

MARYLAND REGISTER

Proposed Action on Regulations

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2. COMAR Codification

Title Subtitle Chapter Regulation

10 09 50 01-.05 and .07

3. Name of Promulgating Authority

Department of Health and Mental Hygiene

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Title 10
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
Subtitle 09 MEDICAL CARE PROGRAMS

10.09.50 EPSDT School Health-Related Services or Health-Related Early Intervention Services

Authority: Health-General Article, §§2-104(b), 15-103, and 15-124, Annotated Code of Maryland

Notice of Proposed Action

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The Secretary of Health and Mental Hygiene proposes to amend Regulations .01—.05 and .07 under COMAR 10.09.50 EPSDT School Health-Related Services or Health-Related Early Intervention Services.

Statement of Purpose

The purpose of this action is to clarify and update definitions and licensure requirements for EPSDT School Health-Related Services or Health-Related Early Intervention Services (COMAR 10.09.50).

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, or fax to 410-767-6483. Comments will be accepted through January 27, 2016. 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?
- 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 proposed amendments do not include any changes to services or reimbursement rates.
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.
See E.
- G. Small Business Worksheet:

Attached Document:

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.50 EPSDT School Health-Related Services or Health-Related Early Intervention Services

Authority: Health-General Article, §§2-104(b), 15-103, and 15-124, Annotated Code of Maryland

10.09.50.01 (10/20/15)

.01 Definitions.

- A. (text unchanged)
- B. Terms Defined.
- (1) "[Audiology] *Audiological evaluation*" means identification, evaluation, and treatment of auditory impairments necessary to develop and implement an IFSP[,] or an IEP[, or an IPE] pursuant to COMAR [13A.05.01.03B(6), 13A.11.08.02B(30), and 13A.13.01.07B(2)] *13A.13.01.03B and 13A.05.01.03B.*
- (2) "*Audiologist*" means an individual licensed by the Board of Examiners for Audiologists, Hearing Aid Dispensers, and Speech Language Pathologists to practice audiology in Maryland.
- (3) "*Audiology service*" means treatment of auditory impairments necessary to develop and implement an IFSP or an IEP pursuant to COMAR 13A.13.01.03B and 13A.05.01.03B.
- (4) "*Dietitian-Nutritionist*" means an individual who is licensed as a dietitian-nutritionist by the Maryland State Board of Dietetic Practice to practice dietetics in Maryland.

[(2)] (5)—[(3)] (6) (text unchanged)

[(4)] Counseling Services.

(a) "Counseling services" means mental health services delivered by a licensed mental health professional, as authorized under the Health Occupations Article, Annotated Code of Maryland.

(b) "Counseling services" includes: licensed clinical social workers, psychologists, nurse psychotherapists, and professional counselors with the appropriate expertise to provide the services which are necessary to develop an IFSP, an IEP, or an IPE pursuant to COMAR 13A.05.01.03B(12), 13A.11.08.02B(36), and 13A.13.01.07B(4) .

(5) "Counselor" means a licensed professional counselor as authorized under Health Occupations Article, Title 17, Annotated Code of Maryland, with the appropriate expertise to provide the services which are necessary to develop and implement an IFSP, an IEP, or an IPE pursuant to COMAR 13A.05.01.03B(12), 13A.11.08.02B(36), and 13A.13.01.07B(4).]

[(6)](7)—[] (8) (text unchanged)

[(8)] (9) "Early intervention services (EIS)" means services which are consistent with COMAR [13A.13.01.02B(14)] *13A.13.01.03B*.

[(9)] (10) "Individualized education program (IEP)" means a written description of special education and related services developed by [a multidisciplinary] *an IEP* team to be implemented to meet the individual needs of a child pursuant to COMAR *13A.05.01.03B* and 13A.05.01.09.

(11) "*IEP team*" means a group convened and conducted by a provider to develop a participant's IEP, which is composed of a child's parent or parents, the child's teacher, and relevant service providers as indicated in COMAR *13A.05.01.03B* and *13A.05.01.07*.

[(10)] (12) "Individualized Family Service Plan (IFSP)" means a written plan for providing early intervention and other services to an eligible child and the child's family *developed by an IFSP team* pursuant to COMAR [13A.13.01.02B(20)] *13A.13.01.03B*.

[(11)] "Individualized Plan for Employment (IPE)" means a written plan developed by a rehabilitation counselor with input from a multidisciplinary team that specifies an employment outcome and specific vocational rehabilitation services for an eligible individual, pursuant to COMAR 13A.11.01.06 .]

(13) "*IFSP team*" means a group convened and conducted by a provider to develop a participant's IFSP, which is composed of a child's parent or parents, the child's service coordinator, and relevant service providers as indicated in COMAR *13A.13.01.06*.

[(12)] (14) "Infants and toddlers with disabilities" means children from birth [through 2 years old] *to the beginning of the school year following the child's 4th birthday* who are eligible for early intervention services, as described in COMAR [13A.13.01.02B(21)] *13A.13.01.03B* and documented by appropriate [qualified] *licensed* personnel as defined in COMAR [13A.13.01.02B(36)] *13A.13.01.03B*.

[(13)] (15) (text unchanged)

[(14)] (16) "Local [education agency (LEA)] *School System (LSS)*" means [a local public school district] *any of the 24 public school systems in Maryland responsible for providing public elementary or secondary education*.

[(15)] (17)—[(18)] (20) (text unchanged)

[(19)] "Multidisciplinary" means the involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities and the development of the Individualized Family Service Plan, or the Individualized Education Plan.

(20) "Multidisciplinary team" means a group convened and conducted by a provider to develop a participant's IEP, IFSP, or IPE, which is composed of a child's parent or parents, the child's teacher, and relevant service providers as indicated in COMAR 13A.05.01.07.]

(21) "*Mental health professional*" has the meaning stated in COMAR *10.21.17.02B*.

(22) "*Nurse*" means an individual who is licensed to practice as a registered nurse (RN) or licensed practical nurse (LPN) in the jurisdiction in which services are provided.

[(21)] (23) "Nursing care plan" means [an individualized plan written by a registered nurse which determines the course of action, including specific interventions and times, a nurse uses to meet the health needs of a child.] *a plan developed by a registered nurse that identifies the patient's diagnoses and needs, the goals to be achieved, and the interventions required to meet the patient's medical condition as defined in COMAR 10.09.53.01B*.

[(22)] "Nurse psychotherapist services" means clinical mental health services delivered by a licensed nurse psychotherapist which are necessary to develop and implement an IFSP, an IEP, or an IPE pursuant to COMAR 13A.05.01.03B(57), 13A.11.01.07, and 13A.13.01.07B(12).]

[(23)] (24) Nursing Services.

(a) "Nursing services" means skilled nursing services performed by a licensed nurse for a participant, which are necessary for the participant to benefit from educational or early intervention services pursuant to COMAR [13A.05.01.09, 13A.11.08.02B(30),] *13A.05.01.03B* and [13A.13.01.07B(7)] *13A.13.01.03B*.

(b)—(c) (text unchanged)

[(24)] (25) Nutrition Services.

(a) "Nutrition services" means services delivered by a [qualified] *licensed* [nutritionist or dietitian] *dietitian nutritionist*.

(b) "Nutrition services" includes:

(i)—(ii) (text unchanged)

(iii) Making referrals to appropriate community resources to carry out nutrition goals in an IFSP pursuant to COMAR [13A.13.01.07B(8),] *13A.13.01.03B* [, in an IEP pursuant to COMAR 13A.05.01.09, or in an IPE pursuant to COMAR 13A.11.01.07].

(26) "*Occupational therapist*" means an individual licensed by the Maryland State Board of Occupational Therapy Practice to practice occupational therapy in Maryland.

(27) "*Occupational therapy assistant*" means an individual licensed by the Maryland State Board of Occupational Therapy Practice to practice limited occupational therapy in Maryland.

[(25)] (28) "Occupational therapy services" means occupational therapy evaluations[,] or treatments [or consultations] delivered by a [qualified] *licensed* occupational therapist, or treatments delivered by a *licensed occupational therapy assistant*, which are necessary to develop and implement an IEP[,] or an IFSP[, or an IPE] pursuant to COMAR [13A.05.01.03B(40),] *13A.05.01.03B* [13A.05.01.09, 13A.11.01.07, and 13A.13.01.07B(9)] and *13A.13.01.03B*.

[(26)] (29) (text unchanged)

[(27)] (30) "Participant" means a Medical Assistance recipient who is eligible for and receives health-related services in an IEP[, an IPE,] or health-related early intervention services in an IFSP.

(31) "*Physical therapist*" means an individual licensed by the Maryland Board of Physical Therapy Examiners to practice physical therapy in Maryland.

(32) "*Physical therapist assistant*" means an individual licensed by the Maryland Board of Physical Therapy Examiners to practice limited physical therapy in Maryland.

[(28)] (33) "Physical therapy services" means physical therapy evaluations[,] or treatments [or consultations], delivered by a [qualified] *licensed* physical therapist, or treatments delivered by a *licensed physical therapy assistant*, which are necessary to develop and implement an IEP[,] or an IFSP[, or an IPE] pursuant to COMAR [13A.05.01.03B(49),] *13A.05.01.03B* [13A.05.01.07, 13A.11.08.02B(30), and 13A.13.01.07B(10).] and *13A.13.01.03B*.

[(29)] (34) (text unchanged)

[(30)] (35) "Provider" means a local [education agency] *school system*, local lead agency, State-operated education agency, or State-supported education agency which meets the conditions for participation as defined in Regulation .03 of this chapter to provide health-related services in an IEP [, or an IPE,] or health-related early intervention services in an IFSP.

[(31)] "Psychiatric evaluation" means an evaluation recommended by the multidisciplinary team and performed by a qualified psychiatrist, which is necessary to develop and implement an IEP, an IFSP, or an IPE pursuant to COMAR 13A.05.01.05, 13A.11.01.07, and 13A.13.01.1.]

[(32)] (36) "Psychological services" means the delivery of services by a [psychologist] *licensed mental health professional*, including administering psychological and developmental tests and other assessment procedures, interpreting assessment results, obtaining, integrating, and interpreting information about child behavior and child and family conditions related to learning, mental health, and development, and planning and managing a program of psychological services including psychological counseling for children and families which are necessary to develop and implement an IEP or an IFSP[, or an IPE] pursuant to COMAR [13A.05.01.09,] *13A.05.01.03B* [13A.11.01.07,] and [13A.13.01.07B(11).] *13A.13.01.03B*.

[(33)] (37) "Rehabilitative service" means the medical or remedial service recommended by a licensed physician or authorized practitioner under Health Occupations Article, Annotated Code of Maryland[, or a certified school psychologist] within the scope of the practice under §B(32) of this regulation, for the reduction of maladaptive behavior and restoration of a recipient to the best possible functional level.

[(34)] "Social work services" means clinical social work services delivered by a licensed clinical social worker which are necessary to develop and implement an IFSP, an IEP, or an IPE pursuant to COMAR 13A.05.01.03B(57), 13A.11.01.07, and 13A.13.01.07B(12)]

[(35)] (38) (text unchanged)

(39) "*Speech-language pathologist*" means an individual licensed by the State Board of Examiners for Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists to practice speech language pathology in Maryland.

(40) "*Speech-language pathology assistant*" means an individual licensed by the State Board of Examiners for Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists to assist in the practice of speech language pathology in Maryland.

[(36)] (41) "Speech-language pathology" means [services] *speech language evaluations, diagnoses or treatments* delivered by a [qualified] *licensed* speech-language pathologist, [including identification, evaluation, diagnosis, and the treatment of communications disorders] or treatments delivered by a *licensed speech-language pathology assistant*, which are necessary to develop and implement an IEP[,] or an IFSP[, or an IPE] pursuant to COMAR [13A.05.01.03B(66),] *13A.05.01.03B* [13A.11.01.07,] and [13A.13.01.07B(14)] *13A.13.01.03B*.

[(37)] (42) "Therapeutic behavior aide" means an individual who has been trained to implement a behavior plan as specified in the IEP[,] or IFSP under the supervision of a licensed physician or authorized practitioner pursuant to Health Occupations Article, Annotated Code of Maryland[, or a certified school psychologist].

[(38)] (43) "Therapeutic behavior service" means a one-to-one individualized rehabilitative service, rendered by a therapeutic behavior aide, using appropriate methods of preventing or decreasing maladaptive behaviors for a Medicaid recipient who is eligible for and receives health-related services in an IEP[,] or health-related early intervention services in an IFSP.

.02 Licensure and Certification.

A. (text unchanged)

B. A professional employed by a provider shall have the following qualifications:

(1)—(4) (text unchanged)

(5) A [nutritionist or dietitian] *dietitian-nutritionist* shall be licensed to practice in the jurisdiction in which services are provided;

(6) (text unchanged)

(7) *An occupational therapy assistant shall be licensed to practice in the jurisdiction in which services are provided under the direction of a licensed occupational therapist;*

[(7)] (8) (text unchanged)

(9) *A physical therapy assistant shall be licensed to practice in the jurisdiction in which services are provided under the direction of a licensed physical therapist;*

[(8)] (10) (text unchanged)

[(9)] (11) A psychologist shall be licensed to practice in the jurisdiction in which services are provided [or shall be certified as a school psychologist by the Maryland State Department of Education];

[(10)] (12) (text unchanged)

[(11)] (13) A speech language pathologist shall be licensed to practice in the jurisdiction in which services are provided [and or shall be under the direction of a speech language pathologist who has:

(a) A certificate of clinical competence from the American Speech-Language-Hearing Association,

(b) Completed the equivalent educational requirements and work experience necessary for the certificate;

(c) Completed the academic program and is acquiring supervised work experience to qualify for the certificate; and];

(14) *A speech language pathology assistant shall be licensed to practice in the jurisdiction in which services are provided under the supervision of a licensed speech language pathologist; and*

[(12)] (15) (text unchanged)

.03 Conditions for Participation.

[Requirements] A. *General requirements* for participation in EPSDT school health-related or health-related early intervention services are that a:

[A.] (1) (text unchanged)

[(1)] (a)—[(2)] (b) (text unchanged)

[B.] (2) Therapeutic behavior aide shall be:

[(1)] (a) (text unchanged)

[(2)] (b) Supervised by a licensed physician or an authorized practitioner under Health Occupations Article, Annotated Code of Maryland [, or a certified school psychologist].

B. *Specific requirements for participation in the Program require that the provider maintain adequate documentation of all services provided, which at a minimum, includes:*

(1) *The location, date, start and end time of the service;*

(2) *A brief description of the service; and*

(3) *A legible signature, along with the printed or typed name of the individual providing care, with the appropriate title.*

.04 Covered Services.

A. The Program covers the services listed in §B of this regulation when the services are:

(1) Necessary to identify the need for a health-related service or health-related early intervention service that may be furnished as part of an IEP[,] or an IFSP[, or an IPE];

(2)—(4) (text unchanged)

(5) Delivered in accordance with an IEP[,] or an IFSP, [or IPE] which is developed at the time of referral for health-related services or health-related early intervention services.

B. The following services are covered under this chapter:

(1) Audiology services delivered in accordance with an IEP[,] or an IFSP, [or an IPE] which include the identification, evaluation and treatment of auditory impairments;

(2) Counseling services delivered in accordance with an IEP, an IPE, or an IFSP which include assessment and testing, treatment planning, crisis intervention, and individual, group, or family counseling necessary for the participant to benefit from a health-related educational or early intervention program;]

[(3)] (2) Nursing services delivered in accordance with an IEP[, an IPE,] or an IFSP, which:

(a)—(d) (text unchanged)

[(4)] (3) Nutrition services which include conducting assessments of nutritional history and dietary intake and developing and monitoring appropriate plans to address a participant's nutritional needs in accordance with an IFSP [, an IEP, or an IPE];

[(5)] (4) Occupational therapy services delivered in accordance with an IEP[,] *or* an IFSP, [or an IPE] which include any screening, evaluations, *or* treatments[, or consultations] necessary to implement a program of activities, with the goal to develop or maintain the adaptive skills necessary to achieve a participant's adequate and appropriate physical and mental functioning;

[(6)] (5) Physical therapy services delivered in accordance with an IEP[,] *or* an IFSP, [or an IPE] which include screening and evaluations necessary to determine a participant's level of functioning, as well as any treatment, [or consultation] which may use therapeutic exercises for the purpose of preventing, restoring, or alleviating a movement dysfunction and related functional problems;

[(7)] (6) Psychological services delivered in accordance with an IEP[,] *or* an IFSP, [or an IPE] which include the evaluation, diagnosis, and treatment of emotional or behavioral problems in order for a participant to benefit from an educational or early intervention program including the counseling of parents and parent training when the participant is present;

[(8)] (7) Psychological services delivered in accordance with an IEP[,] *or* an IFSP, [or an IPE] which include the evaluation, diagnosis, and treatment of emotional or behavioral problems in order for a participant to benefit from an educational or early intervention program including the counseling of parents and parent training when the participant is present;

[(9)] (8) Therapeutic behavior services which:

[(10)] (9) Social work services delivered in accordance with an IEP, an IPE, or an IFSP which include the assessment and evaluation of the participant's living conditions and the patterns of parent-child interaction, as well as the counseling necessary for the participant and the family to benefit from an educational or early intervention program;]

[(11)] (10) Speech-language pathology services delivered in accordance with an IEP[,] *or* an IFSP, [or an IPE] which include [the screening], diagnosis, evaluation, [and treatment of communication disorders] *or* treatment; and

[(12)] (11) Therapeutic behavior services which:

(a) Includes one-to-one [hourly] services [up to 24 hours a day, 7 days per week] by a trained therapeutic behavior aide [as described in] *delivered in accordance with* the IEP or IFSP [and approved by the multidisciplinary team which develops the recipient's IEP or IFSP for continued treatment]; and

(b) Is supervised by a licensed physician or authorized practitioner under Health Occupations Article, Annotated Code of Maryland [, or a certified school psychologist].

.05 Limitations.

A. To participate in the Program as a provider of health-related services or health-related early intervention services, the provider shall be a local [education agency] *school system*, a local lead agency, a State-operated education agency, or State-supported education agency.

B. Health-related services or health-related early intervention services outlined in the IEP[,] *or* the IFSP[, or the IPE] shall be approved by the [multidisciplinary] *IEP or IFSP* team [which develops the recipient's IEP, IFSP, or IPE] for continued treatment.

C. Therapeutic behavior services may only be provided if:

[(1)] Prescribed by a licensed physician or authorized practitioner under Health Occupations Article, Annotated Code of Maryland, or a certified school psychologist and approved by the child's multidisciplinary IEP or IFSP team;]

(1) *Preauthorized through the IEP or IFSP process and directly related to the IEP or IFSP;*

(2) (text unchanged)

(3) Services are considered medically necessary by the [multidisciplinary] *IEP or IFSP* team, which develops the recipient's IEP or IFSP;

[(4)] *Preauthorized through the IEP or IFSP process and directly related to the IEP or IFSP;*

[(5)] (4)—[(6)] (5) (text unchanged)

[(7)] (6) The recipient has:

(a)—(b) (text unchanged)

(c) Behavior that is deviant from developmentally appropriate behavior for the individual's chronological age as determined by the [multidisciplinary] *IEP or IFSP* team;

(d)—(e) (text unchanged)

.07 Payment Procedures.

A.—D. (text unchanged)

E. Reimbursement for health-related services and health-related early intervention services is contained in the Maryland Medical Assistance Program Physicians' Services Provider Fee Manual, Revision [July—December 2011] *January 2014*, contained in the Medical Assistance Provider Fee Manual, dated October 1986[. All the provisions of this document], *the provisions of which*, unless specifically excepted, are incorporated by reference *in COMAR 10.09.02.07*. The State portion of *reimbursement* is provided by the Maryland State Department of Education.

[F. Reimbursement for behavior services is contained in the Maryland Medical Assistance Program Physicians' Services Provider Fee Manual, Revision July—December 2011, contained in the Medical Assistance Provider Fee Manual, dated October 1986. All the provisions of this document, unless specifically excepted, are incorporated by reference. The State portion is provided by the Maryland State Department of Education.]

VAN T. MITCHELL

Secretary of Health and Mental Hygiene