

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Department of Health and Mental Hygiene  
(DLS Control No. 15-294)**

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**Overview and Legal and Fiscal Impact**

The regulations modify Medicaid coverage of personal assistance services for individuals who do not require an institutional level of care so that those services are covered and paid for in a manner that is consistent with the coverage of personal assistance services for individuals who do require an institutional level of care.

The regulations present no 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: Personal Care Services: COMAR 10.09.20.01-.20

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**Legal Analysis**

**Background**

The Secretary of Health and Mental Hygiene is withdrawing changes to COMAR 10.09.20 that were proposed and published in the January 23, 2015 issue of the *Maryland Register* and replacing them with these regulations.

**Summary of Regulations**

The regulations modify Medicaid coverage of personal assistance services for individuals who do not require an institutional level of care so that those services are covered and paid for in a manner that is consistent with the coverage of personal assistance services for individuals who do require an institutional level of care.

Regulation .01 defines various terms, including “activities of daily living,” “community setting,” and “instrumental activities of daily living.”

Regulation .02 requires that registered nurses, licensed practical nurses, certified medication technicians, and certified nursing assistants be licensed to practice in the jurisdiction in which services are rendered.

Regulation .03 requires that, in order to participate in the Maryland Medicaid Program, a participant be determined by the Department of Health and Mental Hygiene to need personal assistance services, be eligible for Medicaid under an eligibility coverage group described in certain provisions of COMAR 10.09.24, and reside at home. The regulation also requires that a participant have an active plan of service. The plan of service must (1) be based on the evaluation and recommended plan of care and consultation with the applicant or participant; (2) address the applicant's or participant's health and safety needs; (3) specify the services needed to safely support the participant in the community; (4) specify the provider agency providing personal assistance services; and (5) include the signature of (i) the participant, or when applicable the individual's representative, (ii) the supports planner, and (iii) the personal assistance provider agency listed within the plan of service. The regulation requires that a participant's eligibility for services be reevaluated by the department every 12 months or more frequently, if needed due to a significant change in the participant's condition or needs. Finally, the regulation specifies the conditions under which participant eligibility must be terminated.

Regulation .04 states the general requirements that a provider must meet in order to participate as a provider of a service covered under the chapter. The requirements include (1) meeting all conditions for participation as a Medicaid provider; (2) implementing the reporting and follow-up of incidents and complaints in accordance with the department's established policy; (3) agreeing to cooperate with required inspections, reviews, and audits by authorized governmental agents; and (4) verifying Medicaid eligibility at the beginning of each month that services will be rendered. The regulation also provides that a provider or its principals must not have had certain actions, such as the revocation of a license or the imposition of sanctions, taken against them within the past 24 months in order to participate as a provider. Finally, the regulation requires a provider who renders health-related services to agree to periodically provide information about a participant in accordance with procedures and forms designated by the department and share and discuss the documented information at the request of the participant.

Regulation .05 governs the specific conditions required for participating as a personal assistance service provider. The regulation requires that a personal assistance service provider (1) be licensed as a residential service agency; (2) employ a registered nurse to carry out certain duties, including assessing each new participant; (3) employ workers who will accept instruction on the services required in the participant's plan of service; (4) provide services directly through their workers under the direction of the participant or, when applicable, the participant's representative; (5) allow participants to have a significant role in the delivery of their specific care; (6) notify the department in writing at least 45 days in advance of a change, such as a voluntary closure or a change of ownership, and include certain information in the notice; (7) apply for a new license, if applicable, when ownership is to be transferred; and (8) submit a Medicaid provider application to the department if the new owner chooses to participate in Medicaid. The regulation also requires a worker who performs delegated nursing services to be a certified medications technician if required to administer medications in accordance with the plan of service and also be a certified nursing assistant if performing other delegated nursing functions. Finally, the regulation prohibits a personal assistance provider agency from assigning the participant's representative to provide services to that participant.

In order to participate as a supports planning provider, Regulation .06 requires a provider to (1) be free from conflicts of interest; (2) agree to be monitored by the department; and (3) be identified by the department through a solicitation process or be the area agency on aging that is enrolled to provide case management services.

In order to participate as a nurse monitoring provider, Regulation .07 requires a provider to (1) be designated by the department through a process approved by the Centers for Medicare and Medicaid Services; (2) employ or contract with registered nurses who are currently licensed to practice in Maryland; (3) agree to accept all referrals from the department; and (4) agree to be monitored by the department.

Regulation .08 requires Medicaid to reimburse for the covered services when the services have been preauthorized by the department in the participant's plan of service, billed in accordance with the payment procedures in Regulation .14, and documented as necessary to prevent institutionalization.

Regulation .09 provides that Medicaid covers the following services when provided by a personal assistance provider: (1) assistance with activities of daily living; (2) delegated nursing functions, under certain circumstances; (3) assistance with tasks requiring judgment to protect a participant from harm or neglect; (4) assistance with or completion of instrumental activities of daily living provided in conjunction with certain other services; and (5) assistance with the participant's self-administration of medications or administration of medications or other remedies, when ordered by a physician. The regulation also provides that the services may not include (1) services rendered to, or primarily for the benefit of, anyone other than the participant; (2) the cost of food or meals prepared in or delivered to the home or otherwise received in the community; or (3) housekeeping services, other than those incidental to services otherwise allowed.

Regulation .10 requires supports planning services to (1) address the individualized needs of the participant; (2) be sensitive to the educational background, culture, and general environment of the participant; (3) support the participant to self-direct services and exercise as much control as desired over the personal assistance provider; and (4) ensure freedom of choice among any willing provider for all services. The regulation provides that supports planning services include time spent by a qualified provider conducting certain services, including assisting the participant in developing a plan of service, monitoring the provision of services to determine whether they are in accordance with the plan of service, and using information technology systems developed by the department.

Regulation .11 specifies that Medicaid covers the following services when provided by a nurse monitor: (1) being available to give instruction and to answer questions; (2) complying with the department's reportable events policy; and (3) maintaining an up-to-date client profile in an electronic database designated by the department. The regulation specifies the schedule under which Medicaid covers nurse monitoring services. Also, the regulation requires the nurse monitoring provider to use the home or workplace visit for the purpose of assessing the participant's condition, assessing the quality of personal assistance services, and determining the

need for discharge from the services or referral to other services. Finally, the regulation requires the nurse monitor to assess the quality of personal assistance services by reviewing documentation related to the services and observing the performance of the worker as appropriate.

Regulation .12 requires Medicaid to reimburse for the personal assistance services if the service (1) is provided in accordance with the requirements of the chapter; (2) is recommended on the plan of service as necessary in order to assure the health and safety of the applicant or participant in the community; (3) has been preauthorized by the department; (4) is provided to an enrolled participant; (5) is medically necessary; and (6) is provided by a Medicaid provider who meets the conditions for participation.

Regulation .13 requires the department to establish a budget for personal assistance services that may be included in the participant's plan of service, based on each participant's assessed need. The regulation also specifies the services that Medicaid does not cover. Those services include meals delivered to the home, expenses related to room and board for either the participant or the worker, and services provided by providers not approved for participation by the department. Additionally, the regulation requires that payment for supports planning and nurse monitoring services be limited to direct services to the participant. The payments cannot be made for items such as administrative overhead, travel, or staff supervision.

To receive payment as a personal assistance provider agency, Regulation .14 requires a provider and its workers to use the telephonic timekeeping system approved by the department to document time and submit claims. To receive payment as a provider of supports planning services or nurse monitoring services, the regulation requires a provider to submit claims in accordance with procedures outlined in the department's billing manual. Additionally, the regulation requires that payments for services be made directly to a qualified provider. The provider must be paid the lesser of (1) the provider's usual and customary charge to the general public unless the service is free to individuals not covered by Medicaid or (2) the rate established in the regulation or according to the fee scheduled published by the department. The regulation sets the rate of payment to personal assistance provider agencies at \$16.48 per hour and specifies that payment to personal assistance agencies for services provided by a personal assistance worker to each of two participants in the same residence is \$10.99 per hour. The rates must increase on July 1 of each year, subject to the limitations of the State budget, by the lesser of 2.5% or the increase in the consumer price index.

- Regulation .15 provides that recovery and reimbursement procedures are set forth in COMAR 10.09.36.07.
- Regulation .16 specifies that the cause for suspension or removal and imposition of sanctions are set forth in COMAR 10.09.26.08.
- Regulation .17 states that appeal procedures for providers are those set in COMAR 10.09.36.09 and COMAR 10.01.03.

- Regulation .18 states that appeal procedures for applicants and participants are those set in COMAR 10.09.24.13 and COMAR 10.01.04.
- Regulation .19 provides that interpretive regulatory requirements are those stated in COMAR 10.09.36.10.
- Regulation .20 provides that the chapter must be implemented October 1, 2015.

## **Legal Issues**

The regulations present no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The department cites § 2-104(b), 15-103, and 15-105 of the Health – General Article as statutory authority for the regulations. Section 2-104(b) authorizes the Secretary to adopt rules and regulations to carry out the provisions of law that are within the jurisdiction of the Secretary. Section 15-103 requires the Secretary to administer the Maryland Medical Assistance Program. Section 15-105 requires the department to adopt rules regulations for the reimbursement of providers under the Maryland Medical Assistance Program.

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

## **Technical Corrections and Special Notes**

The department was contacted regarding two terms that were defined, but were not otherwise used in the regulations. The department has decided to keep those definitions in the regulations.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

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

The regulations modify Medicaid coverage of personal assistance services for individuals who do not require an institutional level of care so that those services are covered and paid for in a manner that is consistent with the coverage of personal assistance services for individuals who do require an institutional level of care. As part of this change, Medicaid will no longer cover personal assistance services provided by participant-employed workers. Although the hourly reimbursement rate for agency providers is higher, overall expenditures on participant-employer workers is higher making the overall cost of either worker approximately the same. Thus, the

department advises that the regulations are budget neutral and have no impact on State or local governments. 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.

### **Contact Information**

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