

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: 10/17/2014**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

10 22 14 03, and .05—.11

**3. Name of Promulgating Authority**

Department of Health and Mental Hygiene

**4. Name of Regulations Coordinator**

Michele Phinney

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410-767-5623

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201 W. Preston Street

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Baltimore MD 21201

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michele.phinney@maryland.gov

**5. Name of Person to Call About this Document**

Amy Daugherty

**Telephone No.**

410-767-8688

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**6. Check applicable items:**

- New Regulations

- Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: April 25, 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 - 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 Kathleen A. Morse, Assistant Attorney General, (telephone #410-767-1866) on August 7, 2014. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Joshua M. Sharfstein, M.D.

**Title**

Secretary

**Telephone No.**

410-767-6500

**Date**

September 8, 2014

**Title 10**  
**DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

**Subtitle 22 DEVELOPMENTAL DISABILITIES**

**10.22.14 Low Intensity Support Services (LISS) Program**

Authority: Health-General Article, §§7-703, 7-708, 7-717 and 7-904, Annotated Code of Maryland

**Notice of Proposed Action**

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The Secretary of Health and Mental Hygiene proposes to amend Regulations .03, and .05—.10 and adopt new Regulation .11 under COMAR 10.22.14 Low Intensity Support Services (LISS) Program.

**Statement of Purpose**

The purpose of this action is to improve the application process and lower the amount of funding to increase the number of individuals served.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.**

These proposed regulations have an economic impact because they infuse \$5,141,770 into the community for payment for low intensity support services.

<b>II. Types of Economic Impact.</b>	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E+)	\$5,141,770
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	

D. On regulated industries or trade groups:

(1) DDA Licensed Providers	(+)	\$511,770
(2) Individuals receiving LISS	(+)	\$4,630,000
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. The State has budgeted \$5,141,770 to spend on the low intensity support services program.

D(1). DDA licensed providers administering the program will receive funding.

D(2). Individuals receiving funding for low intensity support services will go directly in the community to obtain the services.

**Economic Impact on Small Businesses**

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

The proposed action has a meaningful economic impact on small businesses because \$511,770 will be infused into the State economy by means of consumer service needs.

**Impact on Individuals with Disabilities**

The proposed action has an impact on individuals with disabilities as follows:

The proposed action has an impact on individuals with disabilities because in order to be eligible for funding a person must have at least a supports-only developmental disability. The funds expended in this program will benefit people with developmental disabilities directly.

**Opportunity for Public Comment**

Comments may be sent to Michele A. 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 November 17, 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:

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:

Attached Document:

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## Title 10

# DEPARTMENT OF HEALTH AND MENTAL HYGIENE

## Subtitle 22 DEVELOPMENTAL DISABILITIES

### 10.22.14 Low Intensity Support Services (LISS) Program

Authority: Health-General Article, §§7-703, 7-708, 7-717 and 7-904, Annotated Code of Maryland

#### 10.22.14.03 (April 25, 2014)

##### .03 Definitions.

- A. (text unchanged)
- B. Terms Defined.
  - (1)—(2) (text unchanged)
  - (3) Assistive Technology.
    - (a) (text unchanged)
    - (b) "Assistive technology" may include:
      - (i) (text unchanged)
      - (ii) Personal computers, tablets, software, and computer accessories [which] *that* enable participants to function more independently;
    - (c)—(f) (text unchanged)
  - (4)—(5) (text unchanged)
  - (6) Housing Adaptations and Barrier Removals.
    - (a) (text unchanged)
    - (b) "Housing adaptations and barrier removals" may include but are not limited to:
      - (i)—(viii) (text unchanged)
      - (ix) Home modifications to help [a] *an* individual identify the physical environment.
  - (7)—(8) (text unchanged)
  - (9) "*Random selection process*" means the system used to promote equality and fairness to identify which applicants will be considered for funding in each fiscal year during Round 1, which occurs annually in August, and Round 2, which occurs in February.
  - [(9)] (10) (text unchanged)

**.05 Application and Eligibility.**

- A. An individual shall [complete] *submit to the Department*:
- (1) The [Program's application form and demonstrate a service need] *abbreviated LISS application form*;
  - (2) *For applicants under the age of 21, one of the following, demonstrating that the applicant meets the eligibility requirements for LISS:*
    - (a) *A current, signed Individual Educational Plan (IEP); or*
    - (b) *A current statement by a licensed physician;*
  - (3) *For applicants aged 21 and older, one of the following, demonstrating that the applicant meets the eligibility requirements for LISS:*
    - (a) *A current statement by a licensed physician;*
    - (b) *A current psychological evaluation;*
    - (c) *A current evaluation by an Occupational Therapist, a Division of Rehabilitation Services evaluator, or another licensed professional; or*
    - (d) *An IEP dated 3 years or less after the applicant left school; and*
- [(2)] (4) *Unless the services are for a minor, [complete an application for the Medical Assistance Program] a completed application for the Medical Assistance Program along with verification that the application was submitted.*
- [B. Eligibility. To be eligible for the Program an individual:
- (1) *Shall be a Maryland resident;*
  - (2) *Shall have a developmental disability or be eligible for individual support services in accordance with Health-General Article, §7-403(c), Annotated Code of Maryland;*
  - (3) *May not be currently funded for full residential services under COMAR 10.22.17; and*
  - (4) *Shall have an identified service and support need.*
- C. An agency shall approve services for an eligible individual:
- (1) *On a first-come, first-served basis; and*
  - (2) *Dependent on the availability and allocation of funds.]*
- B. Eligibility.
- (1) *To be eligible for the Program an individual:*
    - (a) *Shall be a Maryland resident and provide a current proof of address;*
    - (b) *Shall have a developmental disability or be eligible for individual support services in accordance with Health-General Article, §7-403(c), Annotated Code of Maryland;*
    - (c) *Shall have a valid social security number and provide a legible social security card;*
    - (d) *May not currently be enrolled in any Maryland Medicaid home and community-based services waiver or the Rare and Expensive Case Management program;*
    - (e) *Shall submit a LISS request by July 31<sup>st</sup> for Round 1 and January 31<sup>st</sup> for Round 2; and*
    - (f) *Shall be identified by the random selection process.*
  - (2) *An individual currently receiving DDA services, other than resource coordination, may not apply for or receive LISS funding under this chapter.*
  - (3) *An individual who received funding in Round 1 of the random selection may not apply for Round 2 in the same fiscal year, even if the entire maximum amount of \$2,000 was not awarded to the individual in Round 1.*
- C. The agency shall approve services for an eligible individual:
- (1) *Who is selected by the random selection process; and*
  - (2) *Whose requested services, items, and providers are eligible for LISS funding.*

**.06 Scope.**

- A. Services shall:
- (1) *[Increase] Enhance the individual's health or increase safety in the home environment;*
  - (2) *(text unchanged)*
  - (3) *Enable the individual to remain in [their] the individual's own home or with [their] the individual's family;*
  - (4)—(5) *(text unchanged)*
- B.—C. *(text unchanged)*
- D. To be approved for funding:
- (1) *Services and items:*
- (a) *Shall be rendered by a provider whose administrative fee does not exceed 15 percent of the total cost of the item or service;*
  - (b) *May not be provided by a legally responsible person, as defined in Health General Article, §7-701(c), Annotated Code of Maryland;*
  - (c) *Shall be received within the same fiscal year as the request; and*
  - (d) *Shall be approved in accordance with this chapter;*
- [(1)] (2)—[(2)] (3) *(text unchanged)*
- [E. The Administration shall pre-approve funding of any out-of-State services.]

**.07 Covered Services.**

- A. Services may include, but are not limited to, supports involving:

- (1) (text unchanged)
- (2) [Camps] *Crisis intervention and follow-up*;
- (3)—(7) (text unchanged)
- (8) Housing adaptations and barrier removals, *provided the applicant or the applicant's family owns the property needing the adaptation*;
- [(9) Housing assistance, including eviction assistance, utility disconnection, and deposits;]
- [(10)] (9)—[(11)] (10) (text unchanged)
- [(12) Recreation programs;]
- [(13)] (11)—Respite [care] *and approved camps*;
- [(14)] (12)—[(18)] (16) (text unchanged)
- B.—C. (text unchanged)
- D. [All] *To be approved for funding, all requested medical, health-related services, prescription drugs, therapies, and similar items [referred to in §A(7)] shall:*
  - (1)—(2) (text unchanged)
  - (3) Have an expected outcome; *and*
  - (4) (text unchanged)
- E. [All] *To be approved for funding, all providers of housing adaptations and barrier removal services shall:*
  - (1)—(3) (text unchanged)
  - (4) [Obtain] *Pass* final required inspections; *and*
  - (5) (text unchanged)

#### **.08 Program Funding.**

- A. The Program is not an entitlement program and does not create a right to funding.
- B. *Funding is not transferable and shall be used as originally requested.*
- [B.] C. Amount of Funding.
  - (1) The agency may approve funding for an eligible individual for services up to [\$3,000] \$2,000 per fiscal year.
  - (2) [If the agency requests permission to fund services over \$3,000 per fiscal year, the Administration may approve the request if it complies with Regulation .06 of this chapter and there are available funds] *Requests for amounts exceeding \$2,000 may not be considered.*
- [C.] D. The agency may not fund a request for services [without an identified] *unless the agency identifies a service or support that meets the requirements [of Regulation .06] of this chapter.*
- [D.] E. Exclusions.
  - (1) [In addition to §D(2) and (3) of this regulation, all] *All experimental [or prohibited] treatments and all treatments prohibited by the Health Occupations Licensing Boards and the FDA, if applicable, are excluded services.*
  - (2) [Unless pre-approved by the Administration, the] *The Program does not provide or cover the following:*
    - (a) (text unchanged)
    - (b) [ Out-of-State services] *Adaptations or modifications that restrict an individual's movement or jeopardize an individual's welfare.*
  - (3) [The Program does not provide or cover the following] *Services and items that the Program does not provide or cover includes but is not limited to:*
    - (a)—(d) (text unchanged)
    - (e) Toys, except *those recommended for specific therapeutic purposes*;
    - (f) *Tuition for academic purposes*;
    - (g) *Tutoring for academic purposes*;
    - [(g)] (h) Vacations; [or] *and*
    - [(h)] (i) (text unchanged)

#### **.09 Appeals.**

- A. Pursuant to Health General Article, §7-406, Annotated Code of Maryland and COMAR 10.22.16:
  - (1) On any action or inaction of the Secretary under Regulations .01—[.09] .08 of this chapter, *other than non-selection through the random selection process*, an applicant may request:
    - (a)—(b) (text unchanged)
  - (2)—(3) (text unchanged)
- B.—C. (text unchanged)

#### **.10 Program Agencies — Eligibility and Responsibilities.**

- A. [An] *The agency [who] that administers the Program shall:*
  - (1) Be licensed under COMAR 10.22.06 as [a] *an Individual and Family Support Program*;
  - (2) [Be] *Have been* awarded a contract to administer the Program under the Administration's competitive procurement process;
  - (3) (text unchanged)
  - (4) *Establish, manage, and maintain service files for each participant, in a standardized file format that includes:*
    - (a) *Communication sheet and eligibility documentation*;

- (b) Information included in the LISS application;*
- (c) Correspondence & PCIS2 information;*
- (d) Proof of services provided; and*
- (e) Proof of payments.*

[B. The agency shall ensure that a provider of housing adaptations and barrier removal services meets the requirements of Regulation .06 of this chapter.]

[C.] B. Funding of Services. The agency shall fund services as follows:

(1)—(4) (text unchanged)

[(5)] C. Deny funding if the [provider]:

- (1) Applicant does not meet eligibility criteria;*
- (2) Service or item requested is not permitted by this chapter; or*
- (3) Provider of the service does not meet the requirements of this chapter.*

***.11 Implementation Date.***

*This chapter shall be implemented July 1, 2014.*

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

**Secretary of Health and Mental Hygiene**