

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
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2. COMAR Codification

Title Subtitle Chapter Regulation

10 09 10 07-1, .07-2, .10-1, .11-2,.11-7, .11-8, .15-1, .25

3. Name of Promulgating Authority

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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 .07-1, .07-2, .10-1, .11-2, .11-7, .11-8, .15-1 and .25 under COMAR 10.09.10 Nursing Facility Services.

Statement of Purpose

The purpose of this action is to :

- (1) Clarify language related to the cost reports used when setting capital costs and nursing services cost indexing;
- (2) Extend the interim working capital fund;
- (3) Change the source of acuity for the pay-for-performance program;
- (4) Correct certain citations;
- (5) Modify the factors used to calculate the amount of an indemnity bond or standby letter of credit; and
- (6) Establish the budget adjustment factor in order to provide a rate increase of 2 percent in accordance with the Fiscal Year 2017 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 accordance with the Program's budget for Fiscal Year 2017, rates for nursing facility services will increase by 2 percent. In addition, working capital advances will result in loss of potential interest income to the State. All other changes are budget-neutral.

II. Types of Economic Impact.

	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(E+)	\$41,628,157
(2)	(R-)	\$133,959

- B. On other State agencies: NONE
 C. On local governments: NONE

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(+)	\$41,762,116
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(1). The average reimbursement rate for nursing facility services in Fiscal Year 2016 was \$245.92. After a 2 percent increase in Fiscal Year 2017 under the provisions of the proposed amendments, the average rate will be \$250.84. Based on a projected 5,600,208 Medicaid days in Fiscal Year 2016, and 5,656,320 days in Fiscal Year 2017, total Medicaid expenditures for nursing facility services will increase by \$41,628,157. $(\$250.84 \times 5,656,320) - (\$245.92 \times 5,600,208) = \$41,628,157$

A(2). The interim working capital fund will provide \$12,955,404 to providers during Fiscal Year 2017, resulting in loss of potential interest income of \$133,959, based on a rate of return of 1.034 percent.

D. Provider reimbursement for nursing facilities will increase by \$41,628,157 during Fiscal Year 2017 as described in Section III.A. Providers will also benefit from the State’s loss of potential interest income in the amount of \$133,959 due to providing working capital advances.

Economic Impact on Small Businesses

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

Eight nursing homes, which qualify as small businesses, are expected to account for 54,302 Medicaid days during Fiscal Year 2017. At an average increase in rates of \$4.92 per day, the impact on small businesses is estimated as an increase in revenue of \$267,166. The amount of benefit to small businesses due to the interim working capital fund is indeterminate.

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 on 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 October 3, 2016. A public hearing has not been scheduled.

Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 2017
- 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

10.09.10.07-1 (5/17/16)

.07-1 Interim Working Capital Fund.

A.—H. (text unchanged)

I. The Interim Working Capital Fund expires on [May 1, 2015] *May 1, 2017*. Providers shall repay all outstanding funds to the Department by [May 1, 2015] *May 1, 2017*. The Department may grant repayment extensions of not longer than 60 days under extraordinary circumstances.

10.09.10.07-2 (5/10/16)

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

A.—K. (text unchanged)

L. *Final facility rates for the period July 1, 2016 through December 31, 2016 shall be each nursing facility's quarterly rate, exclusive of the amount identified in Regulation .11-8A(2) of this chapter, reduced by the budget adjustment factor of 6.076 percent, plus the Nursing Facility Quality Assessment add-on identified in Regulation .10-1E of this chapter and the ventilator care add-on amount identified in Regulation .11-8A(2) of this chapter when applicable.*

M. *Final facility rates for the period January 1, 2017 through June 30, 2017 shall be each nursing facility's quarterly rate, exclusive of the amount identified in Regulation .11-8A(2) of this chapter, reduced by the budget adjustment factor of 8.212 percent, plus the Nursing Facility Quality Assessment add-on identified in Regulation .10-1E of this chapter and the ventilator care add-on amount identified in Regulation .11-8A(2) of this chapter when applicable.*

10.09.10.10-1 (6/3/16)

.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)—(b) (text unchanged)

(c) Determine the cost report for each facility that covers the date of valuation of the appraisal identified in §B(1)(b) of this regulation, *or, if a cost report covering the date of valuation has not been filed by the facility, determine the closest match to the date of valuation available 2 months before the period for which final Capital rates are being calculated;*

(d)—(m) (text unchanged)

(2) (text unchanged)

C.—E. (text unchanged)

10.09.10.11-2 (4/22/16)

.11-2 Pay-for-Performance — Quality Measures.

A. (text unchanged)

B. Staffing Levels.

(1) (text unchanged)

(2) Each Maryland facility covered by these regulations which fails to comply with [§G(1)] §B(1) of this regulation shall incur a 1 percentage point reduction in its applicable rental rate presented in [Regulation .10G(9)] Regulation .10-1B(1)(i) or (j) of this chapter.

(3) (text unchanged)

(4) A facility's average acuity shall be determined [from claims for services provided by the facility] *based on the facilities Minimum Data Set Resource Utilization Groups (RUG) during the [1-year] 6-month period ending [September 30] December 31 of the most recent [prior] State fiscal year. To establish expected staffing hours, each [day of care and procedure is multiplied by the daily hours required under Regulation .25B of this chapter and divided by the total days of care during the same period] RUG group will be multiplied by the corresponding hours under Regulation .25C of this chapter and divided by the total days of care during the same period.*

(5)—(7) (text unchanged)

C.—G. (text unchanged)

10.09.10.11-7 (6/3/16)

.11-7 Rate Calculation — Nursing Service Costs for Rates Effective January 1, 2015.

A.—B. (text unchanged)

C. The final Nursing Service rate for each nursing facility for each quarter is calculated as follows:

(1)—(2) (text unchanged)

(3) Calculate a Medicaid adjusted Nursing Service cost per diem by multiplying the per diem identified under §B(2) or §C(5) of this regulation by the Medicaid case mix adjustment ratio calculated as the facility average Medicaid case mix index divided by the cost report period case mix index rounded to four decimals; [and]

(4) Calculate the final Nursing Service rate as the initial nursing facility rate reduced by any positive difference between 95 percent of the initial nursing facility rate and the Medicaid adjusted Nursing Service cost per diem; *and*

(5) *For years between periods when the prices are rebased, the indexed Nursing Service cost per diem identified under §B(2) of this regulation shall be adjusted as set forth in Regulation .08-1D of this chapter.*

D.—G. (text unchanged)

10.09.10.11-8 (5/9/16)

.11-8 Ventilator Care Nursing Facilities Effective January 1, 2015.

Nursing facilities with licensed nursing facility beds, which have been determined by the Department to meet the standards for ventilator care under COMAR 10.07.02, shall be reimbursed as follows:

A.—B. (text unchanged)

C. The facility average Medicaid case mix index for rates under §A of this regulation are not subject to the Medicaid case mix index equalizer adjustment in [Regulation .11-7F(2)(h)] *Regulation .11-7F(6)* of this chapter;

D.—G. (text unchanged)

10.09.10.15-1 (5/19/2016)

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

A.—C. (text unchanged)

D. Change of Ownership.

(1) (text unchanged)

(2) Indemnity Bond or Standby Letter of Credit.

(a) The indemnity bond or standby letter of credit required by [§C(2)(a)(ii)] §D(1)(a)(ii) or (b)(iii) of this regulation shall be in the amount of:

(i) 10 percent of the Program billings for each unsettled fiscal period *prior to January 1, 2015* outstanding;

(ii) All unpaid amounts due and owing the Program for each settled fiscal period *before January 1, 2015*;

[and]

(iii) *10 percent of the Program billings for the most recent annual fiscal period; and*

[(iii)] (iv) (text unchanged)

(b) If a court of competent jurisdiction discharges the debt of a bankrupt provider, the Program shall release to the purchaser the difference between the indemnity bond of standby letter of credit required under [§C(2)(b)(iii)] §D(1)(b)(iii) of this regulation and the amount of the financial obligation discharged by the court.

(3)—(5) (text unchanged)

10.09.10.25 (6/16/2016)

.25 Nursing Service Personnel and Procedures.

A.—B. (text unchanged)

C. *Minimum Data Set Resource Utilization Groups Hourly Weights.*

<i>RUG-IV 48</i>	<i>Total Hrs</i>
<i>ES3</i>	<i>6.17733333</i>
<i>ES2</i>	<i>5.04483333</i>
<i>ES1</i>	<i>5.69500000</i>
<i>RAE</i>	<i>5.17450000</i>
<i>RAD</i>	<i>4.70150000</i>
<i>RAC</i>	<i>3.86266667</i>
<i>RAB</i>	<i>3.07583333</i>
<i>RAA</i>	<i>2.28500000</i>
<i>HE2</i>	<i>5.43733333</i>
<i>HE1</i>	<i>4.49366667</i>
<i>HD2</i>	<i>5.00533333</i>
<i>HD1</i>	<i>3.99700000</i>
<i>HC2</i>	<i>4.26566667</i>
<i>HC1</i>	<i>3.84616667</i>
<i>HB2</i>	<i>5.30500000</i>
<i>HB1</i>	<i>3.02300000</i>
<i>LE2</i>	<i>4.89816667</i>
<i>LE1</i>	<i>4.01933333</i>

<i>LD2</i>	<i>4.31583333</i>
<i>LD1</i>	<i>3.35383333</i>
<i>LC2</i>	<i>3.32883333</i>
<i>LC1</i>	<i>3.36916667</i>
<i>LB2</i>	<i>4.07566667</i>
<i>LB1</i>	<i>2.91083333</i>
<i>CE2</i>	<i>4.28650000</i>
<i>CE1</i>	<i>3.86816667</i>
<i>CD2</i>	<i>4.46816667</i>
<i>CD1</i>	<i>3.80533333</i>
<i>CC2</i>	<i>3.02250000</i>
<i>CC1</i>	<i>2.98650000</i>
<i>CB2</i>	<i>2.83283333</i>
<i>CB1</i>	<i>2.68883333</i>
<i>CA2</i>	<i>1.87200000</i>
<i>CA1</i>	<i>1.75983333</i>
<i>BB2</i>	<i>2.49116667</i>
<i>BB1</i>	<i>2.46466667</i>
<i>BA2</i>	<i>2.12716667</i>
<i>BA1</i>	<i>1.65100000</i>
<i>PE2</i>	<i>3.84716667</i>
<i>PE1</i>	<i>3.81933333</i>
<i>PD2</i>	<i>3.74566667</i>
<i>PD1</i>	<i>3.46050000</i>
<i>PC2</i>	<i>2.68133333</i>
<i>PC1</i>	<i>2.90283333</i>
<i>PB2</i>	<i>2.74100000</i>
<i>PB1</i>	<i>2.00416667</i>
<i>PA2</i>	<i>1.07683333</i>
<i>PA1</i>	<i>1.34950000</i>

VAN T. MITCHELL

Secretary of Health and Mental Hygiene