

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
		Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 1/8/2016

2. COMAR Codification

Title	Subtitle	Chapter	Regulation
10	09	52	01-.04-2 and .06

3. Name of Promulgating Authority

Department of Health and Mental Hygiene

4. Name of Regulations Coordinator	Telephone Number
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Title 10
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
Subtitle 09 MEDICAL CARE PROGRAMS
10.09.52 Service Coordination for Children with Disabilities

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 .01—.04-2 and .06 under COMAR 10.09.52 Service Coordination for Children with Disabilities.

Statement of Purpose

The purpose of this action is to update regulations to reflect changes in the waiver authority approved by the Centers for Medicare and Medicaid Services (CMS). The proposed amendments update the conditions for participation for service coordinators and establish the risk assessment as a part of the waiver reassessment for all waiver participants. Additionally, references to 504 Written Individualized Plan (WIP) have been removed from the chapter, because this is no longer a requirement.

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 an impact on individuals with disabilities as follows:
The risk assessment will ensure that the waiver applicant can be safely maintained in a home and community-based setting.

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

dhmfh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through February 8, 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: There is no economic impact to the state, trade groups or public because no additional funding is required to implement the risk assessment tool and eliminate 504 WIP.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

No small businesses will be impacted by these regulations as covered services are delivered by service coordinators, who work for the public school system.

G. Small Business Worksheet:

Attached Document:

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

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10.09.52 Service Coordination for Children with Disabilities

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

10.09.52.01 (10/08/15)

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) "Autism" has the meaning stated in COMAR [10.09.56.01B] *10.09.56.01C*.

(2)—(6) (text unchanged)

(7) "Individualized education program (IEP) team" means a multidisciplinary team convened by a provider in accordance with COMAR 13A.05.01 to review a participant's needs and develop the participant's IEP [or 504 WIP].

(8)—(16) (text unchanged)

(17) "Qualified diagnostician" means an individual whose license or certification permits diagnosis of Autism Spectrum Disorder.

[(17)] (18)—[(18)] (19) (text unchanged)

[(19)] (20) "Service coordination" means case management services which assist participants in gaining access to the services recommended in a participant's IEP[, 504 WIP,] or waiver plan of care.

[(20)] (21)—[(25)] (26) (text unchanged)

[(26)] "504 Written Individualized Plan (504 WIP)" means a plan which describes the services that are provided to accommodate a child's disability, as defined under §504 of the Rehabilitation Act of 1973.]

10.09.52.02 (10/08/15)

.02 Participant Eligibility.

A recipient is eligible to participate in Service Coordination for Children with Disabilities if:

A. (text unchanged)

B. The following requirements are met:

(1) The recipient, for whom free and appropriate education is provided under the Individuals with Disabilities Education Act [or §504 of the Rehabilitation Act of 1973], is 2 through 20 years old;

(2) An IEP team determines that the recipient is a child with disabilities who:

(a) (text unchanged)

(b) Needs an IEP [or 504 WIP];

(3)—(5) (text unchanged)

10.09.52.03 (10/08/15)

.03 Conditions for Participation.

A. (text unchanged)

B. Specific requirements for participation in the Program as a provider of Service Coordination for Children with Disabilities are that a provider shall:

(1) (text unchanged)

(2) Convene or participate on an IEP team or teams, in accordance with COMAR 13A.05.01, which shall:

(a)—(c) (text unchanged)

(d) Develop an IEP [or 504 WIP] for a participant in accordance with COMAR 13A.05.01 within 30 calendar days of the determination of eligibility for the services covered under this chapter;

(e) Review the IEP [or 504 WIP] and progress of each participant who is receiving the special education and related services recommended in the IEP [or 504 WIP], upon request of the parent or parents;

(f) Meet and conduct an annual review of each participant's IEP [or 504 WIP] and, if appropriate, revise the IEPs [or 504 WIPs] provisions, and

(g) Reconvene the IEP team to conduct an interim IEP [or 504 WIP] review and modify the existing IEP [or 504 WIP] at any time upon request of the professionals included on the team or the parent or parents, as considered necessary pursuant to the participant's progress;

(3)—(4) (text unchanged)

(5) Maintain a file on each participant which meets the Program's requirements and which shall include:

(a) Copies of the participant's IEP [or 504 WIP] with any revisions;

(b)—(c) (text unchanged)

(d) Approval from a participant's parent of the participant's service coordinator and the participant's IEP [or 504 WIP] before implementation of the service coordination; and

(e) The following documentation for a waiver participant:

(i) Diagnosis of autism spectrum disorder every 3 years or more often as requested by MSDE, by a qualified diagnostician using an evaluation methodology considered sufficient by the multidisciplinary team;

(ii)—(vii) (text unchanged)

(6) Employ or have under contract qualified personnel who convene or participate on IEP teams, convene or participate on waiver multidisciplinary teams as necessary, develop participants' IEPs[, 504 WIPs,] or waiver plans of care, and perform as service coordinators for participants; and

(7) (text unchanged)

C. Service Coordinator Requirements.

(1) A service coordinator shall:

(a) (text unchanged)

(b) Be chosen by the IEP team or waiver multidisciplinary team, with the approval of the participant's parent or parents, taking into consideration the:

(i)—(ii) (text unchanged)

(iii) Services recommended in the IEP[, 504 WIP,] or waiver plan of care;

(c) Participate with the IEP team or waiver multidisciplinary team in the development or revision of a participant's IEP[, 504 WIP,] or waiver plan of care and in the IEP[, 504 WIP,] or waiver plan of care review;

(d) Assist the participant in gaining access to the services recommended in the IEP[, 504 WIP,] or waiver plan of care; and

(e) (text unchanged)

(2)—(5) (text unchanged)

(6) Service coordinators for waiver participants shall complete at least 5 hours of *initial* training on the Autism Waiver, offered by the Department and MSDE, before rendering Autism Waiver service coordination covered under Regulations .04-1 and .04-2 of this chapter.

(7) *Service coordinators for waiver participants must attend one statewide training for Autism Waiver service coordinators per fiscal year.*

10.09.52.04 (10/08/15)

.04 Covered Services.

A. (text unchanged)

B. Initial IEP [or 504 WIP].

(1) Definition. "Unit of service" means:

(a) A completed initial IEP [or 504 WIP], signed by all members of the IEP team; and

(b) At least one contact by the participant's service coordinator or IEP team in person or by telephone with the participant or the participant's parent, on the participant's behalf relating to development of the IEP [or 504 WIP].

(2) The covered services include convening and conducting an IEP team to:

(a) (text unchanged)

(b) Develop an initial IEP [or 504 WIP].

C. Ongoing Service Coordination.

(1)—(2) (text unchanged)

(3) As necessary, the Program shall include as covered services the following:

(a) Acting as a central point of contact relating to IEP [or 504 WIP] services for a participant;

(b) (text unchanged)

(c) Implementing the IEP [or 504 WIP] by referring the participant to direct service providers, assisting the participant in gaining access to services specified in the IEP [or 504 WIP], and providing linkage to agreed-upon direct service providers of services;

(d) Discussing with direct service providers the services needed and available for the participant, assessing the quality and quantity of services being provided, following up to identify any obstacles to a participant's utilization of services, coordinating the service delivery, and performing ongoing monitoring to determine whether the services are being delivered in an integrated fashion as recommended in the IEP [or 504 WIP] and meet the participant's current needs;

(e) Providing a participant and the participant's parent with information and direction that will assist them in successfully accessing and using the services recommended in the IEP [or 504 WIP];

(f) Informing a participant's parent of the participant's and the family's rights and responsibilities in regard to specific programs and resources recommended in the IEP [or 504 WIP];

(g) Conducting, with a participant's parent at a meeting or by other means acceptable to the parent and the service coordinator, a periodic review of the participant's IEP [or 504 WIP] every 6 months, or more frequently if warranted or the parent requests a review; and

(h) Reviewing at least annually at a meeting or by other means acceptable to the participant's parent and others involved in the review process:

(i) The degree of a participant's progress toward achieving the goals established in the IEP [or 504 WIP];

and

(ii) (text unchanged)

(4) (text unchanged)

D. IEP [or 504 WIP] Review.

(1) Definition. "Unit of service" means:

(a) A completed initial 60-day, interim, or annual IEP [or 504 WIP] review as evidenced by a signed revised IEP or, if a revised IEP was not done, IEP team records documenting a meeting in which there is participation by at least two different disciplines; and

(b) (text unchanged)

(2) The covered services include convening and conducting an IEP team to:

(a) (text unchanged)

(b) Review and revise, as necessary, the participant's IEP [or 504 WIP].

10.09.52.04-1 (10/08/15)

.04-1 Covered Services—Autism Waiver Service Coordination — General Requirements.

A.—C. (text unchanged)

D. Waiver Plan of Care.

(1)—(4) (text unchanged)

(5) A waiver participant's initial or revised waiver plan of care shall be documented on the waiver plan of care form [included in the Autism Waiver proposal, which specifies for each Autism Waiver service which is preauthorized for the waiver participant the] *that includes the :*

(a) Description of [the] *each specific preauthorized* service to be delivered;

(b)—(c) (text unchanged)

(d) Approved frequency and units of services to be delivered; *and*

(e) Provider[; and].

[(f) Estimated unit costs and monthly costs, for evaluating waiver services.]

E. (text unchanged)

10.09.52.04-2 (10/08/15)

.04-2 Covered Services — Autism Waiver Service Coordination — Specific Requirements.

A. Waiver Initial Assessment.

(1) Definition. For the purposes of this section, "unit of service" means:

(a) A completed initial waiver plan of care, approved by MSDE and signed by the service coordinator, the waiver participant or the parent or parents of a minor child, and all other members of the waiver multidisciplinary team; [and] *or*

(b) (text unchanged)

(2) The covered services shall include:

(a)—(b) (text unchanged)

(c) [On behalf of the waiver multidisciplinary team, providing written notification to the waiver participant or the parent or parents of a minor child of MSDE's approval of the waiver participant's waiver enrollment and the effective date of enrollment;] *Informing the representative of the MSDE of the applicant's ineligibility for the Autism Waiver.*

(d)—(f) (text unchanged)

B. Waiver Ongoing Service Coordination.

(1) (text unchanged)

(2) The covered services shall include, as necessary:

(a)—(c) (text unchanged)

(d) Assisting the waiver participant with gaining access to the Autism Waiver services preauthorized in the waiver plan of care according to the type, level, amount, frequency, *and* duration[, and cost specified];

(e)—(m) (text unchanged)

C. Waiver Reassessment.

(1) (text unchanged)

(2) The covered services shall include:

(a)—(d) (text unchanged)

[(e) On behalf of the waiver multidisciplinary team, providing written notification to the waiver participant or the parent or parents of a minor child of DHMH's approval or denial of the waiver participant's continued waiver enrollment;

(f) If continued enrollment is denied by DHMH providing written notification to the waiver participant or the parent or parents of a minor child of the effective date for the waiver participant's termination from the waiver, the reason or reasons for ineligibility, and the right to appeal and request a fair hearing under COMAR 10.01.04 and 42 CFR Part 431, Subpart E.]

(e) Completing a risk assessment within 45 days of receiving notification of eligibility by the Department using the Autism Waiver Risk Assessment form;

(f) Completing a risk assessment if the participant's status changes, to ensure the applicant can be safely maintained in a home and community-based setting utilizing Autism Waiver services; and

(g) Providing written notice to a MSDE representative of the participant's ineligibility for the Autism Waiver.

10.09.52.06 (10/08/15)

.06 Payment Procedures.

A.—B. (text unchanged)

C. The Program shall make payment only to one qualified provider for covered services rendered on a particular date of service to a participant and according to the following fee-for-services schedule covered under this chapter:

Description Fee Per Unit of Service

(1) Initial IEP [or 504 WIP]: no more than one unit of service may be reimbursed per participant ... \$500;

(2) (text unchanged)

(3) IEP [or 504 WIP] review: at most, three units of service may be reimbursed for a participant in a 12-month period ... \$275;

(4)—(6) (text unchanged)

D. The Program may not make payment for ongoing service coordination when, for the same month, payment is made to the provider for furnishing to the participant:

- (1) An initial IEP [or 504 WIP] service; or
- (2) An IEP [or 504 WIP] review service.

E. The Program may not make payment for more than one IEP [or 504 WIP] review in the same month, unless a subsequent review is documented as an emergency.

F. The Program may not make payment for an initial IEP [or 504 WIP] and an IEP [or 504 WIP] review in the same month, unless a review is documented as an emergency.

G. If an IEP [or 504 WIP] review takes more than one meeting to complete, the Program shall only make payment for the meeting during which the review was signed.

[H. Providers may not bill the program for services which are provided at no charge to the general public, except for service coordination related to an IEP or IFSP.

I. If providers are to bill the Medical Assistance Program for service coordination related to a 504 WIP, which is a service provided at no charge to the general public, they shall bill the third-party payors for all children who received 504 WIP services.]

H. A provider shall 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 under §C of this regulation.

VAN T. MITCHELL

Secretary of Health and Mental Hygiene