

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: 11/13/2015

2. COMAR Codification

Title Subtitle Chapter Regulation

10 09 10 07-2, .10-1, .12-1, .13, .15-1, .16-1, and .28

3. Name of Promulgating Authority

Department of Health and Mental Hygiene

4. Name of Regulations Coordinator

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5. Name of Person to Call About this Document

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6. Check applicable items:

- New Regulations
 - Amendments to Existing Regulations
 - Date when existing text was downloaded from COMAR online: April 13, 2015.
 - 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 David Lapp, Assistant Attorney General, (telephone #410-767-5292) on September 29, 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

October 8, 2015

Title 10
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.10 Nursing Facility Services

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

Notice of Proposed Action

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The Secretary of Health and Mental Hygiene proposes to amend Regulations .07-2, .10-1, .12-1, .13, .15-1, .16-1, and .28 under COMAR 10.09.10 Nursing Facility Services.

Statement of Purpose

The purpose of this action is to :

- (1) Modify the phase-in schedule of the prospective reimbursement methodology;
- (2) Modify the implementation dates of the hold harmless provision;
- (3) Clarify language related to the hold harmless provision, waiver of minimum occupancy, out-of-State facility reimbursement, appeal process, and exemption from cost reporting;
- (4) Correct certain citations; and
- (5) Decrease Fiscal Year 2016 Medicaid nursing facility services rates by an adjustment factor to be consistent with the Fiscal Year 2016 budget.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

In order to be consistent with the Fiscal Year 2016 budget, rates for nursing facility services will be reduced by 1.96 percent during the first half of the fiscal year, and 3.28 percent during the second half of the fiscal year, after accounting for inflation and other adjustments required within this chapter. This represents a 0.41 percent reduction from Fiscal Year 2015 rates. All other changes are budget-neutral.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E-)	\$34,441,279

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:
 Nursing home providers (-) \$34,441,279
 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’s budget allocation for Fiscal Year 2016 provides for \$8,000,000 to increase payments for nursing facility services above Fiscal Year 2014 rates. This represents a decrease of 0.41 percent compared with the rates paid during the period January 1, 2015 through June 30, 2015. After adjusting rates for inflation and other updates in accordance with the provisions of the chapter, a reduction factor of 1.96 percent during the period July 1, 2015 through December 31, 2015 (and 3.28 percent during the period January 1, 2016 through June 30, 2016) will be applied to the portion of the rate that excludes the Nursing Facility Quality Assessment add-on, in order to be consistent with the budget allocation. This results in an average rate reduction of \$6.15 per day or, based on a projected 5,600,208 Medicaid days, \$34,441,279.

D. Provider reimbursement for nursing facilities will be decreased by \$34,441,279 during Fiscal Year 2016 as described in Section A.

Economic Impact on Small Businesses

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

Eleven nursing homes, which qualify as small businesses, are expected to account for 55,272 Medicaid days during Fiscal Year 2016. At an average decrease in rates of \$6.15 per day, the impact on small businesses is estimated as a reduction in revenue of \$339,923.

Impact on Individuals with Disabilities

The proposed action has an impact on individuals with disabilities as follows:
 The proposed action affects payments for services used by individuals with disabilities, but is not expected to have an impact availability or access to services.

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, or fax to 410-767-6483. Comments will be accepted through December 14, 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:
50 percent General, and 50 percent federal 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:

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.10 Nursing Facility Services

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

10.09.10.07-2 (4/13/2015)

.07-2 Prospective Rates Effective January 1, 2015.

A. For dates of service from January 1, 2015 through [June 30, 2016] *December 31, 2016*, a 2012 final per diem rate shall be determined based on the following from each nursing facility's cost report ending in 2012 and shall be adjusted by the nursing facility budget changes implemented from the settled 2012 rate through and including [June 30, 2016] *December 31, 2016*:

(1)—(6) (text unchanged)

B. Per diem rates paid for services beginning January 1, 2015, shall be calculated as follows:

(1) Rates paid for services January 1, 2015, through [June 30, 2015] *December 31, 2015*, shall be calculated as the sum of:

(a)—(c) (text unchanged)

(2) Rates paid for services [July 1, 2015] *January 1, 2016*, through [December 31, 2015] *June 30, 2016*, shall be calculated as the sum of:

(a)—(c) (text unchanged)

(3) Rates paid for services [January 1, 2016] *July 1, 2016*, through [June 30, 2016] *December 31, 2016*, shall be calculated as the sum of:

(a)—(c) (text unchanged)

(4) Rates paid for services after [June 30, 2016] *December 31, 2016*, shall be calculated as 100 percent of the prospective rate plus the Nursing Facility Quality Assessment add-on identified in Regulation .10-1E of this chapter.

C. Hold Harmless.

(1) For each provider, the Department shall determine the difference between the rate calculated in §A of this regulation *excluding any budget changes implemented after June 30, 2014* and the rate calculated under §B(1)(a) and (b) of this regulation.

(2) If a provider's rate determined under §B(1)(a) and (b) of this regulation is less than the rate under §A of this regulation *excluding any budget changes implemented after June 30, 2014*, the provider shall be paid [100 percent of the rate under §A of this regulation during the period January 1, 2015 through June 30, 2015, plus the amount of the Nursing Facility Quality Assessment add-on identified in Regulation .10-1E of this chapter] *the rate determined under §B(1) of this regulation plus 100 percent of the amount calculated in §C(1) of this regulation.*

(3) During implementation of §B(2) of this regulation, providers identified in §C(2) of this regulation shall be paid the rate determined under §B(2) of this regulation plus [67 percent] *50 percent* of the amount calculated in §C(1) of this regulation.

[(4) During implementation of §B(3) of this regulation, providers identified in §C(2) of this regulation shall be paid the rate determined under §B(3) of this regulation plus 33 percent of the amount calculated in §C(1) of this regulation.]

D. Hold Harmless Offset.

(1) The Department shall determine the total aggregate amount under §C(1) of this regulation for all facilities for which the rate determined under §B(1)(a) and (b) of this regulation is less than the rate under §A of this regulation *excluding any budget changes implemented after June 30, 2014.*

(2) The Department shall determine the total aggregate amount under §C(1) of this regulation for all facilities for which the rate determined under §B(1)(a) and (b) of this regulation is greater than the rate under §A of this regulation *excluding any budget changes implemented after June 30, 2014.*

(3) (text unchanged)

(4) The Department shall identify all facilities that have a rate determined under §B(1)(a) and (b) of this regulation that is greater than the rate identified under §A of this regulation *excluding any budget changes implemented after June 30, 2014.*

(5) For each facility identified in §D(4) of this regulation, the Department shall multiply the amount by which §B(1)(a) and (b) of this regulation is greater than the rate identified under §A of this regulation, *excluding any budget changes implemented after June 30, 2014*, by the percentage determined in §D(3) of this regulation.

(6) (text unchanged)

(7) During implementation of §B(2) of this regulation, providers identified in §D(4) of this regulation shall be paid the amount determined under §B(2) of this regulation, minus [67 percent] *50 percent* of the amount determined under §D(5) of this regulation.

[(8) During implementation of §B(3) of this regulation, providers identified in §D(4) of this regulation shall be paid the amount determined under §B(3) of this regulation, minus 33 percent of the amount determined under §D(5) of this regulation.]

E. — I. (text unchanged)

J. Final facility rates for the period July 1, 2015 through December 31, 2015 shall be each nursing facility's quarterly rate reduced by the budget adjustment factor of 1.96 percent plus the Nursing Facility Quality Assessment add-on identified in Regulation .10-1E of this chapter.

K. Final facility rates for the period January 1, 2016 through June 30, 2016 shall be each nursing facility's quarterly rate reduced by the budget adjustment factor of 3.28 percent plus the Nursing Facility Quality Assessment add-on identified in Regulation .10-1E of this chapter.

10.09.10.10-1 (4/13/2015)

.10-1 Rate Calculation — Capital Costs for Rates Effective January 1, 2015.

A. (text unchanged)

B. Final Capital Cost.

(1) The determination of a provider's allowable final Capital per diem rate for the cost items under §A of this regulation is calculated as follows:

(a)—(c) (text unchanged)

(d) Multiply the ending licensed nursing facility beds from the cost report in §B(1)(c) of this regulation, *adjusted for accuracy using information available 2 months before setting the rate in this regulation*, by the land per bed amount from the appraisal to calculate a total land amount;

(e) (text unchanged)

(f) Divide the total appraisal amount by the number of ending licensed nursing facility beds, *under §B(1)(d) of this regulation*, to determine an appraised value per bed;

(g) (text unchanged)

(h) Multiply the final appraised value per bed times the number of ending licensed nursing facility beds, *under §B(1)(d) of this regulation*, to determine the facility's gross value;

(i)—(m) (text unchanged)

(2) (text unchanged)

C. — E. (text unchanged)

10.09.10.12-1 (4/13/2015)

.12-1 Payment Procedures — Out-of-State Facilities for Rates Effective January 1, 2015.

A. Out-of-State nursing facilities that are not special rehabilitation nursing facilities and do not meet the exception to cost reporting requirements set forth in Regulation .13N of this chapter shall be reimbursed at a rate that is the lesser of:

(1) The average *statewide* quarterly rate identified by Regulation .07-2 of this chapter for in-State nursing facilities minus the quality assessment; and

(2) (text unchanged)

B. Out-of-State nursing facilities that are not special rehabilitation nursing facilities and do meet the exception to cost reporting requirements set forth in Regulation .13N of this chapter shall be reimbursed the average *statewide* quarterly rate identified by Regulation .07-2 of this chapter for in-State nursing facilities minus the quality assessment.

C. — D. (text unchanged)

10.09.10.13 (4/13/2015)

.13 Cost Reporting.

A. — N. (text unchanged)

O. The notice required in §N(2) of this regulation shall include:

(1) (text unchanged)

(2) A statement that the provider agrees to accept as final reimbursement the average projected Medical Assistance payment calculated under Regulation .07B(2) of this chapter for each day of care rendered to a Maryland Medical Assistance recipient during the fiscal period, or for rates effective after December 31, 2014, the average rate paid to all other nursing facilities in the facility's geographic region *identified in Regulation .24A of this chapter, minus the quality assessment add-on for facilities that are exempt from Nursing Facility Quality Assessment identified in COMAR 10.01.20.*

P. (text unchanged)

10.09.10.15-1 (8/11/15)

.15-1 New Nursing Facilities, Replacement Facilities, and Change of Ownership for Rates Effective January 1, 2015.

A. (text unchanged)

B. New Nursing Facilities.

(1) Until such time as an appraisal for the new facility is available as set forth in Regulation [.10-1B(3)] .10-1B(1)(b) of this chapter, the fair rental value [portion of the Capital] *per diem* rate shall be based on the lower of the facility's construction costs plus the assessed land value divided by the number of licensed beds, or the maximum appraised value per bed in Regulation [.10-1B(8)] .10-1B(1)(g) of this chapter.

(2)—(4) (text unchanged)

(5) The [Capital] *fair rental value per diem* rate shall use days as the greater of total estimated resident days or days at full occupancy times an occupancy standard calculated under Regulation .08-1B(4) of this chapter and the maximum bed value identified in Regulation [.10-1B(8)] .10-1B(1)(g) of this chapter. [For the period of time the facility is operating under a waiver of occupancy granted in accordance with Regulation .16-1F of this chapter, the Capital rate shall be calculated using estimated resident days. At the completion of the waiver period, either the State or the facility may initiate a settlement payment should the estimate vary from the actual by more than 10 percent.]

(6) Upon providing the real estate bills to the State which incorporate the new construction at least 15 days before the start of operations or at least 15 days before the beginning of any calendar quarter, the real estate tax [pass through amount] *per diem rate* shall be calculated in accordance with Regulation [.10-1B(14)] .10-1B(1)(l) of this chapter. This amount shall be used for the period from the time of submission until the next facility cost report is filed. For the period of time the facility is operating under a waiver of occupancy granted in accordance with Regulation .16-1F of this chapter, the real estate tax *per diem rate* shall be calculated using estimated resident days. At the completion of the waiver period, either the State or the facility may initiate a settlement payment should the estimate vary from the actual by more than 10 percent.

(7) (text unchanged)

C. Replacement Facilities.

(1) Until such time as an appraisal for the replacement facility is available as set forth in Regulation [.10-1B(3)] .10-1B(1)(b) of this chapter, the fair rental value [portion of the Capital] *per diem rate* shall be based on the lower of the facility's construction costs plus the assessed land value divided by the number of licensed beds, or the maximum appraised value per bed in Regulation [.10-1B(8)] .10-1B(1)(g) of this chapter.

(2) The [Capital] *fair rental value per diem rate* shall use days as the greater of total estimated resident days or days at full occupancy times an occupancy standard calculated as the Statewide average under Regulation .08-1B(4) of this chapter. [For the period of time the facility is operating under a waiver of occupancy granted in accordance with Regulation .16-1F of this chapter the Capital rate shall be calculated using estimated resident days. At the completion of the waiver period either the State or the facility may initiate a settlement payment should the estimate vary from the actual by more than 10 percent.]

(3) Upon providing the real estate bills to the State, which incorporate the new construction, at least 15 days before [to] the start of operations or at least 15 days before the beginning of any calendar quarter, the real estate tax [pass through amount] *per diem rate* shall be calculated in accordance with Regulation [.10-1B(13)] .10-1B(1)(l) of this chapter. This amount shall be used for the period from the time of submission until the next facility cost report is filed. For the period of time the facility is operating under a waiver of occupancy granted in accordance with Regulation .16-1F of this chapter, the real estate tax *per diem rate* shall be calculated using estimated resident days. At the completion of the waiver period either the State or the facility may initiate a settlement payment should the estimate vary from the actual by more than 10 percent.

(4)—(6) (text unchanged)

D. Change of Ownership.

(1)—(4) (text unchanged)

(5) The new owner shall be paid at the same rates as the old nursing facility provider except for the period of time the facility is operating under a waiver of occupancy granted in accordance with Regulation .16-1F of this chapter in which the [Capital] *real estate tax per diem rate* shall be calculated using estimated resident days. At the completion of the waiver period either the State or the facility may initiate a settlement payment should the estimate vary from the actual by more than 10 percent.

10.09.10.16-1 (8/11/15)

.16-1 Selected Costs — Allowable for Payments for Services Provided Effective January 1, 2015.

A.—F. (text unchanged)

G. When a waiver is granted under the provisions of [§F] §F(3) of this regulation, the occupancy standards shall be applied to the reduced licensed capacity.

H. (text unchanged)

I. *The occupancy standard described in Regulations .10-1B(1)(k), .15-1B(5), and .15-1C(2) of this chapter may not be waived.*

10.09.10.28 (7/22/2015)

.28 Appeal Procedures.

A. (text unchanged)

B. Nursing Home Appeal Board.

(1) Appeals regarding *rate calculations or cost report adjustments which cannot be resolved administratively* go to the Nursing Home Appeal Board.

(2)—(6) (text unchanged)

VAN T. MITCHELL

Secretary of Health and Mental Hygiene