

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Department of Health and Mental Hygiene  
(DLS Control No. 15-384)**

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**Overview and Legal and Fiscal Impact**

The regulations add intensive therapeutic integration as a new service, increase the reimbursement limit for environmental accessibility adaptations, and make numerous other changes to Home and Community-Based Services Waiver for Children with Autism Spectrum Disorder requirements.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies as the regulations reflect current practice.

**Regulations of COMAR Affected**

**Department of Health and Mental Hygiene:**

Medical Care Programs: Home and Community-Based Services Waiver for Children with Autism Spectrum Disorder:  
COMAR 10.09.56.01, .02, 04-.08, .11, 14-.17, .19, .21 and .22

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**Legal Analysis**

**Background**

The Home and Community-Based Services Waiver for Children with Autism Spectrum Disorder allows eligible children with autism spectrum disorder to receive waiver services and specified Medicaid services to support them in their homes and communities. The waiver is administered by the Maryland State Department of Education (MSDE). The local school systems provide or arrange for case management services called service coordination. The local lead agencies and school systems help individuals access many of the community services offered through the waiver.

**Summary of Regulations**

The regulations add intensive therapeutic integration as a new service, increase the reimbursement limit for environmental accessibility adaptations, and make numerous other changes to waiver requirements.

Intensive therapeutic integration services are for waiver participants who require one-to-one interventions and also have problems with socialization, isolation, hyperactivity, impulse control, and behavioral or other related disorders. The services are provided at a setting separate from the participant's residence. Services include expressive therapies, therapeutic recreational activities, and other services based on the participant's individualized written treatment plan.

The limitation on environmental accessibility adaptations is increased from a total of \$1,500 to \$2,000 over a 36-month period.

Other noteworthy changes include:

- Altering participant eligibility requirements to require a child to (1) have a diagnosis of autism spectrum disorder at least every 3 years; and (2) receive 15 or more hours per week of special education and related services (current regulations require more than 12 hours per week);
- Requiring waiver services providers to ensure that (1) direct care workers and supervisors receive training in reportable event policy and HIPAA; (2) training in positive behavioral interventions and restraints be rendered by a MSDE approved trainer; and (3) direct care workers have experience that may include specified types of experience;
- Requiring waiver services providers to agree not to terminate services for a participant without 30 days written notice (current regulations require "appropriate" notice), unless a risk to health and safety exists;
- Requiring the records that a waiver services provider must maintain to include specified direct observation of a participant;
- Establishing requirements for transportation, when provided as a service under the waiver;
- Requiring residential habilitation services providers to provide round-the-clock staffing for 365 days a year, unless the provider designates that it does not provide residential habilitation on weekends (current regulations allow services to be provided less than 7 days a week);
- Requiring the policies and procedures of a residential habilitation services provider to include emergency back-up plans;
- Requiring the policies and procedures of the providers of specified waiver services to include HIPAA;
- Adding specified documentation of service as a condition for participation as a respite care provider;
- Changing family *training* to family *consultation* services;
- For coverage of residential habilitation services (1) establishing requirements for a supervisor; and (2) establishing a unit of service as a per diem;
- For coverage of therapeutic integration services (1) establishing requirements for a supervisor; (2) establishing requirements for transportation, when provided; and (3) deleting the minimum and maximum service hours;
- For coverage of therapeutic integration, respite care, family consultation, and adult life planning services; establishing a unit of service as a 30-minute increment of service;

- For coverage of adult life planning services; changing the minimum age of a participant from 18 to 16 years old;
- Limiting the covered services that may be provided on the same date, on the same period of the same day, or during the same week;
- Establishing parameters for inclusion of transportation time as part of certain services; and
- Altering the maximum units of services and fees-for-service that may be reimbursed.

## **Legal Issues**

The regulations present no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The Department of Health and Mental Hygiene cites §§ 2-104(b), 15-103, 15-105, and 15-130 of the Health – General Article as statutory authority for the regulations. Section 2-104(b) authorizes the Secretary of Health and Mental Hygiene to adopt regulations to carry out the provisions of law that are within the jurisdiction of the Secretary. Section 15-103 gives the Secretary broad authority to regulate Medicaid. Section 15-105 requires the department to adopt regulations for the reimbursement of providers under Medicaid.

Section 15-130 requires the department to apply to the Health Care Financing Administration of the federal Department of Health and Human Services for a home- and community-based services waiver under § 1915(c) of the federal Social Security Act in order to receive federal matching funds for services to autistic children aged 1 through 21 years who would otherwise require institutionalization in an institution for the developmentally disabled. The section also specifies the services that may be included in the waiver. The State matching funds required to cover the Medicaid costs under the waiver for autistic children must be certified or otherwise provided by MSDE, local school systems, and local lead agencies.

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

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies as the regulations reflect current practice.

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

The regulations formally establish intensive therapeutic integration (ITI) as a waiver service in the Medicaid Home and Community-Based Services Waiver for Children with Autism Spectrum Disorder and increase the reimbursement limit for environmental accessibility adaptations. Additionally, the regulations update participant eligibility requirements, staff

training, and staffing requirements for residential rehabilitation. The actions reflect changes in the waiver authority approved by the federal Centers for Medicare and Medicaid Services.

The department advises that the regulations increase expenditures for the Maryland State Department of Education (MSDE) by \$168,245 in fiscal 2016, including \$158,912 for ITI services and \$9,333 to increase the reimbursement limit for environmental accessibility adaptations. The Department of Legislative Services disagrees. According to the department, the regulations reflect current practice, with ITI services available since September 2014, and increased reimbursement for environmental accessibility adaptations available since July 2014; therefore, there is no fiscal impact. The Department of Legislative Services does concur that the fiscal 2016 cost of these services and reimbursement is \$168,245, which is included in the fiscal 2016 budget.

### **Impact on Budget**

There is no impact on the State operating or capital budget. However, \$168,245 (50% general funds, 50% federal funds) is included in the MSDE budget for ITI services and additional reimbursement for environmental accessibility adaptations.

### **Agency Estimate of Projected Small Business Impact**

The department advises that the regulations have a meaningful impact on small businesses in the State. The Department of Legislative Services disagrees and notes that the regulations reflect current practice.

### **Contact Information**

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