

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>
	12/02/2014	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

**1. Desired date of publication in Maryland Register: 1/9/2015**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

10 09 84 02-.07, .15, .20, .23, .24 and .27

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

Michael Cimmino

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**6. Check applicable items:**

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: June 30, 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 David Lapp, Assistant Attorney General, (telephone #410-767-5292) on November 12, 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**

December 2, 2014

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

**Subtitle 09 MEDICAL CARE PROGRAMS**

**10.09.84 Community First Choice**

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

**Notice of Proposed Action**

[]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .02—.07, .15, .20, .23, .24, and .27 under COMAR 10.09.84 Community First Choice.

**Statement of Purpose**

The purpose of this action is to align the language in the Community First Choice regulations with the language in the proposed amendments to COMAR 10.09.20 Community Personal Assistance Services; make grammatical corrections; update the current requirement to allow people to stay in the program under less restrictive terms; and to include rates.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**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 February 9, 2015. 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?
- C. If 'yes', state whether general, special (exact name), or federal funds will be used:
- 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:  
These regulations have no economic impact because they do not affect utilization or reimbursement of covered services.
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.  
There will be no impact on small businesses as no change is being made to the reimbursement amounts or processes in these regulations.
- G. Small Business Worksheet:

Attached Document:

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## **Title 10**

# **DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

## **Subtitle 09 MEDICAL CARE PROGRAMS**

### **10.09.84 Community First Choice**

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

*10.09.84.02 (6/30/14)*

#### **.02 Definitions.**

- A. (text unchanged)
- B. Terms Defined.
- (1)—(2) (text unchanged)
- (3) “Assistance” means that another [person] *individual*:
- (a)—(d) (text unchanged)

(4)—(5) (text unchanged)

(6) “Certified medication technician (CMT)” means an individual, regardless of title, who:

(a) (text unchanged)

(b) Is certified by the [board] *Maryland Board of Nursing* under COMAR 10.39.04; and

(c) (text unchanged)

(7)—(8) (text unchanged)

(9) [“Community setting” is the area, district, locality, neighborhood, or vicinity where a group of people live.]

Community Setting.

(a) [A community setting provides participants with opportunities to:] “*Community setting*” means the area, district, locality, neighborhood, or vicinity where a group of people live which provides participants with opportunities to:

(i)—(iv) (text unchanged)

(b) “Community setting” does not [include] *mean*:

(i)—(iv) (text unchanged)

(v) Community-based residential facilities for individuals with intellectual or developmental disabilities licensed under COMAR [10.22.03] *10.22.02*; or

(vi) (text unchanged)

(10) (text unchanged)

(11) “Delegated nursing functions” means nursing services provided to a participant by an enrolled personal assistance provider under the supervision of a [registered nurse in accordance with COMAR 10.27.11 or nurse practitioner in accordance with COMAR 10.27.07.]:

(a) *Registered nurse in accordance with COMAR 10.27.11; or*

(b) *Nurse practitioner in accordance with COMAR 10.27.07.*

(12)—(13) (text unchanged)

(14) “Fiscal intermediary” means an agency that is under contract with the Department to provide [fiscal intermediary services that provides] certain services performed on behalf of the Department or the participant, or both, such as:

(a) Employer-related payroll functions, [such as State and federal tax withholding, withholding of union dues, and Social Security withholding; and] *including*:

(i) *State and Federal tax withholding;*

(ii) *Withholding of union dues; and*

(iii) *Social Security withholding; and*

(b) Verification of eligible services and providers to be reimbursed by the Program, including preauthorizations [in some instances].

(15)—(18) (text unchanged)

(19) “Medicaid” means the [Maryland Medical Assistance] Program, administered by the State of Maryland under Title XIX of the Social Security Act, which provides comprehensive medical and other health-related care for categorically eligible and medically needy participants.

(20) (text unchanged)

(21) “Nurse” means an individual who is currently licensed to practice nursing in the State under COMAR [10.27] *10.27.01*.

(22) “Nurse monitor” means a registered nurse who [assesses] *completes nursing assessments on* participants and evaluates the delivery of care.

(22)—(25) (text unchanged)

(26) “Person-centered” means that the plan reflects what is important to the individual, what is important for his or her health and welfare, and *is* developed with input from the individual and the individual’s representative when applicable.

(27) (text unchanged)

(28) Personal Assistance Services.

(a) “Personal assistance services” means assistance specific to the functional needs of a participant with a chronic illness, medical condition, or disability [and includes assistance with activities of daily living and instrumental activities of daily living].

(b) “Personal assistance services” includes [the performance of some delegated nursing functions.] :

(i) *Assistance with activities of daily living and instrumental activities of daily living; and*

(ii) *The performance of delegated nursing function.*

(29)—(30) (text unchanged)

(31) “Program” means the [Medical Assistance] *Maryland Medicaid* Program.

(32)—(34) (text unchanged)

(35) “Recommended plan of care” means the recommended service plan developed by a nurse after a face-to-face [assessment] *evaluation* of an applicant or participant.

(36)—(37) (text unchanged)

(38) “Supports planner” means an individual who coordinates services, including:

(a)—(b) (text unchanged)

(c) [The responsibility for ensuring] *Ensuring* an accurate plan of service is provided to the Department.

(39) “Telephonic timekeeping system” means a system developed by the Department [that certain providers are required to use to accurately] *for providers to* time stamp the start and finish of services provided to a participant.

10.09.84.03 (6/30/14)

### **.03 Requirements for Provider Licensing or Certification.**

A. The following health professionals providing services under this chapter shall be licensed to practice in the jurisdiction in which services are rendered:

(1)—(3) (text unchanged)

[(4) Licensed vocational nurses;]

[(5)] (4)—[(11)] (10) (text unchanged)

[B. The following shall be appropriately licensed, certified, or approved by the Department to provide services under this chapter:

(1) Licensed home health agency under COMAR 10.09.04;

(2) Certified residential services agency under COMAR 10.07.05;

(3) Medical Assistance personal assistance provider under COMAR 10.09.20;

(4) A personal assistance provider who renders personal assistance services in his or her home under COMAR 10.07.14; and

(5) Nursing Referral Service Agency under COMAR 10.07.07.]

*B.A personal assistance provider who renders personal assistance services in his or her home shall be licensed under COMAR 10.07.14.*

10.09.84.04 (6/30/14)

### **.04 Participant Eligibility.**

A. To be eligible for participation, a participant shall be determined by the Department to:

(1) Require the level of care provided in a hospital, nursing facility, or an intermediate care facility for individuals with intellectual disabilities; [and]

(2) Be eligible for [the Maryland Medical Assistance Program] *Medicaid* under an eligibility group defined in COMAR 10.09.24[.]; *and*

(3) *Reside at home.*

B. To be eligible for participation, a participant [must] *shall* have an active plan of service. The plan of service shall:

(1) Be based on:

(a) The [assessment] *evaluation* and recommended plan of care; and

(b) Consultation [from] *with* the applicant or participant;

(2)—(4) (text unchanged)

(5) Include the signature of the participant [,] *or* the individual’s representative if applicable, the supports planner, and the personal assistance provider listed within the plan of service.

C. (text unchanged)

D. Participant eligibility shall be terminated if the participant:

(1)—(2) (text unchanged)

(3) Is without [personal assistance] services for 30 *consecutive calendar* days;

(4)—(7) (text unchanged)

10.09.84.05 (6/30/14)

### **.05 Conditions for Provider Participation — General Requirements.**

A. To participate as a provider of a service covered under this chapter, a provider [shall]:

(1) [Meet] *Shall meet* all of the conditions for participation as a Maryland Medical Assistance Program provider as set forth in COMAR 10.09.36, except as otherwise specified in this chapter;

(2) [Verify] *Shall verify* the qualifications of all individuals who render services on the provider’s behalf, and provide a copy of the current license or credentials upon request;

(3) [Implement] *Shall implement* the reporting and follow-up of incidents and complaints in accordance with the Department’s established policy by:

(a)—(c) (text unchanged)

(4) [Agree] *Shall agree* to cooperate with required inspections, reviews, and audits by authorized governmental agents;

(5) [Agree] *Shall agree* to provide services, and to subsequently bill the Department in accordance with the reimbursement methodology specified in this chapter, for only those services covered under this chapter which have been:

(a)—(c) (text unchanged)

(6) [Agree] *Shall agree* to maintain and have available written documentation of services, including dates and hours of services provided to participants, for a period of 6 years, in a manner approved by the Department;

(7) [Agree] *Shall agree* not to suspend, terminate, increase, or reduce services for an individual without authorization from the Department and [with] *only after* consultation and agreement from the participant or a participant's representative when applicable;

(8) [Submit] *Shall submit* a transition plan to the case manager or supports planner and participant or participant's representative when applicable when suspending or terminating services;

[(9) Demonstrate substantial, sustained compliance with the requirements of this chapter for at least 24 months after a cited deficiency which presented serious danger to participants' health and safety;]

[(10)] (9) [Verify] *Shall verify* Medicaid eligibility at the beginning of each month that services will be rendered; and

[(11)] (10) [Not] *May not* be a Medicaid provider or principal of a Medicaid provider that has overpayments that remain due to the Department.

B. (text unchanged)

C. A provider who renders health-related services to participants shall agree to:

(1) Periodically [indicate the condition of] *provide information about* a participant in accordance with the procedures and forms designated by the Department; and

(2) (text unchanged)

10.09.84.06 (4/10/14)

#### **.06 Specific Conditions for Provider Participation — Personal Assistance Services.**

A. To participate in the Program as a consumer-employed provider of personal assistance services under this chapter, unless otherwise exempted under §E of this regulation, a personal assistance provider shall:

(1)—(3) (text unchanged)

(4) Be currently certified by an organization [recognized] *accepted* by the [Board of Nursing] *Department* to provide training in the following areas:

(a)—(b) (text unchanged)

(5) Accept instruction [and training] on the personal assistance services required in the participant's plan of service from the following:

(a)—(c) (text unchanged)

(d) A treating physician *or nurse practitioner*;

(e)—(f) (text unchanged)

(6)—(7) (text unchanged)

(8) Agree to use a telephonic timekeeping system to:

(a) (text unchanged)

(b) Submit claims for payment[.];

(9)—(11) (text unchanged)

B. To participate in the Program as a [consumer] *participant*-employed provider of personal assistance services, a personal assistance provider may not:

(1)—(4) (text unchanged)

C. An agency that provides personal assistance services shall:

[(1) Employ individuals to provide personal assistance services who meet the conditions of §§A and B of this regulation;

(2) Employ a registered nurse who may delegate nursing tasks to a CNA or CMT in accordance with COMAR 10.27.09 and 10.27.11;

(3) Either provide services directly through their employees or arrange for the provision of services under the direction of the individual receiving services;

(4) Allow participants to have a significant role in the selection and dismissal of the providers of their choice, for the delivery of their specific care, and for the services and supports identified in their person-centered service plan;

(5) Be licensed as a:

(a) Residential Service Agency under COMAR 10.07.05;

(b) Home Health Agency under COMAR 10.07.10; or

(c) Nursing Referral Service Agency under COMAR 10.07.07;]

(1) *Be licensed as a Residential Service Agency under COMAR 10.07.05;*

(2) *Employ a registered nurse who shall:*

(a) *Assess each new participant who requires personal assistance services;*

(b) *Participate in developing the provider instructions and in assigning appropriate personnel;*

(c) *Delegate nursing tasks, as appropriate, to a CNA or a CMT in accordance with COMAR 10.27.11; and*

(d) *Participate in instructing the individuals who will provide the assistance, when indicated;*

(3) *Employ individuals to provide personal assistance services who meet the conditions of §§A and B of this regulation;*

(4) *Either provide services directly through their employees or arrange for the provision of services under the direction of the individual receiving services;*

(5) *Allow participants to have a significant role in the selection and dismissal of the providers of their choice, for the delivery of their specific care, and for the services and supports identified in their person-centered service plan;*

(6)—(10) (text unchanged)

D. A [consumer] *participant*-employed or agency-employed provider of personal assistance services who performs delegated nursing services in accordance with COMAR 10.27.11 shall:

(1)—(2) (text unchanged)

E. Exemptions.

(1) Subject to approval by the Department, [consumer] *participant*-employed providers of personal assistance services may be exempted from the qualifications of [§§ A(2),(4),(5),(8), and B(2)] §§A(1),(3),(4), and B(3) of this regulation, if:

(a)—(b) (text unchanged)

(2)—(3) (text unchanged)

F. If requested by the agency or applicant to provide personal assistance services the Department may waive the provisions of §[B(2)] B(3) of this regulation if the agency or applicant demonstrates that:

(1)—(2) (text unchanged)

10.09.84.07 (5/19/14)

#### **.07 Specific Conditions for Provider Participation — Supports Planning [Services].**

To participate in the Program as a supports planning provider under Regulation .15 of this chapter, a provider shall:

A. (text unchanged)

B. Be the [Area Agency on Aging] *area agency on aging* enrolled to provide case management services under COMAR 10.09.54.

10.09.84.15 (7/8/14)

#### **.15 Covered Services — Supports Planning.**

A. (text unchanged)

B. Supports planning services shall:

(1)—(3) (text unchanged)

(4) Allow [participant's] *participants* to exercise as much control as desired to select, train, supervise, schedule, determine duties, and dismiss the personal assistance provider.

C. Supports planning services include time spent by a qualified provider conducting any of the following activities:

(1)—(2) (text unchanged)

(3) Monitoring the provision of services to determine if services are received in accordance with the plan of [services] *service*;

(4)—(6) (text unchanged)

(7) Verifying the participant's eligibility [and] at the beginning of each month that personal assistance services will be rendered.

10.09.84.20 (11/13/14)

#### **.20 Covered Services — Nurse Monitoring.**

A. (text unchanged)

B. The program covers the following services when provided by a nurse monitor:

(1) (text unchanged)

(2) Instructing the individual providing personal assistance services concerning the services required under the participant's provider instructions[,] and [about] *the* conditions [which] *that* should be brought to the attention of the supports planner, nurse monitor, or personal physician;

(3)—(5) (text unchanged)

C.—D. (text unchanged)

10.09.84.23 (6/30/14)

#### **.23 Limitations.**

A. (text unchanged)

B. The Department shall establish a budget for personal assistance services that may be included in the participant's plan of [services] *service*, based [upon] *on* each participant's [assessment of] *assessed* need.

C. The Program does not cover the following services:

(1) Service primarily for the purpose of housekeeping [or] unrelated to the participant's activities of daily living, such as:

(a) Cleaning of *the* floor and furniture in areas not occupied by the participant;

(b)—(c) (text unchanged)



(2)—(3) (text unchanged)

(4) Expenses related to room and board for either the participant or the personal assistance provider[.];

(5) *Transition services more than 60 days post transition;*

(6) *Personal assistance services provided outside the State for more than 14 days per calendar year.*

*D. Personal assistance services provided to a participant younger than 18 years old to substitute for care ordinarily rendered by the parent or guardian shall be considered medically necessary when the:*

*(1) Participant requires an awake and alert caregiver at all times;*

*(2) Parent or guardian provides documentation, including work schedule, commuting times, and school attendance records, that substitute care is necessary to allow employment or school attendance; or*

*(3) Parent or guardian provides documentation of emergency circumstances, as determined by the Department, including but not limited to the inability of the primary caregiver to provide care due to hospitalization or an acute debilitating illness.*

#### **.24 Payment Procedures.**

A. Request for Payment — Personal Assistance [Services]. To receive payment as a provider of personal assistance services under Regulation .14 of this chapter, a provider shall use the telephonic timekeeping system approved by the Department to:

(1)—(2) (text unchanged)

B.—D. (text unchanged)

E. Rates.

[(1) The Department shall publish a fee schedule for services covered under this chapter which shall be publicly available and updated at least annually or upon any changes made by the Department;]

*(1) The rate of payment to agencies for personal assistance shall be \$16.48 per hour;*

*(2) The rate of payment to participant-employed personal assistance providers shall be \$12.58 per hour, unless a participant chooses to self-direct their services in which case the participant may set the rate of payment at no less than \$11.75 and not more than \$14.63 per hour;*

[(2)] (3) The Program's rates [as specified in the Department's fee schedule] shall increase on July 1 of each year, subject to the limitations of the State budget, by the lesser of:

(a)—(b) (text unchanged)

10.09.84.27 (4/28/14)

#### **.27 Appeal Procedures — Providers.**

Appeal procedures shall be as set forth in [COMAR 10.09.36.09]:

A. *COMAR 10.09.36.09; and*

B. *COMAR 10.01.03.*

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

**Secretary of Health and Mental Hygiene**