

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>
		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**

10 09 54 10-1, .18-1 and .21

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:  
X- New Regulations

**X-** Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: May 6, 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 June 11, 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**

July 29, 2014

**Telephone No.**

410-767-6500

# **DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

## **Subtitle 09 MEDICAL CARE PROGRAMS**

### **10.09.54 Home and Community-Based Options Waiver**

Authority: Health-General Article, §§2-104(6), 15-103, 15-105, and 15-132 Annotated Code of Maryland

#### **Notice of Proposed Action**

□

The Secretary of Health and Mental Hygiene proposes to adopt new Regulations .10-1 and .18-1 and to amend Regulation .21 under COMAR 10.09.54 Home and Community-Based Options Waiver.

#### **Statement of Purpose**

The purpose of this action is to include Medicaid coverage of respite care under this chapter to be offered in both enrolled nursing facilities and assisted living facilities.

#### **Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

#### **Estimate of Economic Impact**

The proposed action has no economic impact.

#### **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 ensure access to respite care in nursing facilities or assisted living facilities for participants in the Home and Community-Based Options Waiver.

#### **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, Baltimore, MD 21201, 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 October 6, 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:  
Program expenditures for this service will remain consistent with those included in the budget under the pre-existing Waiver for Older Adults.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

Program expenditures for this service will remain consistent with those included in the budget under the pre-existing Waiver for Older Adults.

G. Small Business Worksheet:

Attached Document:

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## Title 10

# DEPARTMENT OF HEALTH AND MENTAL HYGIENE

### Subtitle 09 MEDICAL CARE PROGRAMS

#### 10.09.54 Home and Community-Based Options Waiver

Authority: Health-General Article, §§2-104(6), 15-103, 15-105, and 15-132, Annotated Code of Maryland

***.10-1 Specific Conditions for Participation—Respite Care.***

*To participate in the Program as a provider of respite care services under Regulation .18-1 of this chapter a provider shall be enrolled as a provider of:*

- A. Assisted living services under this chapter; or*
- B. Nursing facility services under COMAR 10.09.10.*

***.18-1 Covered Services—Respite Care.***

*A. Definition. "Unit of service" means a day of service.*

*B. Respite care services shall:*

- (1) Be provided to participants who, due to physical or cognitive impairments, are unable to care for themselves;*
- (2) Be furnished on a short-term basis because of the absence or need for relief of an individual normally providing the care;*
- (3) Provide a period of rest and renewal, which contributes to maintaining the participant at home in the community;*
- (4) Be provided at planned intervals, in a time of crisis, or as needed;*

- (5) *Include the participant's room and board;*
- (6) *Include overnight care; and*
- (7) *Include the following services:*
  - (a) *Supervising participants with cognitive impairments to ensure the individual's health and safety;*
  - (b) *Assisting a participants with functional impairments to perform activities of daily living or instrumental activities of daily living; and*
  - (c) *Delegated nursing functions, such as medication assistance or administration by appropriately trained, certified, and supervised staff.*

**10.09.54.21 (5/6/14)**

**.21 Limitations.**

- A. (text unchanged)
- B. The Program may not reimburse the following combinations of services for a participant for the same date of service:
  - (1) Senior Center Plus and Medical Day Care under this chapter; [or]
  - (2) Assisted living services under this chapter and personal assistance services under COMAR 10.09.20 or COMAR 10.09.84[.] ;
  - (3) *Assisted living services and respite care under this chapter; or*
  - (4) *Respite care under this chapter and personal assistance services covered under COMAR 10.09.20 or COMAR 10.09.84.*
- C. *Reimbursement by the Program for respite care shall be limited to 14 days per occurrence.*

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

**Secretary of Health and Mental Hygiene**