

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: 6/26/2015**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

10 22 14 03, .05-.11

**3. Name of Promulgating Authority**

Department of Health and Mental Hygiene

**4. Name of Regulations Coordinator**

Michele Phinney

**Telephone Number**

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**

Saundra Johnson

**Telephone No.**

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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 Morse, Assistant Attorney General, (telephone #410-767-1866) on May 1, 2015. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Van T. Mitchell

**Title**

Secretary

**Telephone No.**

410-767-6500

**Date**

May 18, 2015

**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**

[]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .03, .05—.10 and adopt New Regulation .11 under COMAR 10.22.14 Low Intensity Support Services (LISS) Program. At this time, the Secretary is also withdrawing the proposed amendments to Regulation .03 and .05—.10 and new Regulation .11 under COMAR 10.22.14 Low Intensity Support Services (LISS) Program which were proposed in 41:21 Md. R. 1272—1275 (October 17, 2014).

**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. Also, in order to comply with Chapter 13, Laws of 2015, the description of an eligible diagnosis, as defined in Senate Bill 110, has been added to Regulation .03.

**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 (+) Cost (-)	Magnitude
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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 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 July 27, 2015. A public hearing has not been scheduled.

**Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2016

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) "Camp" means a day camp, residential camp, travel camp, or trip camp that:

(a) During a calendar year, accommodates seven or more campers who are unrelated to the operator;

(b) Provides primarily recreational activities or has a substantial recreational component; and

(c) Operates on private property or private facilities, whether leased or owned, public property, or public facilities.

(4) "Child care" means the care or supervision for an individual, younger than 21 years old, who has a disabling condition or other emotional, developmental, physical, educational, or medical need necessitating child care when the individual's parent or legal guardian gives the individual's care over to another for some portion of a 24-hour day as a supplement to the parent's or guardian's primary care of the child.

(5) "Day care" means the care provided to an individual 21 years old or older, who has a disabling condition or other emotional, developmental, physical, educational, or medical need necessitating care from an adult day care center.

- (6) "Eligible diagnosis" means the individual has a severe chronic disability that:
- (a) Is attributable to a physical or mental impairment, other than the sole diagnosis of mental illness, or to a combination of physical and mental impairments; and
  - (b) Is likely to continue indefinitely.
- [(4)] (7)—[(8)] (11) (text unchanged)
- (12) "Random selection process" means a system used to identify the applicants who will be considered for funding during Round 1 and Round 2 of each fiscal year, by using an automated system that does not consider the identity or any other personal aspect of the applicants.
- [(9)] (13) (text unchanged)
- [(3)] (14) *Specialized Equipment and Assistive Technology*.
- (a) "[Assistive] Specialized equipment and assistive technology" means non-experimental technology or adaptive equipment which:
- (i)—(ii) (text unchanged).
  - (b) "[Assistive] Specialized Equipment and assistive technology" may include:
    - (i) (text unchanged);
    - (ii) [Personal computers, tablets] *Devices with web-based operating systems*, software, and computer accessories [which] *that enable participants to function more independently;*
  - (c)—(f) (text unchanged)
- (15) "Therapy" means occupational, physical, speech, or behavioral therapy that is not funded by other State funded programs or by health insurance, including the Medical Assistance Program.
- (16) "Therapeutic summer program" means a set of services designed to provide medical, behavioral, or psychological therapies, such as speech, applied behavior analysis, and occupational, through a variety of activities, in a safe environment, which are recommended by a licensed professional, and provided by clinical staff with clinical oversight..
- (17) "Usual, customary, and reasonable" means the amount paid for a service in a geographic area that is based on what providers in the area typically charge for the same or similar service, so long as that charge is reasonable.

#### **.05 Application and Eligibility.**

- A. An individual shall [complete] *submit to the Department:*
- (1) The [Program's application form and demonstrate a service need; and] *completed LISS application form;*
  - [(2) Unless the services are for a minor, complete an application for the Medical Assistance Program.]
  - (2) *For applicants younger than 21 years old, one of the following, demonstrating that the applicant meets the eligibility requirements for LISS:*
    - (a) *A finalized Individual Educational Program (IEP) from the current calendar year that identifies an eligible diagnosis and that is in effect as of the date of the LISS application; or*
    - (b) *A statement written by a licensed physician, confirming that the individual has an eligible diagnosis;*
  - (3) *For applicants 21 years old or older, one of the following, demonstrating that the applicant meets the eligibility requirements for LISS:*
    - (a) *A statement written by a licensed physician within the last 3 years, confirming that the individual has an eligible diagnosis;*
    - (b) *A psychological evaluation completed by a licensed professional within the last 3 years, confirming that the individual has an eligible diagnosis;*
    - (c) *An evaluation completed by an Occupational Therapist, a Division of Rehabilitation Services evaluator, or another licensed professional within the last 3 years, confirming that the individual has an eligible diagnosis; or*
    - (d) *A finalized IEP dated no later than 3 years after the applicant left the school system, confirming that the individual has an eligible diagnosis; and*
  - (4) *Upon request of the DDA, additional written evidence demonstrating that the criteria for specific services are met.*
- [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 proof of address for the current calendar year;*
    - (b) *Shall have an eligible diagnosis;*
    - (c) *Shall provide proof of identity;*

(d) May not be enrolled in any Maryland Medicaid home and community-based services waiver at the time of the random selection process, except that this restriction does not apply to applicants enrolled in the Maryland Model Waiver Program;

(e) May be enrolled in the Rare and Expensive Case Management (REM) Medicaid Program at the time of the random selection process;

(f) Shall submit a fully completed LISS application by the due dates established by the DDA; and

(g) Shall be selected by the random selection process.

(2) An individual currently receiving DDA services, other than coordination of community services, may not receive LISS funding under this chapter.

(3) An individual who received funding in Round 1 of the random selection process may not receive funding in 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 comply with the provisions of this chapter.

#### **.06 Scope.**

A. Services [shall] funded under this program are intended to be, and are limited to, those that:

(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. Services funded under this program may not duplicate services available to the individual in the community, education systems, or under an existing health plan, including Medical Assistance services.

[C. Services may be temporary or needed on an ongoing basis]

[D.] C. To be approved for funding, requested services and items:

[(1) All medical and health related services, prescription drugs, therapies, and items shall:

(a) Be prescribed by a professional authorized under the Health Occupations Article, Annotated Code of Maryland in the respective field;

(b) Be provided by an individual authorized under the Health Occupations Article, Annotated Code of Maryland;

(c) Have an expected outcome;

(d) Be approved by the:

(i) Respective health occupations licensing board; and

(ii) Federal Drug Administration (FDA); and

(e) Be provided by an individual authorized under the Health Occupations Article, Annotated Code of Maryland; and

(2) All providers of housing adaptations and barrier removal services shall:

(a) Be properly licensed or certified by the State to provide the service being rendered;

(b) Be bonded as is legally required;

(c) Obtain all required State and local permits;

(d) Obtain final required inspections; and

(e) Perform all work in accordance with State and local building codes.

E. The Administration shall pre-approve funding of any out-of-State services.]

(1) Shall be rendered by a provider whose administrative fee does not exceed 15 percent of the total cost of the item or service;

(2) May not be provided by a legally responsible person, as defined in Health General Article, §7-701(c), Annotated Code of Maryland;

(3) Shall be rendered by a provider who is licensed by the State to perform the service;

(4) Shall be received:

(a) Except in accordance with §C(4)(b) of this regulation, within the same fiscal year as the request; and

(b) For summer camps, summer programs, and therapeutic programs, in June of the current fiscal year, or in July and August of the following fiscal year; and

(5) Shall be approved in accordance with this chapter.

#### **.07 Covered Services.**

A. Services include supports involving:

(1) (text unchanged)

(2) Camps that are:

(a) Approved by the Maryland DHMH in accordance with COMAR 10.16.06;

(b) Accredited by the Maryland State Department of Education;

(c) Accredited by the American Camping Association certification;

(d) Approved by a State governmental entity; or

- (e) *Approved by the Developmental Disabilities Administration;*
- (3) *Child care that is provided in accordance with COMAR 13A.16.01.02 and COMAR 13A.14.02;*
- [(3)] (4) *Community integration services, including recreation programs;*
- [(4)] (5) (text unchanged)
- [(5)] (6) *Day care provided in accordance with Health General Article, §14-201(b) or §14-301(b), Annotated Code of Maryland;*
- [(6)] (7)—[(7)] (8) (text unchanged)
- [(8)] (9) *Housing adaptations and barrier removals provided that the applicant or the applicant's family owns the property needing the adaptation;*
- [(9)] *Housing assistance, including eviction assistance, utility disconnection, and deposits;*
- (10)—(12) (text unchanged)
- (13) *Respite care and approved camps;*
- (14)—(16) (text unchanged)
- (17) *Therapeutic summer programs;*
- [(17)] (18) *Training and support for self-advocacy; [and]*
- [(18)] (19) (text unchanged)
- (20) *Tuition for post-secondary academic and vocational services;*
- (21) *Tutoring for post-secondary academic and vocational services; and*
- (22) *Repairs of vehicles that have been modified or adapted with specialized equipment to meet the needs of the eligible individual.*
- B.—C. (text unchanged)
- D. [All] *To be approved for funding, all requested medical [, health-related] services, [prescription drugs,] and therapies [, and items referred to in §A(7) shall]:*
  - (1) [Be] *Shall be prescribed by a professional authorized to do so under the Health Occupations Article, Annotated Code of Maryland, in the [respective] relevant field;*
  - (2) [Be] *Shall be provided or supervised by an [individual] organization authorized to do so under the Health Occupations Article, Annotated Code of Maryland, in the [respective] relevant field;*
  - (3) [Have an expected outcome] *Shall be prescribed for treatment of a specified illness or condition, or for amelioration of the symptoms of a specified illness or condition;*
  - (4) [Be] *Shall be a treatment that is approved by the:*
    - (a) *Respective [health occupations] Health Occupations licensing board; and*
    - (b) *The Federal Drug Administration (FDA), if the FDA regulates the treatment; and*
  - (5) *May not be:*
    - (a) *Related to the individual's primary or secondary education; and*
    - (b) *Covered by the individual's IEP.*
- 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. (text unchanged)
- B. *Funding is not transferable, and the amount funded may not exceed the amount initially requested on the application.*
- [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 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 experimental or prohibited] Treatments and therapies that are not generally accepted by the relevant scientific community [by the Health Occupations Licensing Boards and the FDA are excluded services] may not be provided or funded.*
  - (2) *[Unless pre-approved by the Administration, the] The Program [does] may not provide or [cover] fund the following:*
    - (a) (text unchanged)
    - (b) *[Out-of-State services] Adaptations or modifications that restrict an individual's movement or jeopardize the individual's welfare.*
  - (3) *The Program [does] may not provide or cover the following:*
    - (a)—(d) (text unchanged)

- (e) Toys, except *those recommended by an individual authorized under the Health Occupations Article, Annotated Code of Maryland*, for *specified* therapeutic purposes;
- [(f) Tuition;]
- (g) Vacations; [or]
- (h) Vehicle gas, tires, registration fees, loan payments, insurance coverage, and [or violations] *penalties for violations*, such as tickets and fines; *and*
- (i) *Housing assistance, including eviction assistance, utility disconnection, and deposits.*

**.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 for services 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; *and*
  - (3) [Comply with all provisions and the requirements of the contract; and] *Maintain an operational procedure manual that is approved by DDA.*
- [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) [Reimburse] *Fund* only [for] services that meet the requirements of this chapter;
  - (2) [Reimburse] *Fund* services at the rates set forth in the contract;
  - (3) [Reimburse] *Fund* procured services based on *the usual, customary, and reasonable rate for the service provided; and*
  - (4) [Reimburse] *Fund* housing adaptations and barrier removals referenced in Regulation .07A(8) of this chapter, including the cost of the physical adaptation and associated costs for installation[; and].
- [(5)] *C. The agency shall [Deny] deny* funding if [the provider of the service does not meet the requirements of this chapter.]:
  - (1) *The applicant does not meet eligibility criteria;*
  - (2) *The service or item requested is not permitted to be provided or funded by this chapter; or*
  - (3) *The provider of the service does not meet the requirements of this chapter.*

**.11 Implementation Date.**

*This chapter shall be implemented July 1, 2015.*

**VAN T. MITCHELL**

**Secretary of Health and Mental Hygiene**