

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>
	09/28/2020	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 11/6/2020

2. COMAR Codification

**Title Subtitle Chapter Regulation**

10 09 04 01,,03-.07

3. Name of Promulgating Authority

Department of Health and Mental Hygiene

**4. Name of Regulations Coordinator Telephone Number**  
Jake Whitaker 410-767-6499

**Mailing Address**

201 West Preston Street

**City State Zip Code**  
Baltimore MD 21201

**Email**

jake.whitaker1@maryland.gov

**5. Name of Person to Call About this Document Telephone No.**  
Alison Donley 410-767-6541

**Email Address**

alison.donley@maryland.gov

6. Check applicable items:

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: June 1, 2020.

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 General Provisions Article, §3-302(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 June 5, 2020. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Robert R. Neall

**Title**

Secretary of Health

**Telephone No.**

410-767-6500

**Date**

September 2, 2020

**Title 10**

**DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

**Subtitle 09 MEDICAL CARE PROGRAMS**

**10.09.04 Home Health 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 proposes to amend Regulations .01 and .03—.07 under COMAR 10.09.04 Home Health Services.

### **Statement of Purpose**

The purpose of this action is to expand the provider types permitted to order home health services to include nurse practitioners. Additionally, the proposed action changes instances of the term “recipient” to “participant” throughout the chapter.

### **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 Jake Whitaker, Acting Director, Office of Regulation and Policy Coordination, Maryland Department of Health, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 TTY: 800-735-225, or email to [mdh.regs@maryland.gov](mailto:mdh.regs@maryland.gov), or fax to 410-767-6483. Comments will be accepted through December 7, 2020. A public hearing has not been scheduled.

### **Economic Impact Statement Part C**

- A. Fiscal Year in which regulations will become effective: FY 2021
- 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 may enable participants to access services sooner than they would under current policy which permits only physicians to order home health services. However, Medicaid does not anticipate it will result in increased costs because the proposed change does not amend rates, expand covered services, or alter eligibility requirements.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet. Medicaid anticipates these regulations will have minimal or no economic impact on small businesses because the proposed change does not amend rates, expand covered services, or alter eligibility requirements. However, the proposed change is likely to reduce administrative strain on providers and enable home health agencies to mitigate potential delays in access to care for Medicaid participants. Additionally, it will support a seamless transition from a temporary expansion during the COVID-19 crisis to a permanent expansion regarding orders for these services.

G. Small Business Worksheet:

Attached Document:

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## Title 10

### MARYLAND DEPARTMENT OF HEALTH

#### Subtitle 09 Medical Care Programs

##### 10.09.04 Home Health Services

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

###### .01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) "Attending [physician]" means [a person who is licensed to practice medicine in the jurisdiction in which the service is provided and] *the role of an individual* who establishes the plan of treatment and certifies the necessity for home health services for a [recipient] *participant following a hospitalization.*

(3) "Case coordinator" means a licensed health professional designated by a home health agency to coordinate the care of a [recipient] *participant.*

(4) "*Certified nurse practitioner*" means an individual who meets the licensing requirements and conditions for participation as a nurse practitioner set forth in COMAR 10.09.01.

[(4)] (5) (text unchanged)

[(5)] (6) "Health team" means the [attending] physician *or nonphysician practitioner* and the home health agency personnel who render services listed in Regulation .04B of this chapter to a [recipient] *participant.*

[(6)] (7) "Home" means the place of residence occupied by the [recipient] *participant*, including a domiciliary level facility, but other than a hospital, nursing facility, or other medical institution.

[(7)] (8)—[(15)] (16) (text unchanged)

[(16)] (17) "Nonphysician practitioner" means an individual who:

(a) Is licensed as a *certified* nurse practitioner, clinical nurse specialist, a certified nurse-midwife, or a physician assistant in the jurisdiction in which the service is provided; and

(b) Works in collaboration with or under the supervision of the attending physician *or certified nurse practitioner*.

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

(19) "*Participant*" means a person who is certified as eligible for and is receiving Medical Assistance benefits.

[(18)] (20)—[(19)] (21) (text unchanged)

(22) "*Physician*" means an individual who meets the licensure requirements and conditions for participation set forth in COMAR 10.09.02.

(23) "*Physician assistant*" means an individual who meets license requirements and conditions for participation set forth in COMAR 10.09.55.

[(20)] (24) (text unchanged)

[(21)] (25) "Progress note" means a dated, written notation by a member of the health team which summarizes facts about the care given and the patient's response during a given period of time, specifically addresses the established goals of treatment, is consistent with the patient plan of care, is written immediately following each visit, and is part of the provider's permanent record for the [recipient] *participant*.

[(22)] (26) "Provider" means a person or an organization who meets the requirements of Regulations .03 and .04 of this chapter and who, through an appropriate agreement with the Department, has been identified as a Program provider by the issuance of an individual account number.

[(23)] (27) "Recipient" means a person who is certified as eligible for, and is receiving Medical Assistance benefits.]

[(24)] (27)—[(25)] (28) (text unchanged)

[(26)] (29) "Support system" means a family member, friend, neighbor, or any person who renders services, which would otherwise be covered under Regulation .04 of this chapter, to the [recipient] *participant*.

[(27)] (30) "Visit" means the time spent rendering a covered service to a [recipient] *participant* at home by an individual employed by a home health agency.

[(28)] (31) "Witness" means a person who on behalf of the [recipient] *participant* is able to personally verify at the time of service that the [recipient] *participant* received home health care.

### **.03 Conditions for Participation.**

A. (text unchanged)

B. To participate in the Program, the home health agency shall:

(1)—(6) (text unchanged)

(7) Secure from the [recipient's attending] *participant's* physician *or certified nurse practitioner* a written plan of treatment which relates the items and services to the [recipient's] *participant's* medical condition;

(8) Maintain a patient plan of care based on the [attending] physician's *or certified nurse practitioner's* plan of treatment for the [recipient] *participant*;

(9) (text unchanged)

(10) Verify the [recipient's] *participant's* eligibility;

(11) Place no restriction on a [recipient's] *participant's* right to select his choice of providers under all chapters of COMAR 10.09;

(12) Agree that if the Program denies payment or requests repayment on the basis that an otherwise covered service was not medically necessary, the provider may not seek payment for that service from the [recipient] *participant*; and

(13) Agree that if the Program denies payment due to late billing, the provider may not seek payment from the [recipient] *participant*.

C. Plan of Treatment.

(1) The plan of treatment under [§C(8)] §B(8) shall include:

(a)—(p) (text unchanged)

(2) The plan of treatment shall be reviewed, updated, and signed at least every 60 days by the [attending] *participant's* physician *or certified nurse practitioner*, in consultation with the registered nurse or the case coordinator.

(3) The [attending] physician *or certified nurse practitioner* shall:

(a) (text unchanged)

(b) Document that the [attending] physician [or nonphysician practitioner] *or nonphysician practitioner*, who is not employed by the home health agency, has had a face-to-face encounter with the [recipient] *participant* no more than 90 days before the home health start of care date or within 30 days of the start of the home health care, including the date of the encounter.

(4) For [recipients] *participants* admitted *immediately* to home health upon discharge from a hospital or post-acute setting, the attending acute or post-acute physician [or nonphysician practitioner], shall document the clinical findings of the face-to-face encounter.

(5) The plan of treatment shall be part of the provider's permanent record for the [recipient] *participant*.

D. Plan of Care.

(1)—(2) (text unchanged)

(3) The plan of care is a part of the provider's permanent record for the [recipient] *participant*.

**.04 Covered Services.**

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

- (1) Provided upon the written order of [the attending] *a physician or certified nurse practitioner*;
- (2)—(3) (text unchanged)
- (4) Consistent with the current diagnosis and treatment of the [recipient's] *participant's* condition;
- (5) (text unchanged)
- (6) Required by the medical condition rather than the convenience or preference of the [recipient] *participant*;
- (7) Considered under accepted standards of medical practice to be a specific and effective treatment for the [recipient's] *participant's* condition;
- (8) (text unchanged)
- (9) Rendered in the [recipient's] *participant's* home, or other setting when normal life activities take the *participant outside the home*, by an approved provider;
- (10) Received by the [recipient] *participant* as documented by the [recipient's] *participant's* signature or the signature of the [recipient's] *participant's* witness on the home health agency's official forms; and
- (11) (text unchanged)

B. The Program covers the following services:

- (1) Skilled nursing services provided by a licensed nurse when the complexity of the services, or the condition of a [recipient] *participant*, requires the judgment, knowledge, and skills of a licensed nurse;
- (2) Home health aide services provided by a home health aide, that include:
  - (a)—(b) (text unchanged)
  - (c) Reporting of the [recipient's] *participant's* condition and needs; and
  - (d) (text unchanged)
- (3) Physical therapy services, provided by a physical therapist:
  - (a) When the condition of a [recipient] *participant* requires the judgment, knowledge, and skills of a licensed or registered physical therapist;
  - (b) When the services are directly related to the [attending] *physician's or certified nurse practitioner's* plan of treatment, which specifies:
    - (i)—(iv) (text unchanged)
    - (c) When the services are of a diagnostic, rehabilitative, or therapeutic nature and:
      - (i) Are provided with the expectation, based on the assessment made by [the attending] *a physician or certified nurse practitioner*, that a [recipient] *participant* will improve significantly in physical functioning in a reasonable and generally predictable period of time, or
      - (ii) (text unchanged)
  - (4) Occupational therapy services, provided by an occupational therapist:
    - (a) When the condition of the [recipient] *participant* requires the judgment, knowledge, and skills of a licensed occupational therapist;
    - (b) When the services are provided with the expectation that there will be a significant practical improvement in a [recipient's] *participant's* level of physical functioning within a reasonable period of time; and
    - (c) When the services fall within one or more of the following categories:
      - (i) Evaluation and reevaluation of a [recipient's] *participant's* level of functioning by administering diagnostic and prognostic tests;
      - (ii)—(v) (text unchanged)
  - (5) Speech-language pathology services performed by a licensed speech-language pathologist when the:
    - (a) Services are of a diagnostic, rehabilitative, or therapeutic nature and:
      - (i) Are provided with the expectation, based on the assessment made by [the attending] *a physician or certified nurse practitioner*, that a [recipient] *participant* will improve significantly in a reasonable and generally predictable period of time; or
      - (ii) (text unchanged)
    - (b) (text unchanged)

C. The Program covers a provider's newborn early discharge assessment visit to a [recipient] *participant* when the assessment:

- (1) (text unchanged)
- (2) Is ordered by a physician *or certified nurse practitioner*;
- (3) Is delivered to a [recipient] *participant* and a [recipient's] *participant's* mother who have been discharged within 48 hours after delivery;
- (4)—(6) (text unchanged)

**.05 Limitations.**

The Program does not cover the following:

A.—D. (text unchanged)

E. Home health aide services unless biweekly supervisory visits by a registered nurse in the [recipient's] *participant's* home are made, every second visit of which shall include observations of the delivery of services by the aide to the [recipient] *participant*;

F. Home health aide services rendered to [recipients] *participants* with chronic conditions when those [recipients] *participants* require only assistance with activities of daily living as defined in Regulation .01B of this chapter unless preauthorized as specified in Regulation .06 of this chapter;

G.—L. (text unchanged)

M. A service not documented as received by the [recipient] *participant* as indicated by the [recipient's] *participant's* signature or the signature of a witness on the home health agency's official form;

N.—O. (text unchanged)

P. Services provided for the convenience or preference of the [recipient] *participant* or primary caregiver rather than as required by the [recipient's] *participant's* medical condition;

Q. Services specified in Regulation .04 of this chapter which duplicate or supplant services performed by the [recipient] *participant* and those services rendered by the [recipient's] *participant's* family;

R. (text unchanged)

S. Newborn early discharge services provided more than one time to a [recipient] *participant*;

T.—U. (text unchanged)

#### **.06 Preauthorization Requirements.**

A. (text unchanged)

B. Preauthorization may be:

(1) (text unchanged)

(2) Denied when the Department, after taking into consideration the particular circumstances of the [recipient] *participant*, determines the payments to the provider for any service or combination of services rendered during any 30-day period would exceed the cost to the program of any alternative services which could be used for the same purpose.

#### **.07 Payment Procedures.**

A.—C. (text unchanged)

D. Payment Rates.

(1)—(2) (text unchanged)

(3) The Department shall pay home health providers for medical and other supplies which are used during a covered home health visit as part of the treatment ordered by the [recipient's attending] *participant's* physician or *certified nurse practitioner* at a rate that is the lesser of the:

(a)—(b) (text unchanged)

(4) (text unchanged)

E.—G. (text unchanged)

H. The Department shall reimburse for preauthorized home health services upon verification that a face-to-face encounter with the [recipient] *participant* was performed as described under Regulation .03C of this chapter.

I. (text unchanged)

**ROBERT R. NEALL**

**Secretary of Health**