mental Hygiene cites §§ 2-104(b), 15-103, 15-105, and 15-132 of the Health – General Article as legal authority for the regulations. Section 2-104(b) gives the Secretary of Health and Mental Hygiene authority to adopt rules and regulations to carry out the provisions of law with the jurisdiction of the Secretary. Section 15-103 establishes the Maryland Medical Assistance Program, and requires the Secretary to administer the program, including adopting regulations. Section 15-105(b) requires the department to adopt rules and regulations for the reimbursement of providers for services under the Medicaid program. Section 15-132(a)(13) contains the statutory definition of “respite care services” which is consistent with the proposed regulations. Subsection (c) authorizes services for eligible individuals in the home and community based services waiver.

The statutory authority is correct and complete. The regulations comply with the legislative intent of the law.

### **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

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

The regulations include Medicaid coverage of respite care provided at specified nursing homes and assisted living facilities under the Home and Community-Based Options Waiver. The department advises that waiver expenditures will remain consistent with those budgeted; therefore, there is no fiscal impact beyond that already budgeted for the waiver. 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 in part as there will be no net increase in waiver expenditures; however, nursing homes and assisted living facilities may receive additional reimbursement for providing respite care services.

### **Contact Information**

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