10.22.01.00 (02/17/09)

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 22 DEVELOPMENTAL DISABILITIES

Chapter 01 Definitions

Authority: Health-General Article, §7-904, Annotated Code of Maryland

10.22.01.01

.01 Definitions.

A. In this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Administration" means the Developmental Disabilities Administration of the Department of Health and Mental Hygiene.

(2) "Alternative living unit (ALU)" means a residence owned, leased, or operated by a licensee that:

(a) Provides residential services for individuals who, because of a developmental disability, require specialized living arrangements;

(b) Admits not more than 3 individuals; and

(c) Provides 10 or more hours of supervision per unit, per week.

(3) "Assistive technology" means the technology necessary to enable the individual to live successfully in the community.

(4) "Aversive technique" means the use of painful or noxious stimuli to the body, which is intrusive to the individual's physical, mental, or emotional well-being, used to terminate challenging or maladaptive behavior.

(5) "Barrier" means an obstacle preventing or inhibiting an individual from receiving services and supports in the most integrated setting appropriate to meet the individual's needs.

(6) "Behavior plan (BP)" means a plan designed to modify behavior through the use of clinically accepted techniques.

(7) Behavioral Consultation.

(a) "Behavioral consultation" means on-site observation, assessment, and evaluation of the interaction between the individual and the individual's caregiver in the context of the individual's existing programs.

(b) "Behavioral consultation" includes:

(i) Recommendations regarding the structure of the program and appropriate activities and services; and

(ii) Consultation, as needed, with clinical professionals.

(8) "Behavioral emergency" means a situation in which an individual's behavior appears to present imminent danger to the individual or to others.

(9) "Behavioral respite" means relief services provided by a community residential licensee to meet an individual's behavioral needs.

(10) "Care provider" means an individual who is responsible for the daily operation of an individual family care home as defined in §B(26) of this regulation.

(11) "Challenging behavior" means those behaviors exhibited by an individual which:

(a) Are harmful, destructive, or socially unacceptable; and

(b) Necessitate being addressed in the individual's individual plan.

(12) "Chemical restraint" means the use of an injectable medication as an intervention in a behavioral emergency.

(13) "Community supported living arrangement home" means a residence:

(a) Which is rented or owned by an individual or the individual's family or proponent or held in trust for an individual;

(b) Where an individual lives as a roommate without the individual's name appearing on the lease or title; or

(c) Where the licensee is the guarantor of rental or mortgage payments for an individual receiving CSLA services.

(14) Community Supported Living Arrangements.

(a) "Community supported living arrangements (CSLA)" means services to assist an individual in nonvocational activities necessary to enable that individual to live in the individual's own home, apartment, family home, or rental unit, with

(i) No more than two other nonrelated recipients of these services; or

(ii) Members of the same family regardless of their number.

(b) "Community supported living arrangements (CSLA)" include:

(i) Personal assistance services;

(ii) Supports that enhance the individual's opportunity for community participation and to exercise choice and control over the individual's own life;

(iii) Training and other services necessary to assist the individual in achieving and maintaining increased integration, interdependence, and productivity;

(iv) 24-hour emergency assistance;

(v) Assistive technology;

(vi) Adaptive equipment;

(vii) Resource coordination;

(viii) Environmental modifications;

(ix) Respite services; and

(x) Other services as approved by the Secretary or the Secretary's designee.

(15) "Department" means the Department of Health and Mental Hygiene.

(16) "Developmental disability" means a severe chronic disability of an individual that:

(a) Is attributable to a physical or mental impairment, other than the sole diagnosis of mental illness, or to a combination of mental and physical impairments;

(b) Is likely to continue indefinitely;

(c) Is manifested in an individual younger than 22 years old;

(d) Results in an inability to live independently without external support or continuing and regular assistance; and

(e) Reflects the need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are individually planned and coordinated for the individual.

(17) "Director" means Director of the Developmental Disabilities Administration or the Director's designee.

(18) "Eligible for individual support services" means an individual with a severe chronic disability that is:

(a) Attributable to a physical or mental impairment other than the sole diagnosis of mental illness, or to a combination of mental and physical impairments; and

(b) Likely to continue indefinitely.

(19) "Environmental modification" means physical adaptations to an individual's home that are provided to enable the individual to live safely at home.

(20) "Foreign corporation" means an entity that is properly organized, chartered, and incorporated under the laws of a state other than Maryland.

(21) "Forensic residential center (FRC)" means a facility that is:

(a) Licensed to provide a continuum of integrative services to individuals with mental retardation:

(i) Ordered by the court for an evaluation or to be confined;

(ii) Court-committed for care or treatment to the Department as incompetent to stand trial or not criminally responsible who are dangerous as a result of mental retardation; or

(iii) On conditional release and returned to the facility either voluntarily or on hospital warrant;

(b) A related institution as defined in Health-General Article, §19-301(o), Annotated Code of Maryland; and

(c) Not an extended care or comprehensive rehabilitation facility.

(22) "Functional analysis" means a method of investigation which involves the systematic, experimental manipulation of analogue conditions, and precise measurement of challenging behavior, in order to determine the behavioral consequences which maintain the challenging behavior.

(23) "Functional assessment" means a nonexperimental method, such as systematic observations and questionnaires, designed to assist in the formulation of an educated guess concerning the behavioral consequences which maintain challenging behavior.

(24) "Generic services" means services which are available to the community at large.

(25) "Goal" means measurable supports or training to achieve an outcome.

(26) "Group home" means a residence owned, leased, or operated by a licensee that:

(a) Provides residential services for individuals who, because of a developmental disability, require specialized living arrangements;

(b) Admits at least four, but not more than eight individuals; and

(c) Provides 10 or more hours of supervision per week.

(27) "Individual" means a person eligible to receive services from the Developmental Disabilities Administration.

(28) "Individual family care (IFC) home" means a private, single family residence which provides a home for up to three individuals with developmental disabilities, who are unrelated to the care provider.

(29) "Individual plan (IP)" means a plan that specifies assessments, services, supports, and training required by the individual.

(30) "Integrated work setting" means an environment in which individuals with developmental disabilities and individuals without developmental disabilities work together.

(31) "Licensed capacity" means the number of individuals for whom a licensee is authorized to provide services at a single site.

(32) "Licensed certified social worker" means a person authorized to practice social work under Health Occupations Article, Title 19, Annotated Code of Maryland.

(33) "Licensed health care practitioner" means a person licensed to provide health care within the scope of Health Occupations Article, Annotated Code of Maryland.

(34) "Licensed or certified professional counselor" means a person who is authorized to practice professional counseling under Health Occupations Article, Title 17, Annotated Code of Maryland.

(35) "Licensed physician" means a person who is authorized to practice medicine under Health Occupations Article, Title 14, Annotated Code of Maryland.

(36) "Licensed psychologist" means a person who is authorized to practice psychology under Health Occupations Article, Title 18, Annotated Code of Maryland.

(37) "Licensee" means an agency that has been granted a license by the Administration to provide services to individuals.

(38) "Management of disruptive behavior" means the Administration-approved curriculum for managing challenging or aggressive behavior.

(39) "Mechanical restraint" means a mechanical device which restricts the free movement of an individual, such as a safety coat or posey mittens.

(40) "Mechanical support" means a mechanical device used to:

(a) Support an individual's proper body position, balance, or alignment, such as splints, wedges, bolsters, or lap trays; or

(b) Protect an individual with a continuing medical condition from sustaining an injury, for example, the use of protective head gear for an individual with epilepsy.

(41) "Most integrated setting" means a setting that enables an individual with a disability to interact with nondisabled individuals other than staff to the fullest extent possible.

(42) "Natural supports" means family, friends, co-workers, and community members who provide informal assistance to the individual to enable the individual to live and work in the community.

(43) "Outcome" means tangible results of goals that reflect the desired quality of life as defined by the individual.

(44) "Personal assistance" means help with activities of daily living which does not have an habilitation objective.

(45) "Physical restraint" means a manual method used to restrict the free movement of an individual, such as therapeutic hold.

(46) "Plan of correction (POC)" means the licensee's proposed response to findings of noncompliance identified by the Licensing and Certification Administration or the Administration.

(47) "PRN orders" means a preauthorized order to administer a specific behavior management technique or medication to modify behavior which is administered on an as-needed basis when a challenging behavior is exhibited.

(48) "Program service plan (PSP)" means the document submitted as part of the licensure application that delineates the rationale, scope, staffing, training, setting, and location for the services or supports to be provided.

(49) "Proponent" means a person who has a legitimate interest in the welfare of an individual receiving services from a licensee.

(50) "Psychology associate" means a person who may perform psychological services under certain conditions as specified in Health Occupations Article, Title 18, Annotated Code of Maryland.

(51) "Record" means the cumulative body of information the licensee has on file regarding an individual.

(52) "Resource coordinator" means a professional:

(a) Designated by the Developmental Disabilities Administration;

(b) Not employed by a direct service provider;

(c) Who has knowledge and experience in community supports for individuals with developmental disabilities; and

(d) Who meets the requirements of COMAR 10.22.09.

(53) "Respite" means relief services provided to the family or care provider to meet planned or emergency situations.

(54) "Restrictive technique" means a technique that is implemented to impede an individual's physical mobility or limit free access to the environment, including but not limited to physical, mechanical, or chemical restraints or medications used to modify behavior.

(55) "Seclusion" means the involuntary placement of an individual alone in a room.

(56) "State residential center (SRC)" means a State owned and operated facility for individuals with mental retardation.

(57) "Supports" means the assistance provided to individuals or their families to enable greater participation in the community and enhanced quality of life.

(58) "Target behaviors" means those behaviors identified by the team to be changed by implementing a behavior plan.

(59) "Team" means those persons, including the individual, proponent, licensee representatives, resource coordinator, and others involved in the development of the IP.

(60) "Temporary augmentation of staff" means supplemental staff utilized on a time-limited basis to work with an individual exhibiting challenging behavior.

(61) "Treating professional" means an individual designated by the facility director who is involved in the implementation of the IP.

(62) "Verbal abuse" means disrespectful shouting, screaming, swearing, name calling, or other verbal activity directed toward an individual.

(63) "Vocational assessment" means a method of determining an individual's job and career preferences and the skills and training necessary to accomplish these preferences.

(64) "Volunteer work" means work performed by an individual without pay.

(65) "Written plan of habilitation" means, for State residential centers, a component of the IP as described in COMAR 10.22.05.02B(14) and .03C.

10.22.01.9999

Administrative History

Effective date: July 26, 1999 (26:15 Md. R. 1148)

Regulation .01B amended effective May 5, 2008 (35:9 Md. R. 897)

Regulation .01B amended as an emergency provision effective July 10, 2008 (35:16 Md. R. 1388)

10.22.02.00 (10-21-08)

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 22 DEVELOPMENTAL DISABILITIES

Chapter 02 Administrative Requirements for Licensees

Authority: Health-General Article, §§7-904 and 7-909, Annotated Code of Maryland

10.22.02.01

.01 Incorporation by Reference.

The Developmental Disabilities Administration, Policy on Reportable Incidents and Investigations, (Effective Date: October 1, 2007), is incorporated by reference.

10.22.02.01-1

.01-1 License Required.

A. In addition to any other license required by law, a person shall be licensed by the Administration before the person may provide any of the following services to an individual with a developmental disability or to an individual eligible to receive individual support services:

(1) Vocational and day services;

(2) Community residential services;

(3) Resource coordination;

(4) More than one family support service, as defined in Health-General Article, §7-701, Annotated Code of Maryland;

(5) More than one individual support service, as defined in Health-General Article, §7-706, Annotated Code of Maryland; and

(6) More than one community supported living arrangement service as defined in Health-General Article, §7-709, Annotated Code of Maryland.

B. Waiver. The Director may waive the requirement for a license if a person is licensed or certified by another State agency or accredited by a national accreditation agency, such as the Council on Quality and Leadership in Supports for People with Developmental Disabilities or the Council for Accreditation for Rehabilitation Facilities (CARF), to provide services to an individual with a developmental disability or to an individual eligible for individual support services.

C. After notice and an opportunity for a hearing, the Director may revoke the waiver granted under §B of this regulation if, through inspection, it is determined that a person is providing services which would not conform in substantial part to the licensing requirements of this subtitle.

D. A person who provides residential services to a child with a developmental disability shall meet the requirements of COMAR 14.31.05, 14.31.06, and 14.31.07, in addition to the requirements of this chapter.

10.22.02.02 (02/17/09

.02 Application for Initial License or Renewal.

A. To obtain and maintain a license, an applicant shall, at a minimum:

(1) Except for local health departments, be properly organized as a Maryland corporation, a forensic residential center (FRC), or a State residential center (SRC), or, if operating as a foreign corporation, be properly registered to do business in Maryland;

(2) Have a governing body that is legally responsible for overseeing the management and operation of all programs conducted by the licensee;

(3) Have a governing body that is legally responsible for ensuring that each aspect of the licensee's program operates in compliance with all of the requirements of this chapter and all other applicable laws and regulations; and

(4) Except for currently licensed providers, demonstrate the capability to provide or arrange for the provision of all applicable services required by this chapter by submitting, at a minimum, the following documents to the Department:

(a) A business plan that clearly demonstrates the ability of the applicant to provide services in accordance with this chapter;

(b) A summary of the applicant's demonstrated experience in the field of developmental disabilities;

(c) Prior licensing reports issued within the previous 10 years from any in-State or out-of-State entity associated with the applicant, including deficiency reports and compliance records; and

(d) A written quality assurance plan approved by the Administration in accordance with Regulation .14 of this chapter; and

(5) If currently licensed, produce, upon written request from the Administration, the document required under §A(4) of this regulation.

B. An applicant shall file an application for a license or license renewal on a form provided by the Administration. An existing licensee shall file an application for renewal at least 60 days before expiration of its existing license. The license does not expire until the Director takes an action under §D of this regulation and the time for seeking judicial review or any judicial stay of the final action expires.

C. The administrative head of the corporation or two of its officers, local health officer, or SRC director, shall submit the application.

D. When an application for initial licensure or renewal is submitted, the Director may:

(1) Approve the application unconditionally and issue a license;

(2) Approve the application with conditions and issue a license;

(3) Deny the application for any reason including if an applicant has had a:

(a) License revoked by the Department within the previous 10 years; or

(b) Corporate officer who has served as a corporate officer for a licensee that has had a license revoked by the Department within the previous 10 years; or

(4) Require additional information before a licensure decision is made.

E. Hearing Request.

(1) If the Director proposes to deny a license under this section, the Director shall notify the applicant in writing of the proposed decision and inform the applicant of the reason for the proposed denial and the right to a hearing.

(2) A request for a hearing, including a copy of the Director's action, shall be filed with the Office of Administrative Hearings with a copy to the Administration not later than 30 days after receiving notice of the Director's proposed action.

(3) A hearing requested under this chapter shall be conducted in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 28.02.01 and 10.01.03.

(4) The burden of proof is as set forth in COMAR 10.01.03.28.

(5) Unless otherwise stated in this chapter, the Office of Administrative Hearings shall issue a proposed decision within the time frames set forth in COMAR 28.02.01.

(6) The aggrieved person may file exceptions as set forth in COMAR 10.01.03.35.

(7) A final decision by the Secretary shall be issued in accordance with COMAR 10.01.03.35.

F. Voluntary Surrender of License.

(1) If a licensee intends to voluntarily surrender its license, the licensee shall submit a closure schedule which the Director shall approve before the surrender becomes effective.

(2) The licensee shall submit a schedule for closure to the Director, in writing, at least 90 days before surrendering its license.

(3) The Director may grant the requested closure schedule as submitted, or require the licensee to continue to operate for an additional 90 days to allow the Administration time to plan for the continued provision of services to the individuals served by the licensee.

(4) The Administration shall notify appropriate individuals and proponents of the licensee's intent to surrender its license and of the Director's approved closure schedule.

G. The licensee may terminate services to an individual for good cause only with the written approval of the Director. The licensee shall:

(1) Notify the Director in writing 90 days before the date it proposes to terminate services to an individual;

(2) Notify the individual, and proponent, when appropriate, in writing, of its intent to terminate services and the individual's right to a hearing under COMAR 10.22.16, within the same time frame set forth in §G(1) of this regulation, and provide copies of that notice at that time to the appropriate regional office and members of the individual's team; and

(3) Consider the service terminated, if an individual is absent from a service for 60 consecutive days, unless otherwise determined by the Director.

10.22.02.03

.03 Investigation by the Administration.

A. This regulation sets forth the roles of the Developmental Disabilities Administration and the Office of Health Care Quality in investigation and follow-up of reportable incidents.

B. Licensee to be Open for Inspection. A licensee shall be open at all reasonable times to announced and unannounced inspections by the Administration or its designee.

C. Records and Reports. A licensee shall maintain records and make reports as required by the Administration. The records and reports shall be open to inspection by the Administration. A licensee shall immediately, on request of the Administration, provide copies of the records and reports, including medical records of individuals, to the Administration.

D. Protocol to Determine Necessity to Investigate.

(1) The Administration, through its agent, the Office of Health Care Quality (OHCQ), shall investigate reportable incidents, events, or problems involving individuals in a community agency or State residential center based on the scope and severity in accordance with the Developmental Disabilities Administration, Policy on Reportable Incidents and Investigations.

(2) The licensee shall report incidents in accordance with the requirements and timelines outlined in the Developmental Disabilities Administration, Policy on Reportable Incidents and Investigations.

(3) The necessity for investigation is determined by the following priorities:

(a) Priority Level 1—Immediate Jeopardy—Initiate investigation within 2 working days of receipt;

(b) Priority Level 2—High—Initiate investigation within 4 working days of receipt;

(c) Priority Level 3—Other Harm—Initiate an investigation within 30 working days of receipt;

(d) Priority Level 4—Administrative Review—Review during preparation for licensee's annual survey;

(e) Priority Level 5—Referrals—Refer to internal OHCQ unit or appropriate agency for follow-up within 1 working day; or

(f) Priority Level 6—Death—Upon notification, refer to the Mortality Review Unit of OHCQ within 1 working day for review and investigation.

(4) Timelines for Specific Reports and Follow-Up Protocols.

(a) The licensee shall submit a plan of correction (POC) within 10 working days of the receipt of deficiencies. The POC due date may be sooner than 10 working days when the nature of the deficiency warrants a more immediate response, as determined by the OHCQ and as outlined in Appendix 6 of the Developmental Disabilities Administration, Policy on Reportable Incidents and Investigations.

(b) If the POC is determined to be acceptable, the OHCQ shall, whenever possible, within 10 working days of approving the POC, send the statement of deficiency and the POC to the:

(i) Licensee who is required to share this information with the individual receiving services, who is the specific subject of a deficient practice, or to the resource coordinator, a guardian, or a family member as appropriate and set forth in the Developmental Disabilities Administration, Policy on Reportable Incidents and Investigations;

(ii) Complainant;

(iii) Agency's Executive Director and Board President;

(iv) DDA Regional Office;

(v) Maryland Disability Law Center when required by Developmental Disabilities Administration Policy on Reportable Incidents and Investigations;

(vi) Medicaid Fraud Control Unit of the Attorney General's Office when required by Developmental Disabilities Administration Policy on Reportable Incidents and Investigations; and

(vii) Any other parties determined to be appropriate by OHCQ.

(c) If the POC is determined to be unacceptable, the OHCQ shall, whenever possible, notify the agency in writing within 5 working days of receipt of the issues which require further review and consideration. The licensee shall resubmit to OHCQ a revised POC within 5 working days from notification of an unacceptable POC.

(d) OHCQ shall conduct follow-up monitoring in accordance with Developmental Disabilities Administration Policy on Reportable Incidents and Investigations.

E. Methods of Investigation. OHCQ shall conduct investigations through:

(1) On-site inspections;

(2) Interviews; or

(3) Reviews of relevant records and documents.

F. The licensee and OHCQ may receive extensions of the time periods set forth in this regulation for good cause shown.

10.22.02.04

.04 Compliance Monitoring.

A. The Administration, through its agent, the Office of Health Care Quality (OHCQ), is responsible for monitoring and inspecting the Administration's licensees to ensure regulatory compliance.

B. The Administration shall conduct an on-site pre-licensure survey.

C. The Administration shall conduct announced and unannounced licensure visits at any time the Administration considers necessary, but at least annually, and provide the licensee with any notification of noncompliance.

D. The Administration shall conduct announced or unannounced complaint investigation visits at any time the Administration considers necessary and provide the licensee with notification of any noncompliance.

E. The licensee shall submit a plan of correction (POC) at the end of an exit conference, or within 10 working days of receipt of the findings of noncompliance. The POC due date may be sooner than 10 working days when the nature of the noncompliance warrants a more immediate response, as determined by the OHCQ. The Director of the OHCQ may grant an extension of not more than 30 days for the submission of the POC.

F. If a POC is deemed unacceptable by the OHCQ, the licensee shall resubmit a revised POC within 10 working days to the OHCQ for approval.

10.22.02.05

.05 New Site, Site Closure, or Relocation.

A. A licensee may not open, close, or relocate any site without approval of the Administration. If a licensee intends to open, close, or relocate any site, the licensee shall request approval from the Administration and submit documentation as required by the Administration at least 30 days before the date the licensee intends to make the change.

B. If a licensee is required to open, close, or relocate a site due to an emergency and the notice requirements set forth in §A of this regulation cannot be met, the licensee shall notify the regional director as soon as the change occurs. The regional director shall notify the OHCQ of this change. The OHCQ shall ensure that the change meets with its approval.

10.22.02.06

.06 Licensed Capacity.

A. A license issued by the Administration shall include the number of individuals for whom the licensee is permitted to provide services.

B. A licensee may exceed its licensed capacity only if the Director:

(1) Requests in writing that the licensee exceed its licensed capacity; or

(2) Approves a written request from a licensee to exceed its licensed capacity.

C. A licensee shall include in its written request to exceed its licensed capacity:

(1) The circumstances or reasons for the request;

(2) The identity of all individuals involved; and

(3) Documentation that all individuals involved have been informed of the plan to exceed licensed capacity.

D. Permission to exceed licensed capacity shall be:

(1) Granted for not more than 60 days; and

(2) Extended for not more than an additional 60 days.

10.22.02.07

.07 Individual Family Care (IFC).

A. On the effective date of this chapter, a community residential licensee providing IFC services may not contract with an IFC care provider who has a contract with another community residential licensee who provides IFC services.

B. Notwithstanding §A of this regulation, an individual who is receiving services in an IFC home before the effective date of these regulations may continue to receive services in that home.

10.22.02.08 (02/17/09)

.08 Governing Body.

A. A local health department's governing body is the governing body of the respective county as set forth in Health-General Article, Title 3, Subtitle 3, Annotated Code of Maryland.

B. Except for local health departments, forensic residential centers (FRCs), and State residential centers, the governing body of all licensees shall include, at a minimum, at least one individual with a developmental disability, one family member of an individual with a developmental disability, and an individual with experience in the field of developmental disabilities.

C. Except for local health departments, forensic residential centers (FRCs), and State residential centers, the governing body of all licensees shall adopt written bylaws which require the governing body to be legally responsible for:

(1) Overseeing the management and operation of the licensee;

(2) Ensuring that the licensee operates in compliance with all of the requirements of this chapter and all other applicable laws and regulations;

(3) Approving a licensee's mission statement, long-range goals, policies, procedures, and budget;

(4) Defining and prohibiting those circumstances which would create a financial or personal conflict of interest for members of the governing body, staff, care providers, volunteers, and members of the standing committee;

(5) Ensuring that the licensee responds to all POCs in a timely manner;

(6) Approving a licensee's program service plan and ensuring that its services are provided in accordance with the plan;

(7) Ensuring that at least 75 percent of the governing body of a licensee shall be residents of the State or reside within a 100 mile radius of the administrative offices of the licensee, which shall be located in the State unless the licensee:

(a) Has established an Administration approved community-based advisory board or committee; and

(b) Receives an Administration approved waiver;

(8) Ensuring that no employee of a licensee or immediate family member of an employee of a licensee may serve as a voting member of the governing body of the licensee unless:

(a) The employee receives services from the licensee; or

(b) The Administration approves the composition of the governing body through an innovative program services plan in accordance with Regulation .09 of this chapter; and

(9) Ensuring that by January 1, 2008, members of the governing body and employees of the licensee may not own property that is leased back to the licensee.

10.22.02.09

.09 Program Service Plan (PSP).

A. To receive a license from the Administration under this chapter, the applicant shall develop and submit for approval, as part of its application, a PSP for each service it provides.

B. If the licensee makes a change in its PSP, the licensee shall submit its revised PSP for the Administration's approval before the implementation of the changes.

C. The administrative head of the licensee shall assure that the PSP is reviewed by its governing body and updated at least every 3 years.

D. The licensee shall comply with all provisions of its approved PSP.

E. Contents. The licensee shall ensure the PSP includes the following components:

(1) Rationale, which includes a discussion of the applicant's philosophy for the provision of services;

(2) Scope, which includes a discussion of the specific services to be provided;

(3) Staffing and training, which includes a description of the staff or care providers necessary to provide the services outlined in §E(2) of this regulation and a description of any additional training required by its staff other than provided in Regulation .11 of this chapter; and

(4) Setting and location, which includes a description of where the services are to be provided and the number of individuals expected to be served.

F. Innovative Program Service Plan Variance.

(1) If an applicant or licensee wants to provide services or supports through an alternative model not currently regulated by this subtitle, the applicant or licensee may submit a PSP and request approval from the Administration to provide services or supports through this alternative model.

(2) The Administration shall consider whether the proposed model meets the overall goals of the Administration and reflects the values and outcomes delineated in COMAR 10.22.04.

(3) The Administration may approve the proposed model, as proposed, or with conditions, including which regulatory requirements of this subtitle would apply.

10.22.02.10

.10 Policies and Procedures.

A. A licensee shall develop and adopt written policies and procedures for ensuring:

(1) That each individual's health and safety needs, as identified in the individual plan (IP), are being met;

(2) Fundamental rights in accordance with Health-General Article, §7-1002, Annotated Code of Maryland;

(3) That services are provided in a manner which promotes individual choice and the exercise of individual rights;

(4) Confidentiality for each individual in accordance with Health-General Article, §7-1010, Annotated Code of Maryland;

(5) The implementation of a grievance process with safeguards which protect against retaliatory actions for the filing of any grievance;

(6) That services are provided without discrimination;

(7) That all incidents, including those involving life-threatening conditions, are reported and investigated in accordance with the Administration's procedures on reportable incidents;

(8) That medications are administered in accordance with the practices established by the Administration's curriculum on medication training;

(9) Compliance with COMAR 10.27.11;

(10) That an individual whose behavior requires intervention receives the safeguards required by this regulation;

(11) That in order for an individual to be required to pay for property damage caused by the individual's actions, the individual's IP shall show evidence that the:

(a) Individual has a history of destructive behavior that has been documented in the behavior plan (BP),

(b) Individual has a BP that addresses the destructive behavior,

(c) Individual has the ability to pay for damages,

(d) Licensee's standing committee, as described in Regulation .08 of this chapter, has reviewed and approved the damage payment, and

(e) Licensee has reported this approval to the regional director;

(12) Compliance with Health-General Article, §5-605, Annotated Code of Maryland;

(13) That there is no financial or personal conflict of interest for members of the governing body, staff, care providers, volunteers, and standing committee members;

(14) That the fiscal affairs of the licensee are conducted in accordance with generally accepted accounting practices;

(15) That there is adequate protection for the finances and property of each individual, including:

(a) A system to ensure that each individual's funds are used in an appropriate manner consistent with the individual's needs and preferences,

(b) A system to keep personal funds separate from the funds of the licensee and to ensure that funds are transferred to the individual in a timely manner when services are no longer being provided,

(c) Timely access for the individual to the funds,

(d) An accounting of the individual's funds, on request, and

(e) The accrual of any interest into the individual's account from an interest-bearing account;

(16) That State and federally required safety precautions, infection control, and standard precautions are implemented;

(17) That an effective disaster and emergency evacuation plan, with sufficient evacuation drills is in place;

(18) That an individual may not perform the duties of a paid staff person; and

(19) That an individual only perform those duties and tasks that are shared by the household or included as an activity documented in the individual's IP or remunerated as part of a training program as required by federal or State law.

B. A licensed community residential service provider offering services in alternative living units or group homes shall develop an emergency plan for all types of emergencies and disasters that shall include:

(1) Procedures that will be followed before, during, and after an emergency to address the following:

(a) The evacuation, transportation, or 72 hour shelter-in-place of individuals and staff served;

(b) Holding an annual practice drill coordinated with local emergency planners for sheltering in place or evacuating;

(c) Preparing an after action report and improvement plan after drills that evaluates the plan and takes corrective actions;

(d) Ensuring that individuals served and staff have identification with current health, contact, and other important information that is immediately accessible in the event of evacuation;

(e) The role of the resident, family member, or legal representative in the event of evacuation;

(f) Arranging for medical needs and other accommodations for individuals served and staff at alternative facilities or shelters; and

(g) Establishing a communication protocol among all appropriate parties that includes redundant communication means;

(2) The notification to families, staff, and the respective DDA regional office (licensing authority) regarding the action that will be taken concerning the safety and well-being of the individuals served;

(3) The staff coverage, organization, and assignment of responsibilities that includes:

(a) Planning staff coverage needs for ongoing shelter in place or evacuations;

(b) Identifying staff members available to report for work or remain during extended periods; and

(c) Establishing staff notification and recall contingency plans and procedures;

(4) The continuity of operations, including, but not limited to, redundant communications systems, preservation of records and electronic data, the procurement of essential goods, equipment, and services, plans to secure vacated facilities, and the relocation to alternate facilities;

(5) Procedures to:

(a) Backup and electronically store off-site, appropriate records and data of consumers and staff and facility documents, for access under emergency conditions;

(b) Ensure access to an electronic copy of the emergency plans when requested by local, State, or federal emergency management organizations;

(6) Provisions to ensure that the facility's emergency and disaster plans are shared with local emergency management organizations for the purpose of coordinating local emergency planning; and

(7) An executive summary of the evacuation procedures that shall be provided to the family member of a resident on request.

C. The licensee shall ensure that all staff, care providers, consultants, and volunteers are aware of the policies required by this chapter and that all staff, care providers, consultants, and volunteers implement each policy as adopted.

D. The licensee shall ensure that it provides sufficient information about its grievance process to each individual it serves and, when appropriate, to the individual's proponent, to enable the individual or proponent to use the process effectively.

10.22.02.11

.11 Staffing Requirements.

A. Following an analysis of the number of individuals the licensee intends to serve and the needs of each of these individuals being served, the licensee shall develop and implement a staffing plan that adequately addresses the health and safety needs of each individual and provides each individual with the services identified in the IP. The staffing plan may include any person who meets the training requirements of this regulation and who does not have a criminal history as set forth in §B of this regulation. A staff person who meets the above criteria may assume all responsibilities previously assigned to a qualified developmental disabilities professional.

B. A licensee may not employ or contract with any person who has a criminal history which would indicate behavior potentially harmful to individuals, documented through either a criminal history records check or a criminal background check, pursuant to Health-General Article, §19-1902 et seq., Annotated Code of Maryland, and COMAR 12.15.03.

C. The licensee shall develop and implement staff and care provider training and ensure through appropriate documentation that, before being assigned independent duties:

(1) All staff and care providers receive adequate training to perform their assigned duties;

(2) All staff and care providers successfully complete the Administration's approved training to meet the specific needs of the individuals they serve and to carry out their assigned duties, such as training in:

(a) Seizure disorders,

(b) Principles of behavior change,

(c) Management of disruptive behaviors,

(d) Medication administration, and

(e) The aging process and the special needs of the elderly; and

(3) All staff and care providers receive training in blood-borne pathogens in accordance with OSHA guidelines found in 29 CFR §1910.1030, which is incorporated by reference.

D. All staff and care providers shall receive Administration-approved training within 3 months of hire in the following:

(1) Community integration and inclusion,

(2) Individual-directed, outcome-oriented planning for individuals,

(3) General characteristics and needs of individuals served,

(4) First aid and cardiopulmonary resuscitation (CPR), based on the guidelines of the American Red Cross or another nationally recognized organization,

(5) Fundamental rights of individuals with developmental disabilities,

(6) Communicable diseases,

(7) Supporting individuals and families in making choices, and

(8) Communication skills.

E. A licensee shall develop and adopt:

(1) Written job descriptions that include the nature and extent of training and experience required for each position; and

(2) A policy to prevent employment discrimination.

10.22.02.12

.12 Health and Safety Requirements.

A. To obtain and maintain licensure, a licensee shall ensure that any licensed home or site in which the licensee provides services to individuals:

(1) Meets local zoning requirements, except as otherwise set forth in Health-General Article, §7-603, Annotated Code of Maryland;

(2) Meets local and State building requirements;

(3) Meets applicable life safety requirements;

(4) Is free from safety and health hazards; and

(5) Is in good repair.

B. A licensee shall ensure that any licensed home or site in which the licensee provides services is free from fire hazards and has the following minimum fire safety protections:

(1) Adequate smoke detectors;

(2) Working and updated fire extinguishers; and

(3) A written fire evacuation plan, as required by Regulation .10A(17) of this chapter.

C. A licensee shall ensure that any licensed home or site in which the licensee provides services to individuals maintains its water temperature at a maximum of 110ºF, unless:

(1) Each individual living in the home or receiving services at the site is capable of regulating water temperature safely; and

(2) There is documentation of the capability required in §C(1) of this regulation in each individual's IP.

D. In order to ensure the health and safety of individuals who require staff assistance in the administration of medication, the licensee shall:

(1) Require that all medication be administered in accordance with the Administration's curriculum on medication training;

(2) Provide oral, solid medications in a unit dose package unless an individual's IP indicates that this is not required;

(3) Provide medication for an individual who is absent from a program in a separate, pharmaceutically prepared package that is easily identified by the individual administering the medication; and

(4) Request, from the pharmacy, computer-generated medication administration records, treatment administration records, and physician medication order forms.

10.22.02.13

.13 Records.

A. A licensee shall maintain records for each individual at the site where the individual is being served.

B. The records shall include at a minimum:

(1) The identifying information which appears on the individual's application for services from the Administration;

(2) Sufficient information that enables the licensee to provide services in a manner which ensures the individual's health and safety, including:

(a) An emergency contact person for the individual,

(b) The names of the individual's next of kin,

(c) The individual's physician,

(d) The individual's current diagnosis,

(e) Documented allergies of the individual, and

(f) A listing of the medications the individual receives;

(3) The IP as defined in COMAR 10.22.05;

(4) Documentation demonstrating implementation of the IP; and

(5) Any other information the Administration may require.

C. On notification of a medical emergency, the licensee shall ensure that the individual's medical information is available and readily accessible to emergency personnel.

D. The licensee shall:

(1) Maintain an individual's records for a minimum of 5 years, regardless of whether the individual is no longer being served or dies;

(2) Maintain documents relevant to the services the individual is currently receiving, as long as the individual is being served; and

(3) Organize an individual's record in a manner that facilitates easy access to needed information.

10.22.02.14

.14 Quality Assurance.

A. The licensee shall submit a quality assurance plan and any subsequent substantive changes to the plan to the Administration for approval.

B. The licensee shall develop and implement a system of internal quality assurance which at a minimum:

(1) Is focused on the individual's choices, preferences, and satisfaction, and includes personal contact with the individuals being served;

(2) Has outcomes and results that are measurable and may be incorporated into future IPs for the individuals being served;

(3) Has outcomes and results that are measurable and may be incorporated into systemic changes in a licensee's operation;

(4) Collects and evaluates data and analyzes trends identified through quality assurance activities including:

(a) The name of the individual with a behavior plan,

(b) The medication or other restrictive technique used,

(c) The date and time the restrictive technique was used,

(d) Whether the medication or other restrictive technique was used as an emergency or as part of a behavior plan, and

(e) Whether the medication or other restrictive technique used is meeting the goals and objectives established in the behavior plan;

(5) Provides for prompt and appropriate response when an individual's health or safety is at risk; and

(6) Includes proactive strategies to improve the quality of services, including health and safety.

C. The licensee shall:

(1) Establish goals and standards to measure the quality of services being delivered and define how the standards are measured;

(2) Maintain records to demonstrate the effectiveness of its quality assurance activities;

(3) Implement changes based on the results of the evaluated data; and

(4) Be held accountable by the Administration for accomplishing the goals and standards that are established as part of the licensee's system of quality assurance.

D. The Administration may request documentation from a licensee to verify that the licensee is accomplishing the goals and standards set forth in the licensee's quality assurance plan.

E. Standing Committees.

(1) The licensee shall establish a committee or committees to perform the following functions:

(a) Perform the quality assurance functions set forth in this regulation;

(b) Review the licensee's protocol for identifying, reporting, documenting, investigating, and reviewing of incidents to ensure compliance with Administration procedures;

(c) Monitor whether the licensee's protocol identified in §E(2) of this regulation is being properly implemented by reviewing all incidents in an effort to identify deficient practices and recommend necessary corrective action;

(d) Approve all behavior plans which use restrictive techniques to ensure that the behavior plan complies with the requirements of COMAR 10.22.04.03A and 10.22.10;

(e) Review, approve, and establish the time frame for the restriction of a right if it is not related to a challenging behavior, in accordance with COMAR 10.22.04.03A; and

(f) Review the licensee's policies and procedures, and implementation of them, to ensure that they adequately protect the legal and human rights of each individual served by the licensee.

(2) The committee or committees may be organized to perform the functions set forth in §A of this regulation for one or more licensees.

(3) The committee or committees shall include an equal number of licensee staff, and individuals, proponents, or members of the community who are not employed by the licensee. For a committee member who is remunerated only to serve as a member of the committee, that member is not counted as staff or as a member of the community.

(4) The committee or committees may consult with a licensed health professional such as a psychologist, physician, physician's assistant, nurse practitioner, or board-certified clinical pharmacist, as needed.

(5) A committee member may not participate in the decision making process of any:

(a) Incident in which the committee member was involved; or

(b) Behavior plan the committee member has developed.

(6) The committee or committees shall meet as needed to perform the functions identified in §E(1) of this regulation, with, at least, a majority of members present.

(7) The committee or committees shall ensure confidentiality for the individual in accordance with Health-General Article, §7-1010, Annotated Code of Maryland.

10.22.02.9999

Administrative History

Effective date: July 26, 1999 (26:15 Md. R. 1148)

Regulation .01 amended and recodified to be Regulation .01-1 and new Regulation .01 adopted effective May 5, 2008 (35:9 Md. R. 897)

Regulation .02A, D amended effective January 2, 2006 (32:26 Md. R. 1997)

Regulation .02A amended as an emergency provision effective July 10, 2008 (35:16 Md. R. 1388)

Regulation .03 amended effective May 5, 2008 (35:9 Md. R. 897)

Regulation .04 amended effective January 2, 2006 (32:26 Md. R. 1997)

Regulation .05B amended effective January 2, 2006 (32:26 Md. R. 1997)

Regulation .08B, C amended effective January 2, 2006 (32:26 Md. R. 1997)

Regulation .08B, C amended as an emergency provision effective July 10, 2008 (35:16 Md. R. 1388)

Regulation .10 amended effective December 17, 2007 (34:25 Md. R. 2210)

10.22.03.00 (10-21-08)

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 22 DEVELOPMENTAL DISABILITIES

Chapter 03 Procedures for License Denials and Disciplinary Sanctions

Authority: Health-General Article, §7-904, Annotated Code of Maryland

10.22.03.01

.01 Purpose.

This chapter describes the procedures for a license denial and disciplinary action against a licensee.

10.22.03.02

.02 Definitions.

A. In addition to the definitions set forth in COMAR 10.22.01, in this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Isolated scope" means that the identified deficiency has occurred only once, in only one location, or for only one individual.

(2) "Low scope" means that the deficiency has occurred only occasionally, in sporadic locations, or for only a few individuals.

(3) "Minor impact" means there has been little or no negative effect on an individual's health, safety, rights, or quality of life.

(4) "Moderate impact" means an individual has experienced a significant health or safety consequence, a violation of rights, or infringement on quality of life, or that these consequences may likely occur in the near future.

(5) "Repeated scope" means that the deficiency has occurred on a regular basis, in several locations, or for several individuals.

(6) "Severe impact" means an individual has experienced a deterioration in the individual's medical or psychological condition, has been exposed to a serious safety risk, has experienced frequent rights violations, or infringements on the individual's quality of life, or that these consequences may likely occur in the near future.

(7) "Widespread scope" means that the deficiency has occurred consistently, in most locations, or for a majority of people.

10.22.03.03

.03 Failure to Submit Acceptable Plan of Correction.

A licensee, including a licensee with deficiencies having only a minor impact, is subject to any intermediate sanction set forth in Regulation .04 of this chapter for failure to comply with COMAR 10.22.02.04E and F.

10.22.03.04

.04 Intermediate Sanctions.

A. After notice and an opportunity for a hearing, the Director may impose any intermediate sanctions listed in §B of this regulation if:

(1) Deficiencies have a moderate impact and the scope of the deficiencies occurs on an isolated, low, repeated, or widespread basis; or

(2) Deficiencies have a severe impact and the scope of the deficiencies occurs on an isolated, low, repeated, or widespread basis.

B. For purposes of §A of this regulation, intermediate sanctions include:

(1) A directed plan of correction, when the licensee is directed to take a specific action by a certain date;

(2) A mandatory staffing pattern, when the Administration defines for the licensee the level of individual supervision required at a particular site or program;

(3) Mandatory training, when the Administration identifies deficient areas in which training is needed;

(4) Individual relocation, when the Administration reserves the right to relocate an individual to another licensee in order to protect the health or safety of the individual;

(5) Expansion ban, when the Administration retains the authority to prohibit the licensee from obtaining additional sites, admitting individuals, or providing additional services at the site;

(6) Imposition of an intensive monitoring protocol by the Administration; or

(7) Imposition of a temporary site monitor, when the Administration maintains an on-going physical presence for the purpose of providing assistance and evaluating the extent of the licensee's corrective actions.

10.22.03.05

.05 Summary Suspension.

A. Pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland, and if appropriate, after a pre-deprivation hearing, the Director may summarily order the suspension of a license if the Administration finds that the public health, safety, or welfare imperatively requires emergency action.

B. The Director shall notify the licensee in writing of the suspension, the findings, and the reasons that support the findings, and, when appropriate, the opportunity for a pre-deprivation hearing. The notice shall include:

(1) The proposed order for summary suspension which includes:

(a) The statutory and regulatory authority upon which the order is based,

(b) The facts supporting the alleged violations of law,

(c) The facts supporting the belief that there is an imminent danger to the health, safety, and welfare of individuals, and

(d) The licensee's right to appeal the summary suspension, if executed by the Director; and

(2) A show cause notice providing an opportunity for the licensee to show cause as to why the order should not be issued if the public health, safety, and welfare permits.

C. The Director may suspend a license without prior notice and the opportunity to be heard if:

(1) The Director determines that the health, welfare, and safety of the public imperatively requires immediate suspension;

(2) Notice of an opportunity to be heard before the action is not feasible; and

(3) The Administration provides the licensee with a post-deprivation hearing opportunity within 15 working days of the suspension.

D. The Administration shall:

(1) Notify the individuals being served by the licensee and, if appropriate, their families or proponents, regarding the summary suspension; and

(2) Assist the individuals in finding alternative services if the license is summarily suspended.

10.22.03.06

.06 Denial, Probation, Suspension, or Revocation.

A. In addition to any intermediate sanctions, the Director may deny a license or take disciplinary action against a licensee if:

(1) An applicant fails to meet the regulations governing the services for which it is applying for a license;

(2) A licensee fails to comply with the regulations governing its services; or

(3) A licensee fails to cooperate with the Department during an investigation or licensing survey.

B. If the Director proposes to deny approval to an applicant or take disciplinary action against a licensee, the Director shall give written notice to the governing body, the executive director, the regional director, the Health Care Financing Administration, and, as appropriate, other interested parties.

C. In the written notice under §B of this regulation, the Director shall include:

(1) The statutory and regulatory authority upon which the proposed action is based;

(2) The facts supporting the alleged violations of law; and

(3) The applicant's or licensee's right to a hearing under Regulation .07 of this chapter before final action.

10.22.03.07

.07 Procedures for Hearings.

A. If the Secretary proposes to deny a license or take disciplinary action against a licensee, the Director shall give the licensee written notice according to Regulation .06 of this chapter.

B. Within 10 working days of receipt of the notice, the governing body or health officer may file a written request for a hearing with the Office of Administrative Hearings with copies of the request to the:

(1) Director;

(2) Regional director; and

(3) Administrative prosecutor.

C. If the governing body or the health officer does not file a request for a hearing within 10 working days of receipt of the notification, the licensee waives its right to request a hearing, and the Director may implement the proposed action.

D. If a timely request for a hearing has been received, the Office of Administrative Hearings shall:

(1) Notify the Director, the governing body or health officer, the regional director, and administrative prosecutor of the date, time, and location of the hearing; and

(2) In accordance with COMAR 28.02.01, hold a hearing and, unless the final decision is delegated to the Office of Administrative Hearings, render a proposed decision to the Director.

E. After giving the parties the opportunity to file exceptions under the provisions of State Government Article, §10-216, Annotated Code of Maryland, the Secretary shall issue a final decision according to State Government Article, §10-221, Annotated Code of Maryland, and send notice to the:

(1) Governing body or the health officer;

(2) Regional director;

(3) Medical Care Programs;

(4) Individual and, if appropriate, their family or proponents; and

(5) Health Care Financing Administration.

F. A licensee may appeal a final decision from a contested case by following the provisions of Health-General Article, §2-207, and State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

G. In addition to disposing of a case by a hearing, the Director may dispose of a contested case by:

(1) Stipulation;

(2) Settlement;

(3) Consent order;

(4) Default;

(5) Withdrawal;

(6) Summary disposition; or

(7) Dismissal.

H. If disciplinary action is taken against a licensee, the Director shall notify the appropriate parties which include, but are not limited to the:

(1) Health Care Financing Administration;

(2) Medical Care Programs;

(3) Licensing and Certification Administration;

(4) DHMH Corporate Compliance Office; and

(5) Maryland Disability Law Center.

10.22.03

Administrative History

Effective date: January 7, 1974

Regulations .01-----.27 amended effective July 25, 1980 (7:15 Md. R. 1425)

Regulations .01-----.27, Group Homes for the Mentally Retarded, repealed effective September 21, 1986 (13:19 Md. R. 2121)

Regulations .01-----.07, Community Residential Services for Mentally Retarded and Nonretarded Developmentally Disabled Individuals, adopted effective September 12, 1986 (13:19 Md. R. 2121)

Chapter revised effective December 26, 1988 (15:26 Md. R. 2983)

Chapter, Community Residential Services for Individuals with Developmental Disability, repealed and new chapter, General Provisions for Sanctions and Appeals, adopted effective July 26, 1999 (26:15 Md. R. 1148)

10.22.04.00 (10-21-08)

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 22 DEVELOPMENTAL DISABILITIES

Chapter 04 Values, Outcomes, and Fundamental Rights

Authority: Health-General Article, §7-904, Annotated Code of Maryland

10.22.04.01 (02/17/09)

.01 Scope.

This chapter identifies the values and outcomes that enhance the quality of life for individuals who are receiving services in the SRCs, FRCs, and the community. It is understood, however, that all of the referenced outcomes might not be evident in the lives of all individuals at all times. The licensee shall make every effort to facilitate the achievement of these outcomes. It is understood, however, that the achievement of these outcomes may be influenced by the needs, preferences, and desires of an individual, health and safety considerations, or fiscal limitations.

10.22.04.02

.02 Values to be Considered in the Development of the IP.

The following values shall be considered in the development of the IP:

A. Personal well-being, which includes:

(1) Receiving health care services that respond to the individual's needs and are consistent with those of the general population;

(2) Living and working in places that are safe;

(3) Having access to the places in which the individual lives, works, and receives services;

(4) Having continuity and security;

(5) Having one's basic needs met; and

(6) Having the time, space, and opportunity for privacy;

B. Individual rights, which include:

(1) Having the same rights and protections as all other citizens under the laws and Constitution of Maryland and the United States;

(2) Having religious and cultural beliefs respected;

(3) Being free from abuse, neglect, and mistreatment;

(4) Having personal information kept in confidence;

(5) Living, working, and receiving services in a manner that is not unnecessarily restrictive;

(6) Having one's money and belongings secured; and

(7) Having access to one's money and belongings;

C. Choice and control, which includes:

(1) Being given the opportunity to express choices and opinions;

(2) Having choices about the following:

(a) Where to live and with whom,

(b) The appearance of one's home,

(c) The services one receives and from whom,

(d) How one spends one's time and with whom,

(e) How menus, activities, schedules, and routines are structured,

(f) Who advocates for the individual; and

(3) Having one's choices and opinions respected and addressed;

D. Respect and dignity, which includes:

(1) Being treated with courtesy and respect;

(2) Being treated with warmth and caring;

(3) Receiving positive recognition;

(4) Being spoken to and treated in an age-appropriate manner; and

(5) Living and working in places that reflect things that are valued;

E. Personal growth and independence by:

(1) Having the opportunity to develop personal goals and the opportunity to work toward achieving those goals;

(2) Receiving the supports to succeed where one chooses to live and work;

(3) Receiving the education, habilitation, and the opportunities for increased independence;

(4) Having access to technology to assist in living and learning;

(5) Having the opportunity to manage one's own affairs, including financial affairs as much as possible; and

(6) Having the opportunity to participate in individual activities;

F. The opportunity for relationships by:

(1) Having the opportunity to develop and maintain meaningful ties to other people;

(2) Having relationships encouraged and supported;

(3) Having the opportunity to be connected to family and friends; and

(4) Having the opportunity for intimacy; and

G. Community membership and social inclusion by:

(1) Having the opportunity to be involved in and contribute to the community;

(2) Having the opportunity to participate in community activities of one's choice;

(3) Having the opportunity to use the same resources as other people; and

(4) Having regular access to recreation and leisure time activities with others.

10.22.04.03

.03 Fundamental Rights.

A. Each individual is entitled to the basic rights set forth in Health-General Article, 7-1002-----7-1004, Annotated Code of Maryland, unless the individual's team decides it is necessary to restrict a right. If the restriction is due to a challenging behavior, the licensee shall follow the procedures outlined in COMAR 10.22.10. If it is necessary to restrict a right not related to a challenging behavior, the standing committee shall review, approve, and establish the time frame for the restriction. The licensee shall:

(1) Document in the IP the:

(a) Right being restricted,

(b) Reason for the restriction,

(c) Conditions under which the restriction is employed,

(d) Efforts to restore the right to the individual, and

(e) Conditions under which the right would be restored;

(2) Comply with COMAR 10.22.10.06D and E; and

(3) Ensure that the restriction:

(a) Represents the least restrictive, effective alternative, and

(b) Is only implemented after other methods have been systematically tried and objectively determined to be ineffective.

B. Each licensee shall provide for the preservation of each individual's fundamental rights in accordance with Health-General Article, §7-1003, Annotated Code of Maryland.

C. Each licensee shall ensure that the individual and the individual's family is made aware of and given a copy of these rights, and that they are posted in accordance with Health-General Article, §7-1002, Annotated Code of Maryland.

10.22.04.9999

Administrative History

Effective date: July 26, 1999 (26:15 Md. R. 1148)

Regulation .01 amended as an emergency provision effective July 10, 2008 (35:16 Md. R. 1388)

10.22.05.00 (10-21-08)

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 22 DEVELOPMENTAL DISABILITIES

Chapter 05 The Individual Plan

Authority: Health-General Article, §§7-1002 and 7-1006, Annotated Code of Maryland

10.22.05.01 (02/17/09)

.01 Rationale.

Through an individual directed approach, each individual, with assistance from the individual's team, is the designer of the services and supports reflected in the individual plan (IP). The provision of these services and supports may be influenced by health and safety considerations or resource limitations. This chapter applies to individuals living in the community, FRCs, and SRCs.

10.22.05.02

.02 Components of the IP.

A. The IP is:

(1) A single plan for the provision of services and supports to the individual;

(2) Directed by the individual;

(3) Outcome oriented; and

(4) Intended to specify all needed assessments, services, and training.

B. The IP is a written plan which includes:

(1) Strengths and needs of the individual;

(2) Preferences and desires identified by and for the individual;

(3) Services to be provided to the individual by the licensee, such as:

(a) Habilitation,

(b) Medical,

(c) Occupational therapy,

(d) Physical therapy,

(e) Social,

(f) Psychological,

(g) Audiological,

(h) Speech and language,

(i) Nursing,

(j) Assistive technology, and

(k) Additional services to support an individual in retirement;

(4) A behavior plan, if required;

(5) Specific training and staffing ratios based on the needs, preferences, and desires of the individual;

(6) Measurable goals for the completion of outcomes;

(7) Target dates for the completion of goals;

(8) Implementation strategies and dates;

(9) Documentation of progress toward the achievement of goals;

(10) Monitoring procedures;

(11) Individuals responsible for providing the supports, services, implementation, and monitoring of the plan;

(12) Documentation indicating that the individual or the individual's proponents, when applicable, have been involved in, informed of, and agree with the plan;

(13) A determination of whether the needs of the individual could be met in more integrated settings; and

(14) For individuals residing in a State residential center, the written plan of habilitation consisting of:

(a) The treating professional's recommendation on the most integrated setting appropriate to meet the individual's needs;

(b) The resource coordinator's recommendation on the most integrated setting appropriate to meet the individual's needs;

(c) A description of the services and supports, including residential, day, employment, and technology, that are required for the individual to receive services in the most integrated setting;

(d) A listing of barriers that prevent the individual from receiving supports and services in the most integrated setting, including community capacity or systems, if community services are determined to be the most integrated setting appropriate to meet the individual's needs; and

(e) An annual update on the status and progress toward addressing and resolving any identified barriers to receiving supports and services in the most integrated setting.

10.22.05.03

.03 Development and Implementation.

A. The resource coordinator, as defined in COMAR 10.22.09, shall ensure that:

(1) Each individual, other than an individual receiving respite services in the community, has an IP that is developed not more than 30 calendar days after receiving services;

(2) The IP is developed in a manner consistent with the values and outcomes in COMAR 10.22.04, and the provisions of any other relevant State or federal laws;

(3) Each individual is provided with a range of the most integrated setting service options that may be appropriate; and

(4) The IP meetings are held at a time and place convenient to the individual.

B. If the individual does not have a resource coordinator, the licensee, in the following priority order, shall ensure that the requirements of this chapter are met:

(1) Community residential services licensee;

(2) Vocational or day services licensee; or

(3) Family and individual support services licensee.

C. Written Plan of Habilitation for Individuals Residing in State Residential Center.

(1) The individual, a treating professional, and a resource coordinator shall develop the written plan of habilitation.

(2) On an annual basis and any other time requested by the individual, the treating professional and the resource coordinator shall discuss with the individual:

(a) The service and support needs of the individual;

(b) A range of the most integrated setting service options licensed through the administration that may be appropriate; and

(c) Any identified community-based Medicaid waiver services and any other services and supports that may be appropriate.

(3) The treating professionals and resource coordinator shall use any communication devices and techniques, including the use of sign language, as appropriate, to facilitate the involvement of the individual in the development of the written plan of habilitation.

10.22.05.04

.04 Decisions.

A. The team shall make decisions by consensus.

B. If the team cannot reach a consensus, the resource coordinator shall mediate and resolve the issue of concern.

C. If the resource coordinator cannot resolve the issue or if there is not a resource coordinator on the team, the appropriate regional director shall mediate and resolve the issue of concern.

D. For individuals residing in a State residential center:

(1) If the team cannot reach consensus, the facility director shall mediate and resolve the issue of concern; and

(2) If consensus still cannot be achieved, the regional director shall mediate and resolve the issue of concern.

10.22.05.05

.05 Review of the IP.

A. Each IP shall be reviewed and approved, disapproved, or modified by:

(1) The executive officer or administrative head of the licensee or a qualified developmental disability professional whom the executive officer or administrative head designates; and

(2) One other professional individual who is responsible for carrying out a major program but does not participate in the IP.

B. Approval of an IP shall be based on the current needs of the individual.

C. The team shall review each IP at least annually, or more often as needed, and modify each IP as required by the individual's circumstances.

D. Any member of the team may request a review or modification of the IP at any time.

10.22.05.06

.06 Implementation.

The licensee shall implement the supports and services that the licensee has agreed to provide, as indicated in the IP, within 20 calendar days.

10.22.05.9999

Administrative History

Effective date: April 13, 1977 (4:8 Md. R. 643)

Regulations .01—.06 repealed effective November 14, 1988 (15:23 Md. R. 2659)

Regulations .01—.09, Individualized Habilitation Plans, adopted effective November 14, 1988 (15:23 Md. R. 2659)

Chapter, Individualized Habilitation Plans, repealed and new chapter, The Individual Plan, adopted effective July 26, 1999 (26:15 Md. R. 1148)

Regulation .01 amended as an emergency provision effective July 10, 2008 (35:16 Md. R. 1388)

Regulation .02B amended effective May 5, 2008 (35:9 Md. R. 897)

Regulation .03A amended effective May 5, 2008 (35:9 Md. R. 897)

Regulation .03C adopted effective May 5, 2008 (35:9 Md. R. 897)

Regulation .04D adopted effective May 5, 2008 (35:9 Md. R. 897)

Regulation .05 amended effective May 5, 2008 (35:9 Md. R. 897)

10.22.06.00 (10-21-08)

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 22 DEVELOPMENTAL DISABILITIES

Chapter 06 Family and Individual Support Services (FISS) Program Service Plan

Authority: Health-General Article, §7-703, 7-708, and 7-904, Annotated Code of Maryland

10.22.06.01

.01 Additional Regulatory Compliance.

In addition to this chapter, a person who provides FISS to an individual shall comply with the following regulations of this subtitle:

A. COMAR 10.22.01;

B. COMAR 10.22.02, with the exception of COMAR 10.22.02.06;

C. COMAR 10.22.03;

D. COMAR 10.22.04;

E. COMAR 10.22.05; and

F. COMAR 10.22.10, when applicable.

10.22.06.02

.02 Rationale.

A. Services are to be flexible and dynamic to meet the needs of individuals or families desiring specific areas of support and for those who have changing needs.

B. Services are to be readily adaptable to the changing needs of the individual.

C. The flexibility inherent in FISS lends itself to creative and innovative ways of supporting individuals and their families.

10.22.06.03

.03 Scope.

A. FISS cover a wide array of supports in the life of an individual.

B. FISS are provided by making use of resources available in the community while, at the same time, building on the individual's existing support network.

C. Supports are the assistance provided to the individual to enable participation in the community. Supports are integral to each individual or family's quality of life and often enhance the lives of those involved.

D. FISS may include, but are not limited to, supports involving:

(1) Budgeting;

(2) Medication administration;

(3) Counseling;

(4) Job coaching;

(5) Helping an individual to access and complete the individual's education;

(6) Participating in recreational and social activities;

(7) Accessing community services;

(8) Grocery shopping;

(9) Respite, behavioral, and other services and supports needed by the family of the individual; and

(10) Developing relationships.

10.22.06.04

.04 Staffing and Training.

A. The individual's plan determines the amount of staff time, pattern of supports, and type of staff training needed to support each individual or family.

B. The licensee shall ensure that staff:

(1) Have the necessary skills to carry out the individual's plan; and

(2) Receive training in accordance with COMAR 10.22.02.11.

10.22.06.05

.05 Setting and Location.

A. The licensee shall provide FISS within the context of each individual or family's life style in the least intrusive manner possible.

B. The licensee shall provide FISS consistent with each individual's IP.

10.22.06

Administrative History

Effective date: March 7, 1980 (7:5 Md. R. 474)

Regulations .01-----.09, Respite Care Services in Public Residential Care Facilities Serving the Mentally Retarded, repealed effective June 13, 1988 (15:12 Md. R. 1445)

Regulations .01-----.08, Respite Care Services in State Residential Centers Serving Individuals with Mental Retardation, adopted effective June 13, 1988 (15:12 Md. R. 1445)

Chapter, Respite Care Services in State Residential Centers Serving Individuals with Mental Retardation, repealed and new chapter, Family and Individual Support Services Program Service Plan, adopted effective July 26, 1999 (26:15 Md. R. 1148)

10.22.07.00 (10-21-08)

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 22 DEVELOPMENTAL DISABILITIES

Chapter 07 Vocational and Day Services Program Service Plan

Authority: Health-General Article, §§7-903 and 7-904, Annotated Code of Maryland

10.22.07.01

.01 Additional Regulatory Compliance.

In addition to this chapter, a person who provides vocational or day services to an individual shall comply with the following regulations of this subtitle:

A. COMAR 10.22.01;

B. COMAR 10.22.02, except COMAR 10.22.02.07;

C. COMAR 10.22.03;

D. COMAR 10.22.04;

E. COMAR 10.22.05; and

F. COMAR 10.22.10, when applicable.

10.22.07.02

.02 Rationale.

A. Individuals often need assistance to obtain and maintain work in the community. With supports, job skills are learned and behavior appropriate for the workplace is increased. Work in the community provides income, self esteem, and personal value for the individual.

B. Individuals seeking to obtain and maintain work in the community are free to choose preferred types of work, to seek change of work when not satisfied, and have their day activities reflect the needs, preferences, and desires stated in their IPs, including the ability to combine day or vocational services with other community activities, such as school or recreation.

C. A licensee may not limit an individual to specific types of services because of their ages, severity of disability, or level of supports needed to work.

D. A licensee shall use accommodation, coaching, individual choice, and preferences in matching individuals and employment opportunities.

10.22.07.03

.03 Scope.

A. The vocational or day services licensee shall respond to individual needs and preferences in accordance with the IP.

B. Current program models include:

(1) Supported employment;

(2) Vocational services;

(3) Day habilitation; and

(4) Volunteer work.

C. Supported Employment.

(1) Supported employment includes:

(a) Individuals who are self-employed and need supports, or are working in community businesses for pay with licensee funded supports; or

(b) Any work program except one in an SRC that includes supports necessary for the individual to achieve the desired outcomes established in the IP.

(2) A licensee shall provide job skill training which includes but is not limited to:

(a) Skills required to perform a job;

(b) Community mobility training;

(c) Guidance in acceptable job behaviors; and

(d) Job seeking and interviewing skills.

(3) An individual typically works 20-----40 hours per week, not including commuting time.

D. Vocational Services.

(1) Vocational services include but are not limited to:

(a) Vocational assessment activities;

(b) Job training, work skill training, and placement programs;

(c) Training in social skills, acceptable work behaviors, and other skills such as money management;

(d) Basic safety skills;

(e) Training in work-related hygiene; and

(f) Work skills.

(2) A vocational services licensee shall provide services at a minimum:

(a) 220 days per year;

(b) 5 days a week;

(c) 6 hours a day not including commuting time; or

(d) Consistent with an alternative schedule approved by the Director.

E. Day Habilitation.

(1) Day habilitation includes individuals participating in structured activities designed to increase or maintain:

(a) Motor skills;

(b) Communication skills;

(c) Personal hygiene skills;

(d) Leisure skills; and

(e) Community integration.

(2) A licensee providing day habilitation shall provide services at a minimum:

(a) 220 days per year;

(b) 5 days a week;

(c) 6 hours per day not including commuting time; or

(d) Consistent with an alternative schedule approved by the Director.

F. Volunteer Work.

(1) Volunteer work enables the individual to gain desired work experience, personal satisfaction, and to contribute to the community.

(2) The individual and the individual's team shall evaluate, at least annually, the appropriateness and continued desirability of the volunteer placement over paid work activities.

G. Transportation Services.

(1) The licensee is responsible for assisting or arranging transportation services with the individual.

(2) The licensee shall use the mode of transportation which achieves the least costly, and most appropriate, means of transportation for the individual with priority given to the use of public transportation, when appropriate.

(3) An individual who lives within walking distance of the program or worksite and who is sufficiently mobile shall be encouraged to walk.

(4) The licensee shall keep accurate records which clearly indicate the transportation that the individual uses to participate in the vocational or day service including an alternative transportation plan if the primary plan is unavailable.

10.22.07.04

.04 Staffing and Training.

A. Staffing levels shall be determined by the IP with the licensee providing the staff for each individual as indicated in the IP.

B. The licensee shall ensure that staff receive training in accordance with COMAR 10.22.02.11.

10.22.07.05

.05 Setting and Location.

A. Integrated work settings are preferred.

B. A licensee providing services under this chapter shall make every effort to provide services that are integrated in neighborhoods and communities.

10.22.07

Administrative History

Effective date: October 20, 1986 (13:21 Md. R. 2321)

Regulations .01-----07, Fundamental Rights, repealed effective June 27, 1988 (15:13 Md. R. 1554)

Regulations .01-----.07, Fundamental Rights of Individuals, adopted effective June 27, 1988 (15:13 Md. R. 1554)

Chapter, Fundamental Rights of Individuals, repealed and new chapter, Vocational and Day Services Program Service Plan, adopted effective July 26, 1999 (26:15 Md. R. 1148)

10.22.08.00 (10-21-08)

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 22 DEVELOPMENTAL DISABILITIES

Chapter 08 Community Residential Services Program Service Plan

Authority: Health-General Article, §7-714, 7-903, and 7-904, Annotated Code of Maryland

10.22.08.01

.01 Additional Regulatory Compliance.

In addition to this chapter, a person who provides residential services to an individual shall comply with the following regulations of this subtitle:

A. COMAR 10.22.01;

B. COMAR 10.22.02;

C. COMAR 10.22.03;

D. COMAR 10.22.04;

E. COMAR 10.22.05; and

F. COMAR 10.22.10, when applicable.

10.22.08.02

.02 Rationale.

A. Living in the community involves both a wide range of skills and choices about life style.

B. Community residential models accommodate the wide range of choices individuals and their families make about how to live in the community.

C. Community residential models are designed to give preference to small and individualized settings.

D. Individuals with developmental disabilities have the same range of options about where to live in the community as are available to all people.

E. The Administration respects personal choice regarding decisions about where and with whom individuals with developmental disabilities may live.

10.22.08.03

.03 Scope.

A. Current community residential service models include:

(1) Alternative living units (ALU);

(2) Group homes;

(3) Individual family care homes (IFC); and

(4) Community supported living arrangements (CSLA).

B. A licensee shall make every effort to provide services to an individual according to the individual's choices as identified in the IP.

C. The range of community residential service options available to an individual may be limited by resources or lack of available sites.

D. For transportation services other than those outlined in COMAR 10.22.07.03G, a licensee shall provide or arrange for the provision of the use of transportation services.

E. Respite Services.

(1) A site may be licensed to accommodate additional individuals for respite services.

(2) Respite services for an individual:

(a) May not exceed 45 days within any 1-year period;

(b) May not be provided for more than 28 consecutive days;

(c) May not be provided unless the licensee is provided with current health, emergency, and any other information that is essential to the licensee's ability to provide appropriate care for the individual; and

(d) May be provided for IFC care providers only to the extent permitted by the IFC care provider contract.

F. A licensee providing respite services shall:

(1) Ensure that the health and safety needs of the individual are met; and

(2) Comply with COMAR 10.22.04 and 10.22.05 if the individual has an IP, and 10.22.10 if the individual has a behavior plan.

10.22.08.04

.04 Staffing and Training.

A. A licensee shall provide staffing levels and patterns as determined in the IP.

B. A licensee shall provide or arrange for the provision of training in accordance with COMAR 10.22.02.11.

10.22.08.05

.05 Setting and Location.

A. An individual may receive services under this chapter in the individual's own home, in the family's home, in a current residential service model, or in any other service model approved by the Director in accordance with COMAR 10.22.02.09F.

B. A licensee providing services under this chapter shall make every effort to provide services that are integrated in neighborhoods and communities.

10.22.08

Administrative History

Effective date: July 26, 1999 (26:15 Md. R. 1148)

10.22.09.00 (10-21-08)

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 22 DEVELOPMENTAL DISABILITIES

Chapter 09 Resource Coordination Program Service Plan

Authority: Health-General Article, §§7-903 and 7-904, Annotated Code of Maryland

10.22.09.01

.01 Additional Regulatory Compliance.

In addition to this chapter, a person who provides resource coordination to an individual shall comply with the following regulations of this subtitle:

A. COMAR 10.22.01;

B. COMAR 10.22.02, except COMAR 10.22.02.05, .06, .07, .11, .12, and .14E(1)(d);

C. COMAR 10.22.03;

D. COMAR 10.22.04; and

E. COMAR 10.22.05.

10.22.09.02

.02 Rationale.

A. Resource coordination is provided by a resource coordinator.

B. The resource coordinator assists individuals in obtaining the best quality and most appropriate services and supports within available resources.

C. The resource coordinator is responsible to individuals and their families for providing assistance in implementing individual choice, addressing individual satisfaction, and assuring that an individual's needs and preferences are addressed.

10.22.09.03

.03 Scope.

A. Resource coordination may be provided to individuals determined eligible for services from the Administration, including individuals on the waiting list.

B. Resource coordination may only be provided by licensees who do not provide direct services to individuals.

C. The level and intensity of resource coordination may vary according to the individual's needs and desire for resource coordination.

D. In the State residential center, a resource coordinator shall be provided for all individuals for the purpose of participating in the development of the written plan of habilitation.

10.22.09.04

.04 Functions of the Resource Coordination Licensee.

The resource coordination licensee shall carry out the following functions:

A. Determine an individual's needs, preferences, desires, satisfaction, and the most integrated setting appropriate to meet the individual's needs;

B. Assist the individual through planning in choosing goals and outcomes, the services needed to accomplish these goals and outcomes, and the establishment of realistic time frames for meeting these goals and outcomes;

C. Broker services in consultation with the regional office to obtain generic services, services funded by the Administration, and natural supports;

D. Advocate for the individual to assure that the individual's rights are protected and the individual's needs and preferences are considered;

E. Monitor and act as a third-party advocate for implementation of the IP; and

F. If requested by the Administration, provide utilization review of services being provided to individuals.

10.22.09.05

.05 Responsibilities of the Resource Coordinator.

A. The resource coordinator is responsible for:

(1) Ensuring that each individual receives an IP that is designed to meet the individual's needs, preferences, desires, goals, and outcomes in the most integrated setting appropriate to meet the individual's needs and in the most cost effective manner;

(2) Documenting that the IP is being implemented as designed;

(3) Communicating information with the Administration in an effort to achieve a responsive service delivery system;

(4) Assisting the individual in applying for services; and

(5) Providing education to individuals and their families concerning:

(a) The range of most integrated setting service and support options that may be appropriate to meet the individual's needs;

(b) How to access services, and

(c) How to coordinate and advocate for services.

B. Resource coordinators shall have personal knowledge of each individual served and make every effort to effectively accommodate the individual's needs and preferences.

C. Resource coordinators shall personally meet with each individual served, at least every 6 months, in an effort to effectively meet the individual's needs and preferences.

D. In the State residential center, the resource coordinator shall:

(1) Ensure that communication devices and techniques, including the use of sign language, as appropriate, are used to facilitate the involvement of the individual in the development of the written plan of habilitation;

(2) Recommend the most integrated setting appropriate to meet the individual's needs; and

(3) Conduct an annual update on the status and progress toward addressing and resolving the barriers to receiving services and supports in the most integrated setting.

10.22.09.06

.06 Staffing and Training.

A. A resource coordinator shall have the skills necessary to:

(1) Determine the most integrated setting appropriate to meet the individual's needs;

(2) Coordinate planning meetings;

(3) Negotiate and resolve conflicts;

(4) Assist individuals in gaining access to services and supports;

(5) Coordinate services; and

(6) Monitor the provision of services to individuals.

B. The resource coordination licensee shall ensure through appropriate documentation that the resource coordinator receives training in:

(1) Fundamental rights;

(2) Communication skills;

(3) Specific disabilities of the individuals the resource coordinator serves;

(4) Development of the IP;

(5) Facilitating individual choice;

(6) Determining individual satisfaction; and

(7) Developing opportunities for individuals to establish relationships, friendships, and connections in the community.

10.22.09.07

.07 Setting.

To the extent feasible, individuals may select:

A. Their own resource coordinator; and

B. The time, place, and frequency of meetings.

10.22.09.9999

Administrative History

Effective date: August 25, 1986 (13:17 Md. R. 1922)

Chapter, Services Coordination Programs for Mentally Retarded and Nonretarded Developmentally Disabled Individuals, repealed and new chapter, Resource Coordination Program Service Plan, adopted effective July 26, 1999 (26:15 Md. R. 1148)

Regulation .03D adopted effective May 5, 2008 (35:9 Md. R. 897)

Regulation .04A amended effective May 5, 2008 (35:9 Md. R. 897)

Regulation .05A amended effective May 5, 2008 (35:9 Md. R. 897)

Regulation .05D adopted effective May 5, 2008 (35:9 Md. R. 897)

Regulation .06A amended effective May 5, 2008 (35:9 Md. R. 897)

10.22.10.00 (10-21-08)

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 22 DEVELOPMENTAL DISABILITIES

Chapter 10 Behavior Support Services Program Service Plan

Authority: Health-General Article, §7-904, Annotated Code of Maryland

10.22.10.01

.01 Additional Regulatory Compliance.

In addition to this chapter, a person who provides behavior support services to an individual shall comply with the following regulations of this subtitle:

A. COMAR 10.22.01;

B. COMAR 10.22.02;

C. COMAR 10.22.03;

D. COMAR 10.22.04; and

E. COMAR 10.22.05.

10.22.10.02

.02 Rationale.

A. The Administration serves individuals who exhibit challenging behaviors and require a variety of supports to achieve success in exercising the individual's choices responsibly.

B. Behavior support services are designed to assist individuals who exhibit challenging behaviors in acquiring skills, gaining social acceptance, and becoming full participants in the community.

.03 Scope.

A. A licensee who provides services to an individual in the community or in an SRC whose record indicates a need for a behavior plan shall meet the requirements of this chapter.

B. A licensee who contracts for behavior support services shall ensure that its contractor meets the requirements of this chapter and is knowledgeable about the Administration's service delivery system.

C. Behavior support services include:

(1) Behavioral consultation;

(2) Temporary augmentation of staff;

(3) Behavioral training; and

(4) Behavioral respite services.

10.22.10.04

.04 Staffing and Training.

In addition to the training requirements in COMAR 10.22.02.11A-----D, the licensee shall ensure that staff who provide behavior support services, before being assigned independent duties, receive training in the:

A. Principles of behavioral change; and

B. Appropriate methods of preventing or managing challenging behaviors, which may include the use of mechanical restraints.

10.22.10.05

.05 Behavior Plan (BP).

A. A licensee shall ensure that a BP is developed for each individual for whom it is required.

B. The licensee shall ensure the BP:

(1) Is developed, in conjunction with the team, by a licensed psychologist, psychology associate under the supervision of a licensed psychologist, licensed physician, licensed certified social worker, or licensed or certified professional counselor, who shall have training and experience in applied behavior analysis;

(2) Is based on and includes a functional analysis or assessment of each challenging behavior as identified in the IP;

(3) Specifies the behavioral objectives for the individual, and includes:

(a) A description of the hypothesized function of current behaviors including their frequency and severity, and

(b) Criteria for determining achievement of the objectives established;

(4) Takes into account the medical condition of the individual;

(5) Describes the treatment techniques and when the techniques are to be used;

(6) Specifies the emergency procedures to be implemented for the individual with a history of exhibiting behaviors that present a danger to self or serious bodily harm to others;

(7) Includes a description of the adaptive skills to be learned by the individual that serve as functional alternatives to the challenging behavior or behaviors to be decreased;

(8) Identifies the person or persons responsible for monitoring the BP;

(9) Specifies the data to be collected to assess progress towards meeting the BP's objectives; and

(10) Describes and documents each use of mechanical and physical restraint, the reason for its use, and the length of time used.

C. Before implementation, the licensee shall ensure that each behavior plan which includes the use of restrictive techniques is:

(1) Approved by the standing committee as specified in COMAR 10.22.02.14E(1)(d); and

(2) Includes written informed consent of the:

(a) Individual,

(b) Individual's legal guardian, or

(c) Surrogate decision maker as defined n Health-General Article, §5-605, Annotated Code of Maryland.

D. Before a licensee discontinues a behavior plan, the team and an individual appropriately licensed under Health Occupations Article with training and experience in applied behavior analysis shall recommend that the individual no longer needs a behavior plan.

10.22.10.06

.06 Use of Restrictive Techniques.

A. The licensee shall ensure that the use of restrictive techniques in any BP:

(1) Represents the least restrictive, effective alternative, or the lowest effective dose of a medication; and

(2) Is only implemented after other methods have been:

(a) Systematically tried, and

(b) Objectively determined to be ineffective.

B. The licensee shall collect and present objective data to the authorizing licensed health care practitioner to indicate whether the restrictive technique being used is effective in reducing the individual's challenging behavior.

C. The licensee shall:

(1) Convene the team within 5 calendar days after an emergency use of a restrictive technique to review the situation and action taken;

(2) Determine subsequent action include whether the development or modification of a BP is necessary; and

(3) Document that the requirements of this regulation have been met.

D. The licensee shall ensure that staff do not use:

(1) Any method or technique prohibited by law, including aversive techniques;

(2) Any method or technique which deprives an individual of any basic right specified in Health-General Article, 7-1002-----7-1004, Annotated Code of Maryland, except as permitted in COMAR 10.22.04.03A;

(3) Seclusion;

(4) A room from which egress is prevented; or

(5) A program which results in a nutritionally inadequate diet.

E. Staff may not use a restrictive technique:

(1) As a substitute for a treatment plan;

(2) As punishment; or

(3) For convenience.

10.22.10.07

.07 Use of Medications to Modify Challenging Behavior.

A. In addition to the requirements in Regulations .05 and .06 of this chapter, the licensee shall ensure that a BP which includes the use of medication includes:

(1) The specific medications that have been prescribed;

(2) The rationale for prescribing each medication;

(3) Any alternate methods of management being used to bring challenging behavior under control; and

(4) Objective data collected by staff and presented to the licensed health care practitioner to indicate that the medication being used is effective in reducing the individual's challenging behavior.

B. The licensee shall ensure that a licensed health care practitioner documents that:

(1) Any potential side effect from the medication outweighs the behavior that will occur without the use of the medication; and

(2) Attempts are being made to gradually decrease the dosage or discontinue the medication when clinically indicated.

C. A licensed health care practitioner shall review any medication that has been prescribed to modify behavior at a minimum of every 90 days.

D. PRN orders for medications to modify behavior are prohibited.

E. Medications to modify behavior may not be used in quantities that interfere with an individual's ability to participate in daily living activities.

10.22.10.08

.08 Use of Physical Restraint.

A. Physical restraint may only be used when the individual's behavior presents a danger to self or serious bodily harm to others.

B. The licensee shall ensure that only staff who have been trained in the management of disruptive behavior, or other curriculum approved by the Administration, may use a physical restraint and may only do so as specified in the curriculum.

C. In addition to the requirements in Regulation .06 of this chapter, the licensee shall document in the individual's record each use of a physical restraint, including the reason for its use.

10.22.10.09

.09 Use of Mechanical Restraint and Support.

A. Use of Mechanical Restraint for Behavioral Purposes.

(1) A mechanical restraint may only be used:

(a) To prevent an individual from engaging in self-injurious behaviors such as head banging, teeth gnashing, and similar behavior;

(b) To prevent serious bodily harm to others; or

(c) As required by an individual's treating licensed health care practitioner to allow an individual to recuperate from surgery or injury.

(2) The licensee shall ensure that a mechanical restraint is designed and used:

(a) In a humane, safe, and effective manner; and

(b) Without intent to harm or create undue discomfort.

(3) If a mechanical restraint is being used for the purpose of §A(1)(a) and (b) of this regulation, the licensee shall:

(a) Meet the requirements in Regulations .05 and 06 of this chapter;

(b) Obtain written authorization from a licensed health care practitioner trained in applied behavior analysis for the use of the mechanical restraint, including the duration of its use and the circumstances under which the restraint is authorized;

(c) Document in the individual's record each use of mechanical restraint, including the reason for its use; and

(d) Require staff to check on the individual every 15 minutes.

(4) When a mechanical restraint is being used for the purpose of §A(1)(a) and (b) of this regulation, the licensee shall afford the individual the opportunity:

(a) To be escorted to the bathroom and offered fluids at least every 2 hours;

(b) For motion and exercise for a period of not less than 10 minutes during each 2 hours in which the restraint is used; and

(c) To be provided meals at regularly scheduled hours.

(5) A licensed health care practitioner who authorized the use of the mechanical restraint shall review the authorization at a minimum of every 90 days, and document its effectiveness and whether continuation is indicated.

B. Use of Mechanical Restraint for Medical Purposes. If a mechanical restraint is being used for the purpose of §A(1)(c) of this regulation, the licensee shall:

(1) Obtain written authorization from the individual's treating licensed health care practitioner; and

(2) Document in the individual's record the reason and guidelines for the use of the restraint, including the time frame the mechanical restraint is to be used.

C. Use of a Mechanical Support.

(1) A mechanical support may only be used if authorized by a licensed health care practitioner.

(2) The licensee shall ensure that a mechanical support is designed and used:

(a) In a humane, safe, and effective manner; and

(b) Without intent to harm or create undue discomfort.

(3) The licensee shall document in the individual's record the reason for use of the mechanical support, when it is to be used, and the directions for its use.

(4) The licensed health care practitioner who authorized the use of the mechanical support shall document its effectiveness and whether continuation is indicated, at least, on an annual basis.

10.22.10.10

.10 Use of Chemical Restraint.

A. Chemical restraint may only be used when the individual's behavior presents a danger to self or serious bodily harm to others.

B. A licensee may only use a chemical restraint in a behavioral emergency when:

(1) Ordered by a licensed health care practitioner; and

(2) Administered and monitored by a licensed health care practitioner.

C. In addition to the requirements in Regulation .06 of this chapter, the licensee shall document in the individual's record the use of any chemical restraint, including the reason for its use.

10.22.10.11

.11 Monitoring Use of Medications to Modify Behavior and Restrictive Techniques.

The licensee shall monitor the use of restrictive techniques through its internal quality assurance process as required by COMAR 10.22.02.14B(4).

10.22.10.12

.12 IBMP—Alternative Living Arrangements.

After the effective date of this chapter, a licensee providing residential services which specializes in behavior support services shall comply with the requirements of this chapter and COMAR 10.22.08.

10.22.10

Administrative History

Effective date: July 29, 1985 (12:15 Md. R. 1517)

Regulations .01-----.10 repealed effective January 23, 1989 (16:1 Md. R. 70)

Regulations .01-----.11 adopted effective January 23, 1989 (16:1 Md. R. 70)

Regulation .09B amended as an emergency provision effective May 3, 1989 (16:10 Md. R. 1102); adopted permanently effective October 30, 1989 (16:21 Md. R. 2261)

Regulation .09G amended effective January 6, 1992 (18:26 Md. R. 2830)

Chapter, Intensive Behavior Management and Other Programs Utilizing Behavior Management Techniques, repealed and new chapter, Behavior Support Services Program Service Plan, adopted effective July 26, 1999 (26:15 Md. R. 1148)

10.22.11.00 (10-21-08)

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 22 DEVELOPMENTAL DISABILITIES

Chapter 11 Respite Services in the State Residential Center (SRC)

Authority: Health-General Article, §7-509, Annotated Code of Maryland

10.22.11.01

.01 Additional Regulatory Compliance.

In addition to this chapter, an SRC providing respite services shall comply with the following regulations of this subtitle:

A. COMAR 10.22.01;

B. COMAR 10.22.04;

C. COMAR 10.22.05; and

D. COMAR 10.22.10.

10.22.11.02

.02 Purpose.

This chapter addresses the provision of respite services in the SRC for individuals currently living in the community.

10.22.11.03

.03 Provision of Services.

Before respite services are utilized in the SRC, all efforts are made by the Administration to provide individuals living in the community with respite services in the community. Only when there are no other appropriate alternatives available are respite services provided in the SRC.

10.22.11.04

.04 Eligibility.

To be eligible to receive respite care in the SRC, the individual:

A. Shall be eligible to receive services funded by the Administration;

B. Shall have an appropriate evaluation with the diagnosis of mental retardation;

C. Shall have needs that are able to be met effectively while at the SRC; and

D. May not be in receipt of full residential services in a community program, except with the approval of the Director.

10.22.11.05

.05 Length of Stay.

Respite services in the SRC may only be provided to an individual for not more than:

A. 45 days per calendar year; or

B. 28 consecutive days.

10.22.11.06

.06 Procedures for Respite Requests.

A. The individual's proponent or licensee shall direct requests for respite services to the appropriate regional office.

B. The regional office shall arrange for the following:

(1) The completion of a formal application;

(2) The collection of information to substantiate a diagnosis of mental retardation; and

(3) A meeting with the individual, proponent, or the licensee to discuss the terms and conditions of respite services.

C. The proponent or licensee shall complete all forms required for respite services.

D. The regional office shall render a written decision to the proponent or licensee within a week of the receipt of the completed application.

E. On entering, the SRC shall arrange for a medical examination or nursing assessment as is appropriate to the individual.

F. The SRC shall enter into a contract with the proponent or licensee which at a minimum contains:

(1) A statement that the acceptance of an individual for respite services is not considered an admission as defined in Health-General Article, §7-101(c), Annotated Code of Maryland;

(2) A mutually agreed upon date on which the SRC may not provide respite services; and

(3) A designated time for the licensee or proponent to return the individual to the individual's community residence.

10.22.11.07

.07 Procedures for Leaving Respite Services.

A. The SRC shall arrange for a medical examination or nursing assessment as is appropriate to the individual at the time the individual leaves respite services and shall document the findings.

B. The SRC shall document information about the individual's response to respite services.

C. The proponent or licensee shall return the individual to the individual's community residence at the time agreed to on the admission document.

10.22.11.08

.08 Daily Programs.

A. The SRC shall provide appropriate daily activities during the time the individual is in respite services.

B. The SRC shall make every attempt to maintain the individual in the individual's vocational or day activity during the period of respite services and document the reasons if the individual is unable to attend.

10.22.11.09

.09 Individual Records.

The SRC shall maintain a complete record for each individual receiving respite services.

10.22.11.10

.10 Funding.

The Department's Division of Reimbursement shall determine the cost of respite services in the SRC pursuant to Health-General Article, §16-201, Annotated Code of Maryland.

10.22.11

Administrative History

Effective date: June 17, 1985 (12:12 Md. R. 1164)

Regulations .01-----.10, Developmental Services, repealed effective March 23, 1987 (14:6 Md. R. 716)

Regulations .01-----.19, Community Supported Living Arrangements (CSLA) Program, adopted as an emergency provision effective October 8, 1991 (18:22 Md. R. 2392); adopted permanently effective March 10, 1992 (19:3 Md. R. 304)

Regulation .02B amended as an emergency provision effective June 14, 1996 (23:14 Md. R. 1006); amended permanently effective December 2, 1996 (23:24 Md. R. 1681)

Chapter, Community Supported Living Arrangements (CSLA) Program, repealed and new chapter, Respite Services in the State Residential Center (SRC), adopted effective July 26, 1999 (26:15 Md. R. 1148)

10.22.12.00 (10-21-08)

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 22 DEVELOPMENTAL DISABILITIES

Chapter 12 Eligibility for and Access to Community Services for Individuals with Developmental Disability

Authority: Health-General Article, §7-401, Annotated Code of Maryland

10.22.12.01

.01 Purpose.

A. These regulations specify the individuals with developmental disability who are eligible for Developmental Disabilities Administration (DDA) funded services, the eligibility criteria which are set forth in Health-General Article, Title 7, Annotated Code of Maryland, and the process of eligibility determination.

B. These regulations delineate the eligibility and access determination process involved in obtaining funding for services from the Developmental Disabilities Administration.

C. By outlining the eligibility and access process, these regulations comply with the requirements of Health-General Article, Title 7, Subtitle 4. They establish a uniformly applied Statewide policy that recognizes the needs of families and the comparative urgency of these needs.

10.22.12.02

.02 Scope.

A. This chapter is applicable to the eligibility and access process for individuals with developmental disability involved in seeking funding from the Developmental Disabilities Administration for services provided in community programs under the jurisdiction of the Administration. They do not apply to those similar processes which are related to services provided in State residential centers (SRCs) that are operated by the DDA.

B. This chapter is not intended to address the criteria for access to specific services funded by the DDA. COMAR 10.22.13 addresses the admission of individuals with mental retardation to State residential centers under the jurisdiction of the Developmental Disabilities Administration.

C. Individuals committed to the Department through the Maryland court system are not subject to the procedures set forth in these regulations.

10.22.12.03

.03 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Administration" means the Developmental Disabilities Administration (DDA).

(2) "Alternative living unit (ALU)" means a residence that:

(a) Provides residential services for individuals who, because of developmental disability, require specialized living arrangements;

(b) Admits not more than three individuals; and

(c) Provides 10 or more hours of supervision per unit, per week.

(3) "Applicant" means the individual who files an application for services with the DDA.

(4) "Application for services" means the instrument:

(a) Used to make preliminary determination of eligibility for DDA services, the nature of the disability, the services required, and how these services are to be provided;

(b) Providing the basis for preliminary determination of service priority.

(5) "Appropriate evaluation" means the assessment of an individual using accepted professional standards to document the presence of a:

(a) Developmental disability as defined in Health-General Article, §7-101, Annotated Code of Maryland; or

(b) Disability that qualifies the individual for individual support services only as defined in Health-General Article, §7-403(c), Annotated Code of Maryland.

(6) "Caregiver" means the person who is primarily responsible for the ongoing care of the individual who is applying for services from the DDA. If the applicant is the caregiver, this term is applicable to the applicant.

(6-1) "Community Supported Living Arrangements Services (CSLA)" means one or more of the following services to assist an individual with developmental disability or an individual eligible for support services only in those nonvocational activities necessary to enable that individual to live in the individual's own home, apartment, family home, or rental unit, with not more than two other recipients of these services:

(a) Personal assistance;

(b) Supports that enhance the individual's opportunities for community participation and to exercise choice and control over the individual's own life;

(c) Community integration training services necessary to assist the individual in achieving and maintaining increased integration, interdependence, and productivity;

(d) 24-hour emergency assistance;

(e) Assistive technology;

(f) Adaptive equipment;

(g) Case management services;

(h) Environmental modification;

(i) Respite care; and

(j) Other services as approved by the Secretary or the Secretary's designee.

(7) "Department" means the Department of Health and Mental Hygiene.

(8) "Developmental Disabilities Administration access unit" ("DDA access unit" or "unit") means the component which is under contract with the DDA to conduct the preliminary assessment of eligibility and priority for services based on the information provided on the application.

(9) "Developmental disability" means a severe, chronic disability of an individual that:

(a) Is attributable to a physical or mental impairment other than the sole diagnosis of mental illness, or to a combination of mental and physical impairments;

(b) Is manifested before the individual becomes 22 years old;

(c) Is likely to continue indefinitely;

(d) Results in an inability to live independently without external support or continuing and regular assistance; and

(e) Reflects the need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are individually planned and coordinated for the individual.

(10) "Director" means the Director of the Developmental Disabilities Administration.

(11) "Eligibility for support services only" means an individual shall have a severe chronic disability that is:

(a) Attributable to a physical or mental impairment other than the sole diagnosis of mental illness, or to a combination of mental and physical impairments; and

(b) Likely to continue indefinitely.

(12) "Family support services" means a program designed to enable a family to provide for the needs of a child with developmental disability living in the home. Family support services include:

(a) Individual and family counseling;

(b) Personal care;

(c) Day care;

(d) Specialized equipment;

(e) Health services;

(f) Respite care;

(g) Housing adaptations;

(h) Transportation; and

(i) Other necessary services.

(13) "Grabau class" means those individuals:

(a) Who are confined in a SRC;

(b) Whose level of intellectual and personal skills is sufficient to allow them to function outside the SRC;

(c) Who have been characterized by the SRC as having maladaptive behavior or emotional disturbance of sufficient severity as to require their continued placement with the SRC; and

(d) Who have been confirmed as members of the class through an appropriate evaluation and staffing process designated by the DDA.

(14) "Home and Community Based Waiver for the Mentally Retarded (waiver)" means the document and any amendments to it submitted by the single State agency for Title XIX and approved by the Secretary of Health and Human Services, which authorizes the waiver of statutory requirements limiting coverage for home and community based services under the Medicaid State Plan.

(15) "Individual" means the person for whom an application for services has been filed with the DDA.

(16) "Individual family care home (IFC)" means a private single family residence licensed by the Department under COMAR 10.22.08 which:

(a) Under supervision, provides a home for individuals with developmental disability in a family atmosphere; and

(b) Provides habilitation services for one to three individuals who are not related to the caregiver.

(17) Individual Support Services.

(a) "Individual support services" means an array of services that are designed to increase or maintain an individual's ability to live alone or in a family setting.

(b) "Individual support services" includes:

(i) In-home assistance with meals and personal care;

(ii) Counseling;

(iii) Physical, occupational, or other therapies;

(iv) Architectural modification; and

(v) Any other services that the Administration considers appropriate to meet the individual's needs.

(18) "Knott class" means individuals with mental retardation who were or are deemed inappropriately placed within Mental Hygiene Administration facilities.

(19) "Local review committee (LRC)" means the committee established by the regional director to review the service needs of eligible persons and make recommendations to the regional director.

(20) "Low intensity support services" means support services in accordance with COMAR 10.22.06. Services qualifying for this category are:

(a) Designed to be one-time only;

(b) Low cost with a cap of $3,000 per individual per year; or

(c) Approved by the regional office only if the cost of the services exceeds $3,000 or the services are needed beyond 1 calendar year.

(21) "Personal contact" means a discussion of circumstances with the applicant, caregiver, or other proponent, when one exists, with a representative of the DDA, who has knowledge in the disability or has access to the assistance of someone with knowledge in the disability, for the purpose of gathering information relevant to the determination of eligibility, service needs, and priorities.

(22) "Preliminary determination" means the outcome of the review of information supplied by or for the individual applying for DDA-funded services to produce an initial assessment of eligibility, service needs, and priorities.

(23) "Program" means a prescribed set of services and activities designed to achieve specific objectives related to the needs of the individuals served.

(24) "Proponent" means any person or agency who has a legitimate interest in the welfare of the individual applying for DDA services or being served in a DDA-licensed, operated, or funded program.

(25) "Provider" means a licensed agency which provides services through an appropriate agreement with the Department.

(26) "Regional director" means the director's designee who is charged with the management of the service delivery system in a specific geographic area of the State.

(27) "Resident" means an individual who:

(a) Demonstrates that that individual is living in the State voluntarily with an intent to remain on a permanent basis, including children with parents or guardians who reside out of the State;

(b) Resides out-of-State but whose parents or guardians are residents of Maryland; or

(c) Is a migrant worker and, while in the State, needs medical care and is not receiving assistance from any other state or political jurisdiction.

(28) "Secretary" means the head of the Department of Health and Mental Hygiene.

(29) "Secretary's designee" means the Director of the Developmental Disabilities Administration.

(30) "Service coordinator" means a professional who is assigned the responsibility for assisting the consumer in accessing the service delivery system more efficiently and effectively. This assistance is effected through planning,

monitoring, and coordinating the medical, social, habilitative, and vocational services necessary to meet the identified needs of the consumer, as agreed upon and specified in the consumer's individualized service plan.

(31) "State residential center (SRC)" means a place that:

(a) Is owned and operated by the State;

(b) Provides residential services for individuals with mental retardation and who, because of mental retardation, require specialized living arrangements; and

(c) Admits nine or more individuals with mental retardation.

(32) "Waiting list" means, for the purpose of this chapter, those individuals considered eligible for services and who have not received those services under the auspices of these regulations.

10.22.12.04

.04 Accessing the DDA Service Delivery System by Individuals with Developmental Disability.

A. Referrals.

(1) An individual may be referred for service or services funded by the DDA by anyone who has legitimate interest in the welfare of the individual.

(2) Individuals shall make referrals to and obtain applications from the DDA or its designee.

(3) Individuals making referrals on behalf of individuals purported to have a developmental disability shall make them either separately or together with an application for services.

B. Application for Services.

(1) An individual applying for services funded wholly or in part by the DDA shall complete, or with assistance given by the DDA or its designee shall complete, an application for services.

(2) An application may be submitted by:

(a) The individual, if an adult; or

(b) A parent, guardian, caregiver, or other proponent, when one exists.

(3) The individual submitting the application shall provide, at a minimum, sufficient information to make a preliminary determination of:

(a) The nature of the disability;

(b) Eligibility for DDA-funded services based on the characteristics of the individual;

(c) The individual's priority for DDA-funded services which shall take into account the:

(i) Urgency of need,

(ii) Strengths and needs of the applicant and caregiver,

(iii) Environment in which the applicant lives;

(d) Service or services needed;

(e) Type of environment in which any needed services could be provided with the least restriction on the liberty of the individual; and

(f) Further evaluation, if any, the individual may require.

C. Processing the Application.

(1) The individual shall complete the application and send it to the DDA access unit.

(2) The unit shall send the applicant, caregiver, or other proponent, when one exists, a letter indicating receipt of the application and the results of the preliminary determination within 7 calendar days from the date the application is received.

10.22.12.05

.05 Eligibility Criteria and Preliminary Determination Process.

A. Eligibility Criteria. To be eligible for services funded by the DDA as an individual with developmental disability, that individual shall:

(1) Be a resident of Maryland; and

(2) Have an evaluation that finds that a developmental disability is present.

B. Preliminary Determination Process.

(1) The DDA access unit shall complete the preliminary determination and send the applicant, caregiver, or other proponent, when one exists, a letter containing the results within 7 calendar days of receipt of the application as indicated in Regulation .04C(2),of this chapter.

(2) The preliminary determination consists of a review of all information supplied by or for the individual to determine the presence of an apparent disability which meets the eligibility requirements.

(3) The DDA access unit shall send a letter to the applicant, caregiver, or other proponent, when one exists, which contains the following information:

(a) The DDA access unit has received the application;

(b) The individual appears to have a developmental disability, or does not appear to have a developmental disability, but may be eligible for individual support services in accordance with Health-General Article, §7-403(c), Annotated Code of Maryland;

(c) The applicant, caregiver, or other proponent, when one exists, shall receive a personal contact in accordance with Regulation .03B(21) or the individual is not eligible for services funded by the DDA and no further action shall be taken by the DDA, absent an appeal of this determination;

(d) The individual may be eligible for services from the Mental Hygiene Administration; and

(e) The individual has the right to an informal hearing to appeal the decision in accordance with COMAR 10.22.16.

10.22.12.06

.06 Eligibility Determination Process—Personal Contact and Determination of Service Needs.

A. Determination of Service Needs.

(1) When a personal contact is made by a representative of the DDA, in accordance with Regulation .05B(3)(c), the representative shall:

(a) Establish if the individual has a developmental disability;

(b) Establish the nature of the disability;

(c) Collect sufficient information, including any existing evaluations, to make a recommendation concerning assignment to a services priority category, taking into account the strengths and needs of the family, caregiver, and the individual;

(d) Describe the nature of the services that the individual may require through:

(i) Discussion with the applicant, caregiver, or other proponent, when one exists, and

(ii) Observation of the interaction between the applicant, caregiver, or other proponent, when one exists;

(e) Describe the type of environment that the individual may require through:

(i) Discussion with the applicant, caregiver, or other proponent, when one exists, and

(ii) Observation of the interaction between the applicant, caregiver, or other proponent, when one exists.

(2) A face-to-face personal contact shall be conducted for individuals living in the community. For individuals living in chronic hospitals, rehabilitation facilities, residential schools, or for a transitioning youth whose only service need is a day program, a personal contact may consist of interviews with staff or individuals by phone or in person. Knott class individuals shall receive a personal contact. Individuals with the sole diagnosis of mental illness or otherwise not eligible for DDA-funded services may not receive a personal contact.

(3) A representative of the DDA shall give written results of the personal contact to the appropriate regional director with a recommendation regarding eligibility, service needs, and priorities.

(4) If the regional director agrees that the individual is eligible for services, the regional director shall recommend to the Director that the individual be assigned to one or more of six service priority categories described in Regulation .07B of this chapter, for each service as appropriate.

(5) The Director shall review the recommendation of the regional director concerning eligibility, service needs, and priorities.

(6) The Director shall send a letter to the applicant notifying the individual of the decision regarding the applicant's:

(a) Eligibility;

(b) Service needs;

(c) Priorities; and

(d) Right to an informal hearing in accordance with COMAR 10.22.16.

B. Eligibility and Access Time Frame.

(1) The entire eligibility and access process may not exceed 60 days except under the following conditions:

(a) Scheduled appointments are cancelled by the applicant, caregiver, or other proponent, when one exists, and new appointments cannot be scheduled in a timely manner; or

(b) Requested information necessary to make recommendations regarding eligibility, service needs, and priorities has not been received from the applicant, caregiver, or other proponent, when one exists.

(2) The regional director shall review the applicant's requests for extensions of the eligibility and access process. Requests may be approved if the above conditions have been corrected or if definite arrangements have been made to correct the above conditions.

10.22.12.07

.07 Eligibility Determination Process-----Determination of Service Priority Category and Description of Categories.

A. Determination of Service Priority Category.

(1) The regional director shall base the recommendation regarding service priority on the determination that the individual meets the criteria for one or more of the following categories, which are listed in the order of priority in which applicants shall receive services:

(a) Category I-----Crisis Resolution;

(b) Category II-----Crisis Prevention; and

(c) Category III-----Current Request.

(2) Individuals shall be served according to their priority ranking as follows:

(a) Individuals in Category I are to be served before those in Category II; and

(b) Individuals in Category II are to be served before those in Category III.

(3) Service delivery is dependent upon levels of funding allocated for the fiscal year for the following discrete categories:

(a) Category IV-----Transitioning Youth;

(b) Category V-----Knott Class Member;

(c) Category VI-----Inappropriate Institutionalization; and

(d) Category VII-----Innovation or Demonstration Projects.

(4) Individuals may be in more than one priority category at the same time. For example, an individual in the transitioning youth priority category for a day program may also be in the crisis prevention priority category for a residential program if the individual is graduating or leaving a secondary school program and has no place to live after that program ends.

B. Description of Categories.

(1) Category I-----Crisis Resolution.

(a) To qualify for this category, the applicant shall meet one or more of the following criteria. The applicant shall be:

(i) Homeless or living in temporary housing with clear time-limited ability to continue to live in this setting with no viable non-DDA-funded alternative;

(ii) At serious risk of physical harm in the current environment;

(iii) At serious risk of causing physical harm to others in the current environment;

(iv) In danger of losing DDA-funded residential services because of a lack of current day services;

(v) One who has lost DDA-funded day services; or

(vi) Living with a caregiver who is unable to provide adequate care due to the caregiver's impaired health, which may place the applicant at risk of serious physical harm.

(b) To qualify for Category I under §B(1)(a)(ii), evidence such as the following shall be necessary. The applicant:

(i) Has recently received severe injuries due to the behavior of others in the home or community;

(ii) Has recently been the victim of sexual abuse;

(iii) Has been neglected to the extent that the individual is at serious risk of sustaining injuries which are life threatening or which substantially impair functioning;

(iv) Engages in self-injurious behavior which puts the individual at serious risk of sustaining injuries which are life threatening or which substantially impair functioning; or

(v) Is at serious risk of sustaining injuries which are life threatening or which substantially impair functioning due to the physical surroundings.

(c) If the applicant qualifies for Category I under §B(1)(a)(v), the individual shall qualify for day services only.

(d) If the applicant is living in a situation where the applicant is the caregiver, §B(1)(a)(vi) shall apply to the applicant.

(e) Individuals who qualify for services under this category shall, at a minimum, remain in this category until they have been provided with those services required to resolve the situation.

(f) Individuals become eligible to receive services as the need occurs.

(2) Category II-----Crisis Prevention.

(a) To qualify for this priority category, the applicant:

(i) Shall have been determined by the DDA to have an urgent need for services;

(ii) May not qualify for services based on the criteria for Category I; and

(iii) Shall be at substantial risk for meeting one or more of the criteria in §B(1)(a) within 1 year, or have a caregiver who is 65 years old or more.

(b) Individuals who qualify for services under this category shall, at a minimum, remain in this category until they have been provided with those services required to resolve the situation.

(c) Individuals become eligible to receive services from the date of approval of priority status, except when eligibility is determined by the age of the caregiver. In this case, priority is determined by the caregiver's date of birth so that individuals with caregivers born at an earlier date have priority over individuals with caregivers born at a later date.

(3) Category III-----Current Request.

(a) To qualify for this priority category, the applicant shall indicate at least a current need for services.

(b) Prioritization of Services.

(i) Applicants shall be prioritized for services based on the number of fiscal years they have been on the waiting list, except as provided for in §B(3)(b)(iv) of this regulation.

(ii) Applicants on the waiting list for the longest period of time shall receive services before those who have been on the list for fewer years, except as provided for in §B(3)(b)(iv) of this regulation.

(iii) Applicants whose applications are received by the DDA access unit within a given fiscal year shall be ranked by the fiscal year of application, and the month and day of birth. Those applicants born at the beginning of the fiscal year have priority over those born later in the year.

(iv) For day programs only, the period of time that shall be counted toward prioritizing an individual shall begin with the year of departure from school or the year of application, whichever is later.

(4) Category IV-----Transitioning Youth.

(a) To qualify for funding for services in this priority category the applicant shall be eligible:

(i) For DDA-funded services in this category from the individual's 21st to the individual's 22nd birthday. If the date of graduation is after the individual's 21st birthday, the individual shall continue to be eligible for 1 year after the date of graduation.

(ii) To receive day services only.

(b) Individuals in this priority category shall also be in one or more of the other priority categories.

(c) Individuals become eligible to receive services from the date of approval of priority status.

(5) Category V-----Knott Class.

(a) To qualify for this priority category, the applicant shall have:

(i) Mental retardation; and

(ii) Been determined inappropriately retained in a Mental Hygiene Administration facility as set forth in Knott vs. Hughes Civil Action No. Y-80-2832 (Fed. Dist. Ct. Md).

(b) Individuals become eligible to receive services based on the best clinical judgment of the professionals involved based on availability of allocated resources.

(6) Category VI-----Inappropriate Institutionalization.

(a) To qualify for this priority category, the applicant shall be a:

(i) Resident in a nursing facility and not meet the criteria for admission or retention for that facility;

(ii) Resident of a mental retardation/intermediate care facility and not meet the criteria for admission or retention for that facility as determined by the hearing examiner;

(iii) Resident in a chronic hospital who does not meet the criteria for admission or retention for that facility;

(iv) Resident in an institution under the auspices of the Mental Hygiene Administration who has a developmental disability, but is not an individual with mental retardation and who does not meet the criteria for admission or retention in a State psychiatric hospital and whose primary need is not for a mental health service.

(b) An individual in this priority category shall also be in another priority category.

(c) Funding may be allocated for one or more of the above groups in §B(6)(a)(i)-----(iv).

(d) Individuals become eligible to receive services based on the best clinical judgment of the professionals involved based on availability of allocated resources.

(7) Category VII-----Innovation or Demonstration Projects.

(a) To identify those individuals for whom this priority category is appropriate, the Administration, after consultation with interested parties, shall publish a request for proposal (RFP) for innovation or demonstration projects.

(b) To qualify for this priority category, an individual shall be identified in a proposal submitted to the Administration which is considered appropriate for funding by the Administration.

(c) An individual served in this priority category may continue to receive services, to the extent that funds are allocated, after the termination of the innovation or demonstration period.

(d) An individual in this priority category may also be in another priority category.

(8) Eligible applicants may receive family support services and low intensity support services on a first-come, first-served basis, regardless of service priority determination.

10.22.12.08

.08 Letter of Final Determination.

A. Within 60 days of the receipt of the application, the final letter of determination indicating eligibility, priority, and service needs shall be sent to the applicant, caregiver, or other proponent, when one exists.

B. The letter shall contain the following information:

(1) A statement that the individual has a developmental disability or the individual does not have a developmental disability, but may be eligible for individual support services in accordance with Health-General Article, §7-403(c), Annotated Code of Maryland;

(2) The nature of the services the individual may require;

(3) The type of environment in which any needed services could be provided;

(4) The types of evaluations, if any, the individual requires;

(5) That determinations of priority status may be subject to modification if the applicant's or caregiver's circumstances change;

(6) The individual has the right to an informal hearing to appeal the decision in accordance with COMAR 10.22.16; and

(7) That the individual shall apply for Medical Assistance or other alternative funding before the initiation of services.

10.22.12.09

.09 Local Review Committee.

A. The regional director shall establish one or more local review committees.

B. The function of the LRC is to review the service needs of eligible individuals and make recommendations regarding service needs to the regional director. The LRC shall be appointed by the regional director from among the following:

(1) County government, including local health departments;

(2) DDA;

(3) Advocacy or developmental disability provider agencies; and

(4) Parents.

C. The regional director or designee shall serve as chairperson of the LRC.

10.22.12.10

.10 Confirmation of Eligibility for Service Provision.

A. Confirmation of eligibility, which is established before selection of the individual to receive services, is based on an evaluation in accordance with Health-General Article, §7-404, Annotated Code of Maryland. The exception shall be an emergency situation when a crisis needs to be immediately resolved as specified in Regulation .11B.

B. The regional director shall be responsible for assuring that the evaluation required by Health-General Article, §7-404, Annotated Code of Maryland, has been completed before final determination of eligibility. The individual's evaluation shall confirm the following:

(1) That the individual has a developmental disability as indicated by the preliminary determination;

(2) The nature of the disability;

(3) The nature of the services that the individual may require;

(4) The type of environment in which any needed services could be provided with the least restriction on the liberty of the individual; and

(5) The extent and timing of the services to be provided to the individual.

C. If the regional director concludes that the evidence supports eligibility for service provision, a recommendation may be made to the Director that funding for services for the individual be approved.

10.22.12.11

.11 Initiation of Services.

A. Initiation of service delivery to an eligible individual seeking DDA-funded services shall be dependent upon:

(1) Assigned service priority, except for family support services and low intensity support services which are provided on a first-come, first-served basis;

(2) Availability and allocation of funds provided to the DDA;

(3) Availability of an appropriate community vacancy; and

(4) The individual's completing an application for Medical Assistance or other alternative funding.

B. Emergency Situations.

(1) If an emergency situation arises and immediate services are needed to resolve a crisis, the regional director may telephone the Director or the Director's designee to authorize the initiation of services for a maximum of 15 calendar days, provided that an:

(a) Evaluation pursuant to Regulation .10B(2) is performed to confirm eligibility within 10 calendar days of the initiation of services. If the individual cannot afford evaluation services, the State shall arrange for them.

(b) Application for services is processed pursuant to Regulation .04C and approved by the Director pursuant to Regulation .10.

(2) If the Director or the Director's designee cannot be reached, the regional director may authorize services provided that the approval is obtained on the next working day.

C. Ninety days after the receipt of services, the service needs and priority status of an individual shall be reviewed by the regional director or the regional director's designee, and adjusted if indicated. If the service meets the needs of the individual, the individual's name shall be removed from the waiting list for that service.

D. Any time after the receipt of services, an eligible individual may:

(1) Apply for or request a change in intensity of services or support, or apply for additional services;

(2) Request a less intensive form of that service, and may receive the less intensive service if it is available.

E. Individuals assigned to Category I who enter a State residential center because needed community services are not available or will not be available within a reasonable time, shall retain their eligibility and priority status for community services for 12 months after the date they enter the SRC.

F. Except in an emergency situation or a case approved by the Director because of extenuating circumstances, DDA may not fund services for individuals with State-only dollars unless the individual has been denied:

(1) Medical Assistance including waiver services; and

(2) Related alternative funding.

10.22.12.12

.12 Admission to and Discharge from DDA Community-Funded Services.

A. Exception. This regulation does not apply to family services or low intensity support services.

B. General Requirements for Assigning Vacancies or Providing Support Services.

(1) Only those individuals seeking DDA-funded services and who have been deemed eligible by the DDA in accordance with Regulations .05—.10 of this chapter may be served by community service providers in DDA-funded vacancies or with DDA-funded support services.

(2) Each provider shall report all DDA-funded vacancies to the appropriate regional office in accordance with a DDA-approved procedure, as soon as the potential vacancy is known to the provider.

(3) The DDA shall authorize all admissions to or discharges from DDA-funded services in advance of these actions by providers.

(4) In addition to a final determination of eligibility before authorizing the admission of an individual to a funded vacancy, the DDA shall also determine that the:

(a) Individual is in need of the type of service to be provided;

(b) Service is appropriate and is to be provided with the least restriction on the liberty of the individual; and

(c) Individual wishes to be served by the particular provider or, at a minimum, agrees to accept the service from that provider.

(5) If the individual does not qualify under Category I, the regional director shall determine that there is no one in that category who would be more appropriate for the vacancy or service.

(6) If an appropriate vacancy exists, but the provider refuses to serve an individual whom the DDA has identified as qualified to receive services, the regional office may not authorize the provider to fill the vacancy. The funding for the vacancy may be transferred to another provider that offers an appropriate service and is willing to serve the individual.

C. Specific Criteria for Assigning Community Program Vacancies or Providing Support Services.

(1) The DDA shall develop a Statewide list of eligible individuals to fill a vacancy in a community program. The list should be organized according to priority ranking and according to the criteria for those categories. From this list:

(a) The first eligible individual in the county where that vacancy exists who is appropriate for the service may be served;

(b) Any other eligible individual whose name appears on the list before that of the individual described in §C(1)(a) of this regulation, may be served if appropriate for the service; and

(c) The regional director shall define appropriateness for the service and shall consider the compatibility of residents for multi-person residences.

(2) Individuals eligible under Category I, Crisis Resolution, as specified in Regulation .07B, may be served on a priority basis in an appropriate community program vacancy created by the movement of any client except a:

(a) Client receiving services under the auspices of the Title XIX 1915(c) waiver;

(b) Knott class member;

(c) Grabau class member; or

(d) Former SRC client who has been returned to the SRC.

(3) Vacancies created by the movement of a waiver-eligible individual shall be filled by another client who is eligible for services under the waiver criteria as specified in COMAR 10.09.26.

(4) Vacancies created by the movement of a Knott class member shall be filled in the following manner:

(a) By another member of the Knott class;

(b) If there is no Knott class member in need of that vacancy at the time that the vacancy occurs, the vacancy is to be filled by:

(i) A member of the Grabau class,

(ii) An individual eligible under Category I, Crisis Resolution, or

(iii) An individual eligible under Category II, Crisis Prevention.

(c) If the vacancy is filled by anyone other than a Knott class member, the Director may use funds provided for community expansion to create an equivalent placement for a Knott class member.

(5) Vacancies created by the movement of a nonwaiver Grabau class member shall be filled in the following manner:

(a) By another member of the Grabau class;

(b) If there is no Grabau class member in need of that vacancy at the time that the vacancy occurs, the vacancy is to be filled by:

(i) A member of the Knott class,

(ii) An individual eligible under Category I, Crisis Resolution, or

(iii) An individual eligible under Category II, Crisis Prevention;

(c) If the vacancy is filled by anyone other than a Grabau class member, the Director may use funds provided for community expansion to create an equivalent placement for a Grabau class member.

(6) Vacancies created by the movement of an institutional client out of a community day program shall be filled in the following manner:

(a) By another institutional client;

(b) If there is no appropriate institutional client at the time the vacancy occurs, the vacancy may be filled by an individual under Category I, II, or III in that order;

(c) The regional director shall define "appropriate client", taking into consideration the behavior of the client and the day program available; and

(d) If the vacancy is filled by anyone other than an institutional client, the Director may use funds provided for community expansion to create an equivalent placement for an institutional client.

(7) When filling vacancies for a multi-person community residence, such as an ALU or an IFC home, all available vacancies shall be filled through the procedures set forth in §B(1) of this regulation.

(8) Vacancies for community expansion shall be filled in the order in which the individual's name appears on the Statewide eligibility list. When selecting individuals for multi-person community residential programs, the second and all subsequent individuals shall be selected as set forth in §C(1) of this regulation.

D. Transfers to and from Community Program Vacancies.

(1) Individuals currently enrolled in one provider's program may request a transfer to another provider by submitting a request in writing to the service coordinator or to the regional office.

(2) The service coordinator shall review the request and make a recommendation to the regional director.

(3) The regional director may authorize the request if an appropriate vacancy exists.

(4) If an appropriate vacancy does not exist, the individual shall be placed on the region's waiting list for transfers based on the date of approval of the transfer. The individual on the transfer list shall have priority over those individuals in the Current Request priority category, but may not have priority over those individuals in the Crisis Resolution or Crisis Prevention priority categories.

(5) Individuals requesting transfers outside the region shall have their requests forwarded to the appropriate regional office.

(6) The individual has the right to an informal hearing to appeal the decision in accordance with COMAR 10.22.16.

10.22.12.13

.13 Eligibility for Other Services.

A. An individual's eligibility for services provided by any other public or private agency may not be affected by the individual's eligibility for services pursuant to these regulations.

B. If an individual who is eligible for services funded by the DDA may also be eligible for services provided by another agency, the DDA or its agent shall refer the individual to that agency.

10.22.12.14

.14 Reporting Requirements.

The DDA access unit shall issue an annual report on the characteristics of applicants for DDA-funded services which shall include:

A. Information on the total number of individuals waiting for services by service request and priority category;

B. The number of individuals who have been added or removed by service request and priority category; and

C. Other pertinent information which would assist in planning for future services or evaluating current performance.

10.22.12.15

.15 Administrative and Judicial Review.

A. Pursuant to COMAR 10.22.16:

(1) On any action or inaction of the Secretary pursuant to Regulations .01—.14 of this chapter, an applicant for or recipient of DDA-funded services may request:

(a) An informal hearing before the Secretary's designee, and

(b) The Secretary to review the decision of the informal hearing if that decision is not acceptable.

(2) Informal hearings under §A(1)(a) of this chapter shall be conducted in accordance with the Developmental Disabilities Law, Health-General Article, Title 7, Annotated Code of Maryland.

(3) After a request for a review is made, the Secretary shall conduct the review in accordance with State Government Article, §§10-201—10-217, Annotated Code of Maryland.

B. A person aggrieved by a final decision of the Secretary in a contested case as defined in State Government Article, §10-201, may take an appeal as allowed in State Government Article, §§10-215 and 10-216, Annotated Code of Maryland.

C. Providers filing appeals in connection with these regulations shall do so in accordance with State Government Article, §§10-201—10-217 and 10-401—10-405, Annotated Code of Maryland.

10.22.12.9999

Administrative History

Effective date: March 4, 1991 (18:4 Md. R. 447)

Regulation .03B amended effective September 28, 1992 (19:19 Md. R. 1708)

Regulations .03B and .12A amended as an emergency provision effective June 14, 1996 (23:14 Md. R. 1006); amended permanently effective December 2, 1996 (23:24 Md. R. 1681)

Regulation .07 amended effective September 28, 1992 (19:19 Md. R. 1708)

Regulation .12A amended effective September 28, 1992 (19:19 Md. R. 1708)

_____

COMAR 10.22.18 recodified to COMAR 10.22.12 effective July 26, 1999 (26:15 Md. R. 1148)

Regulation .03B amended effective March 26, 2007 (34:6 Md. R. 627)

Regulation .08B amended as an emergency provision effective September 1, 2003 (30:20 Md. R. 1445); amended permanently effective December 22, 2003 (30:25 Md. R. 1845)

Regulation .11A amended as an emergency provision effective September 1, 2003 (30:20 Md. R. 1445); amended permanently effective December 22, 2003 (30:25 Md. R. 1845)

Regulation .11F adopted as an emergency provision effective September 1, 2003 (30:20 Md. R. 1445); adopted permanently effective December 22, 2003 (30:25 Md. R. 1845)

10.22.13.00 (10-21-08)

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 22 DEVELOPMENTAL DISABILITIES ADMINISTRATION

Chapter 13 Admission of Individuals to State Residential Facilities Under the Jurisdiction of the Developmental Disabilities Administration

Authority: Health-General Article, §7-502, Annotated Code of Maryland

10.22.13.01

.01 Scope.

These regulations shall apply to each individual who has been admitted to any State residential center under the jurisdiction of the Developmental Disabilities Administration of the Department of Health and Mental Hygiene.

10.22.13.02

.02 Definitions.

A. The following terms have the meanings indicated.

B. Terms Defined.

(1) Admission.

(a) "Admission" means the process by which an individual with mental retardation is accepted as a resident in a State residential center.

(b) "Admission" includes the physical act of the individual entering the facility.

(2) "Hearing" means the administrative proceedings which are conducted to determine whether the conclusions leading to an admission decision were properly drawn.

(3) "Hearing examiner" means any impartial officer designated by the Secretary of Health and Mental Hygiene to conduct hearings and make administrative decisions in accordance with these regulations.

(4) "Proponent" means any person who has a legitimate interest in the welfare of an individual who is being served in a program licensed, operated, or funded by the Developmental Disabilities Administration.

(5) "Reasonable time" means a period after a hearing in which an appropriate program or service shall be made available to an individual in order to avoid admission to a State residential center. This period of time may not

exceed 90 days unless there is a program or service which is identified as available to the individual and which will accept the individual for services to begin on a fixed date.

10.22.13.03

.03 Hearing Procedures.

A. The hearing shall be conducted within 21 days after the admission of an individual to a State residential center.

B. Written notice of the admission of an individual and of the date, time, and place of the individual's hearing shall be given:

(1) On admission to the individual; or

(2) As soon as possible, but not later than 5 days after the admission to legal counsel for the individual and to the proponent of the admission.

C. The notice also shall state the:

(1) Name of each proponent of the admission;

(2) Rights of the individual who has been admitted to:

(a) Consult with and be represented by a lawyer, and

(b) Call witnesses and offer evidence at the hearing on admission;

(3) Availability of the services of the Legal Aid Bureau, lawyer referral services, and other agencies that exist for the referral of individuals who need legal counsel;

(4) Right of individuals with developmental disabilities, pursuant to Health-General Article, Title 7, Subtitle 10, and §7-1102, Annotated Code of Maryland;

(5) Rights of the individual to release, pursuant to Health-General Article, 7-506, 7-507, and 7-508, Annotated Code of Maryland.

D. The parties to the hearing shall be the proponent and the individual.

E. Each hearing which is held pursuant to Health-General Article, §7-503, shall be held in an appropriate room within the facility in which the individual is a resident, or in such other place as is deemed appropriate by the hearing examiner.

F. The individual shall have the right to appear dressed in his or her own clothing, at the hearing, if he or she so desires.

G. The records of the facility which address any aspect of the individual for whom the hearing shall be held shall, upon request, be made available to counsel for that person.

H. A mechanical recording of the hearing shall be made, but a transcription need not be made unless an appropriate appeal is taken.

I. Rules of Evidence--Notice.

(1) The hearing examiner:

(a) May admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs;

(b) Shall give effect to the rules of privilege recognized by law;

(c) May exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

(2) All evidence, including records and documents in the possession of the agency, of which it desires to avail itself, shall be offered and made a part of the record in the case, and other factual information or evidence may not be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(3) Each party shall have the right:

(a) Of cross-examination of witnesses who testify; and

(b) To submit rebuttal evidence.

(4) The hearing examiner may take notice of judicially cognizable facts and, in addition, may take notice of general, technical, or scientific facts within the hearing examiner's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and the parties shall be afforded an opportunity to contest the facts so noticed. The hearing examiner may use experience, technical competence, and specialized knowledge in the evaluation of the evidence presented.

(5) The hearing examiner as designee of the Secretary of Health and Mental Hygiene, upon request and good cause shown, shall issue appropriate process to compel the attendance of witnesses and the production of documents or other tangible evidence. This power is granted pursuant to Health-General Article, §2-104(k), Annotated Code of Maryland.

(6) Telephoned Testimony. The hearing examiner, on the motion of the hearing examiner or upon request of a party to the hearing, may allow the testimony of any party or nonparty witness to be taken by telephone. The hearing examiner shall notify all parties in advance of the hearing that the testimony of a witness will be taken by telephone. When testimony is taken by telephone, the hearing examiner shall employ appropriate techniques to ensure that the testimony is fully audible to all parties present at the hearing and the testimony is made a part of the hearing record. The party shall be allowed to fully cross-examine any witness whose testimony is taken using this procedure.

J. Admission Requirements.

(1) At the hearing, in order to certify the admission of the individual, it shall be affirmatively shown by clear and convincing evidence that the conclusions leading to the decision to admit the individual were supported by the following findings:

(a) That the individual whose admission is sought has mental retardation;

(b) That the individual needs residential services for the provision of adequate habilitation; and

(c) That there is no less restrictive setting in which the needed services can be provided that is available to the individual, or will be available to the individual within a reasonable time.

(2) If the hearing examiner finds from the admissible evidence that the conclusions leading to the admission decision are invalid, the hearing examiner shall so certify and the individual shall be released from the State residential center.

(3) If the hearing examiner finds from the evidence presented that all of the admission requirements have been proved, the hearing examiner shall so certify and the individual's admission shall be considered approved.

(4) If the hearing examiner certifies the admission of an individual to a State residential center, the hearing examiner shall, at the conclusion of the hearing, write on the certification form any additional services of habilitation that are not included in the evaluation report, but that the hearing officer finds from the evidence are needed by the individual.

(5) If the hearing examiner certifies the admission of an individual to a State residential center, at the conclusion of the hearing, the examiner shall advise the individual and the legal counsel of the individual's right to seek judicial release from the State Residential Center under Health-General Article, §7-507, Annotated Code of Maryland, and of his right to file a petition for habeas corpus under Health-General Article, §7-506, Annotated Code of Maryland. The hearing examiner shall also advise individual and legal counsel of the individual's right under the appeal provision of State Government Article, 10-215 and 10-216, Annotated Code of Maryland. The individual's rights shall be communicated in a form of language that the individual understands.

K. Hearing Examiners' Powers. In addition to other powers and authority granted by law, the hearing examiner shall:

(1) Administer oaths and affirmation;

(2) Issue summonses for the attendance of witnesses at the hearings and subpoenas requiring the production of physical evidence;

(3) Rule upon offers of proof by the parties;

(4) Consider and rule upon all procedural and other motions appropriate to the proceedings;

(5) Examine witnesses;

(6) Maintain order and limit unduly repetitious or irrelevant testimony or argument.

10.22.13

Administrative History

Effective date: April 1, 1974

Regulations .01-----.03 amended effective February 11, 1985 (12:3 Md. R. 245)

Regulations .01-----.03 repealed effective September 5, 1988 (15:18 Md. R. 2151)

Regulations .01-----.03 adopted effective September 5, 1988 (15:18 Md. R. 2151)

COMAR 10.22.01 recodified to COMAR 10.22.13 effective July 26, 1999 (26:15 Md. R. 1148)

10.22.15.00 (10-21-08)

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 22 DEVELOPMENTAL DISABILITIES

Chapter 15 Waiting List Equity Fund

Authority: Health-General Article, §7-206, Annotated Code of Maryland

10.22.15.01

.01 Scope.

A. These regulations address the management and use of money in the waiting list equity fund.

B. The waiting list equity fund may not be used to supplant funds requested or appropriated for:

(1) Emergency community placements; or

(2) Transitioning students.

10.22.15.02

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Administration" means the Developmental Disabilities Administration (DDA).

(2) "Appropriate evaluation" means the assessment of an individual using accepted professional standards to determine the presence or absence of a developmental disability:

(a) As defined in Health-General Article, §7-101(e), Annotated Code of Maryland; or

(b) That qualifies the individual for individual support services only as defined in Health-General Article, §7-403(c), Annotated Code of Maryland.

(3) "Community placement" means when an individual is discharged from a State residential center into the community and receives community-based services.

(4) "Department" means the Department of Health and Mental Hygiene.

(5) "Developmental disability" means a severe, chronic disability of an individual that:

(a) Is attributable to a physical or mental impairment other than the sole diagnosis of mental illness, or to a combination of mental and physical impairments;

(b) Is manifested before the individual becomes 22 years old;

(c) Is likely to continue indefinitely;

(d) Results in an inability to live independently without external support or continuing and regular assistance; and

(e) Reflects the need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are individually planned and coordinated for the individual.

(6) "Eligibility for support services only" means an individual has a severe chronic disability that is:

(a) Attributable to a physical or mental impairment other than the sole diagnosis of mental illness, or to a combination of mental and physical impairments; and

(b) Likely to continue indefinitely.

(7) "Family caregiver" means any of the following who is residing with the eligible individual:

(a) Spouse;

(b) Biological, adoptive, or foster parent;

(c) Guardian;

(d) Sibling;

(e) Grandparent; or

(f) Other related next of kin.

(8) Family Support Services.

(a) "Family support services" means a program designed to enable a family to provide for the needs of a child with developmental disability living in the family home.

(b) "Family support services" includes:

(i) Individual and family counseling;

(ii) Personal care;

(iii) Day care;

(iv) Specialized equipment;

(v) Health services;

(vi) Respite care;

(vii) Housing adaptations; and

(viii) Transportation.

(9) "Individual" means the person for whom an application for services has been filed with the Administration.

(10) Individual Support Services.

(a) "Individual support services" means an array of services that are designed to increase or maintain an individual's ability to live alone or in a family setting.

(b) "Individual support services" includes:

(i) In-home assistance with meals and personal care;

(ii) Counseling;

(iii) Physical, occupational, or other therapies;

(iv) Architectural modification; and

(v) Other services that the Administration considers appropriate to meet an individual's needs.

(11) "Individualized community integration day services" means any full-time or part-time program of habilitation, health-related services, scheduled training, or skills development activities conducted outside the individual's home.

(12) Individualized Supported Living Arrangements Services.

(a) "Individualized supported living arrangements services" means residential services provided in alternative living units (ALUs), community supported living arrangements (CSLA), and any other community residential arrangement which is individualized.

(b) "Individualized supported living arrangements services" does not include group homes.

(13) "Previous resident of a State residential center" means an individual who:

(a) Was a resident of that facility on the first day of that fiscal year; and

(b) Had resided at the facility at least 120 days during the 180 days immediately preceding placement in the community.

(14) "Respite care" means short-term care not to exceed 14 consecutive days or 28 days in a 12-month period that is made available to provide relief for the individual with whom the developmentally disabled individual ordinarily lives.

(15) "State residential center (SRC)" means a place that:

(a) Is owned and operated by the State;

(b) Provides residential services for an individual with mental retardation and who, because of mental retardation, requires specialized living arrangements and meets the criteria under Health-General Article, 7-502 and 7-505, Annotated Code of Maryland; and

(c) Admits nine or more individuals with mental retardation.

(16) "Supported employment" means paid competitive employment in an integrated work setting consistent with the federal Rehabilitation Act 1992 amendments.

(17) "Waiting list" means those individuals who have:

(a) Applied for services from the Administration in accordance with COMAR 10.22.12.04;

(b) Been considered eligible for services in accordance with COMAR 10.22.12.06; and

(c) Not yet received services for which they have applied from the Administration.

(18) "Waiting list equity fund (WLEF)" means the fund established according to the requirements specified in Health-General Article, §7-206, Annotated Code of Maryland.

10.22.15.03

.03 Establishment of the Waiting List Equity Fund.

A. The waiting list equity fund is a nonlapsing fund established to ensure that when an individual leaves the State residential center to be served in the community, the net average cost of serving the individual in the SRC is applied to:

(1) The individual's community placement;

(2) Community services needed to sustain the individual's community placement; and

(3) Provide community-based services to individuals not yet receiving services.

B. The WLEF consists of funds that are equal to the cost of providing services to an individual in an SRC for a fiscal year, or part of a fiscal year in which the individual is:

(1) No longer served in the SRC; and

(2) Provided community-based services as specified in Regulation .04 of this chapter.

C. In determining the contribution to the WLEF, the Administration shall calculate the cost of providing services to an individual in an SRC by:

(1) Dividing the SRC's appropriation by the daily average census reported in the SRC's annual operating budget for the last full fiscal year the individual was served in the SRC, prorated over the number of months the individual is served in the community; and

(2) Subtracting the following:

(a) The average annual itemized expenses associated with institutional services and administrative overhead costs that are demonstrated to be directly attributable to the individuals remaining in the SRC,

(b) The cost for new admissions certified with the provisions of Health-General Article, 7-502 and 7-503, Annotated Code of Maryland,

(c) The cost for respite care in accordance with Health-General Article, §7-509, Annotated Code of Maryland, which is based on the identification of the actual, specific costs directly attributable to serving individuals in the SRC with respite care services,

(d) The cost for court-ordered commitments, and

(e) Federal revenues under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) attributable to direct client cost.

D. The Administration shall allocate to the WLEF overhead savings derived from the closing of an individual cottage or cottages.

10.22.15.04

.04 Submission of Annual Budget.

A. When submitting its annual budget request for community services programs, the Administration shall include funds for the ongoing cost of services for the number of:

(1) Previous residents placed from the SRC into the community in the previous fiscal year using the WLEF;

(2) Individuals receiving emergency placements using the WLEF; and

(3) Individuals receiving nonemergency placements using the WLEF.

B. The Administration shall reduce the budget submission for the SRC by the net average cost of serving an individual in that center, as defined in Regulation .03C(2) of this chapter.

C. The Administration shall calculate the net average cost on a prorated basis if an individual was placed in the community for less than the entire fiscal year.

D. The Administration may increase or decrease the budget request for each SRC to account for the increased cost of services to the remaining residents of the SRC.

E. If the Administration requests additional amounts for the purpose of funding community placements for current residents of SRCs, the Administration shall request that additional funding in a separate category from funds for the WLEF.

10.22.15.05

.05 Administration of Fund.

A. The Administration shall authorize the funding of services through the WLEF, administered as a nonlapsing revenue account, only to the extent that an appropriation has been made and that funds are available in the WLEF.

B. The WLEF may be used to provide services to individuals who are:

(1) In crisis and need emergency services; and

(2) Not in crisis and do not need emergency services.

C. The WLEF may not be used to supplant funds appropriated for:

(1) Emergency community placements; or

(2) Transitioning students.

D. To determine the amount of funds available from the WLEF at any time during a fiscal year, the Administration shall project the cost for community services for that year for each individual whose services are funded through the WLEF.

E. If approved by the Administration, the Administration shall include the following items in the projected costs:

(1) The cost of the services provided to the individual;

(2) Any increase in the cost of services being provided to the individual; and

(3) Any increase in costs due to a change in the amount or type of services provided to the individual.

F. The Administration shall account for all transactions into and out of the WLEF at the project level.

G. The Administration shall ensure that all interest earned on the money in the WLEF remains with the fund.

H. The availability of funding through the WLEF does not establish an entitlement to services.

10.22.15.05

.05 Administration of Fund.

A. The Administration shall authorize the funding of services through the WLEF, administered as a nonlapsing revenue account, only to the extent that an appropriation has been made and that funds are available in the WLEF.

B. The WLEF may be used to provide services to individuals who are:

(1) In crisis and need emergency services; and

(2) Not in crisis and do not need emergency services.

C. The WLEF may not be used to supplant funds appropriated for:

(1) Emergency community placements; or

(2) Transitioning students.

D. To determine the amount of funds available from the WLEF at any time during a fiscal year, the Administration shall project the cost for community services for that year for each individual whose services are funded through the WLEF.

E. If approved by the Administration, the Administration shall include the following items in the projected costs:

(1) The cost of the services provided to the individual;

(2) Any increase in the cost of services being provided to the individual; and

(3) Any increase in costs due to a change in the amount or type of services provided to the individual.

F. The Administration shall account for all transactions into and out of the WLEF at the project level.

G. The Administration shall ensure that all interest earned on the money in the WLEF remains with the fund.

H. The availability of funding through the WLEF does not establish an entitlement to services.

10.22.15.06

.06 Eligibility Criteria.

A. To be eligible for services funded from the waiting list equity fund, an individual shall:

(1) Be a resident of Maryland;

(2) Have an appropriate evaluation that finds that the individual:

(a) Has a developmental disability, or

(b) Is eligible for support services;

(3) Leave a State residential center on or after October 1, 1994, to be served in community-based services as specified in Regulation .05A of this chapter; or

(4) Be in the community on the waiting list for community-based services in one of the following categories:

(a) Crisis resolution,

(b) Crisis prevention, or

(c) Current request.

B. A determination made under §A(2) of this regulation may be reopened on the provision of an additional evaluation after 1 year from the initial evaluation.

10.22.15.07

.07 Services.

A. The Administration shall ensure that the waiting list equity fund is used to provide the following community-based services to eligible individuals in accordance with the individual's needs:

(1) Individual and family support services;

(2) Respite care;

(3) Supported employment;

(4) Individualized community integration day services; and

(5) Individualized supported living arrangements services.

B. The Administration shall consider the following criteria when deciding priority for services:

(1) 80 percent of the WLEF monies are to be spent for individuals not in crisis and who do not need emergency services;

(2) 20 percent of the WLEF monies are to be spent for individuals in crisis and who need emergency services after all emergency funds have been expended on a regional basis;

(3) Individuals who are not in crisis and who do not need emergency services are defined in COMAR 10.22.12;

(4) Individuals who are in crisis and who need emergency services are defined in COMAR 10.22.12; and

(5) For nonemergencies, individuals and their families shall receive services in the following priority order:

(a) Oldest age of family caregiver, by the date of birth, in descending order, and

(b) If there are two caregivers of the same age next to be served and funding is available to support only one, priority is given to the individual on the crisis prevention list.

10.22.15.08

.08 Review and Reporting Requirements.

A. On or before January 1 of each year, the Administration shall prepare a report to be submitted to the General Assembly and the Department of Fiscal Services on the waiting list equity fund.

B. The Administration shall include in the report:

(1) An accounting of all receipts and expenditures to and from the fund;

(2) The number of individuals who left and entered State residential centers during the previous year;

(3) The number of additional individuals who were on the waiting list for services from the Administration during the previous year; and

(4) An accounting of each factor used to determine the cost of providing services to an individual in a State residential center in accordance with the provisions stated in Health-General Article, §7-206, Annotated Code of Maryland.

C. The Administration shall:

(1) Review the needs of individuals on the waiting list by July 1, 1998; and

(2) Modify these regulations, as appropriate, to respond to the needs of the individuals on the waiting list.

10.22.15.09

.09 Administrative and Judicial Review.

A. An individual has the right to appeal an action or inaction with respect to this chapter in accordance with Health-General Article, §7-406, Annotated Code of Maryland, and COMAR 10.22.16.

B. An individual may prevail at the appeal only upon a showing that the agency has violated statutory or regulatory provisions by its action or inaction.

10.22.15.10

.10 Eligibility for Other Services.

A. An individual's eligibility for services provided by any other public or private agency may not be affected by the individual's eligibility for services under this chapter.

B. An individual who is eligible for services funded by the Administration may also be eligible for services provided by another agency.

10.22.15

Administrative History

Effective date:

Regulations .01-----.10 adopted as an emergency provision effective February 27, 1996 (23:6 Md. R. 470); emergency status extended to September 23, 1996 (23:14 Md. R. 1006); adopted permanently effective September 23, 1996 (23:19 Md. R. 1376)

COMAR 10.22.08 recodified to COMAR 10.22.15 effective July 26, 1999 (26:15 Md. R. 1148)

10.22.16.00 (10-21-08)

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 22 DEVELOPMENTAL DISABILITIES

Chapter 16 Informal Hearings Under the Maryland Developmental Disabilities Law

Authority: Health-General Article, §7-406, Annotated Code of Maryland

10.22.16.01

.01 Scope.

This chapter applies to the hearing which an applicant for or a recipient of Developmental Disabilities Administration services may request under Health-General Article, §7-406(a)(1), Annotated Code of Maryland. Nothing in these regulations shall be construed to create an entitlement to services provided or funded by the Department or the Administration.

10.22.16.02

.02 Purpose.

The purpose of the informal hearing procedure is to seek informal and expeditious resolution when an applicant for or recipient of services is dissatisfied as a result of the Secretary's actions or inactions under Health-General Article, Title 7.

10.22.16.03

.03 Definitions.

A. In these regulations the following terms have the meanings indicated.

B. Terms Defined.

(1) "Action or inaction of the Secretary" means any decision or other official action by the Director of the Administration or an authorized representative of the Director, or the failure to issue or implement an official decision or to take certain action within the authority of the Director or the Director's authorized representative. Action includes, but is not limited to, the denial of services or the significant alteration in the provision of services to an individual including the termination, reduction, suspension, or withdrawal of services, or the transfer of an individual.

(2) "Administration" means the Developmental Disabilities Administration (DDA).

(3) "Appellant" means the person or that person's representative who has applied for or received Administration services and who has requested a hearing pursuant to Health-General Article, §7-406, Annotated Code of Maryland.

(4) "Applicant for services" means a person who has applied for services and is subject to the Administration's determination of eligibility. In addition, the following representatives are considered applicants for the purpose of these regulations:

(a) A parent of an applicant who is a minor;

(b) The applicant's court-appointed guardian of the person;

(c) An attorney representing the applicant; and

(d) A person or agency who has a legitimate interest in the welfare of the individual applying for DDA services or being served in a DDA licensed, operated, or funded program.

(5) "Department" means the Department of Health and Mental Hygiene.

(6) "Department's representative" means the person designated by the Director to represent the Department in the hearing and to defend the action or inaction of the Secretary.

(7) "Director" means the Director of the Developmental Disabilities Administration.

(8) "Hearing" means the informal hearing provided for in Health-General Article, §7-406(a)(1), Annotated Code of Maryland.

(9) "Party" means an appellant or the Department.

(10) "Recipient of services" means a person who has received Administration services. In addition, the following representatives are considered recipients for the purpose of these regulations:

(a) A parent of a recipient who is a minor;

(b) The recipient's court-appointed guardian of the person;

(c) An attorney representing the recipient; and

(d) A person or agency who has a legitimate interest in the welfare of the individual applying for DDA services or being served in a DDA licensed, operated, or funded program.

(11) "Secretary" means the Secretary of the Department of Health and Mental Hygiene or a representative appointed by the Secretary.

(12) "Secretary's designee" means the employee of the Department chosen by the Director to conduct the hearing and make administrative decisions in accordance with these regulations.

10.22.16.04

.04 Notification of Right to Request a Hearing.

The Administration shall:

A. Provide written notification of the right to request a hearing and the method of obtaining the hearing to each applicant for or recipient of services at the time of application, and at any time the Administration decides to deny, terminate, reduce, suspend, withdraw or transfer, or otherwise significantly alter any service to an applicant or recipient;

B. Include in the notification the following statements:

(1) That the applicant or recipient:

(a) Has a right to a hearing upon request regarding any action or inaction of the Secretary made under Health-General Article, Title 7, Annotated Code of Maryland, which affects service provision to the applicant or recipient,

(b) May choose to waive the right to an informal hearing, and

(c) Has the right to a formal hearing in accordance with State Government Article, Title 10, Subtitle 2;

(2) If a decision has been made by the Secretary, the factual basis for the decision;

(3) That a hearing shall be requested within 45 days of the date the notification is postmarked if a decision has been made by the Department, or within 45 days following the action or inaction which is the subject of the appeal;

(4) The procedure the applicant or recipient is required to follow in order to timely request a hearing; and

(5) That unless an informal or formal hearing is requested within the prescribed time period, the Secretary's intended action will become final;

C. Enclose with the written notification a form to be used to request a hearing.

10.22.16.05

.05 Request for Hearing.

A. An applicant or recipient, or the applicant's or recipient's representative, may request a hearing by mailing or delivering a clear, written statement to the Director of the Administration. The request shall state:

(1) That the applicant or recipient desires a hearing; and

(2) The specific action or inaction of the Secretary which the applicant or recipient seeks to challenge.

B. The Administration shall acknowledge in writing a request for a hearing within 10 days of the postmark of the request.

C. The Administration shall give reasonable advance notice in writing to the appellant of the issue or issues to be decided, the date, time, and place of the hearing, the right to be present, the right to be represented by an attorney, and the right to request and present witnesses and documentary evidence.

D. Unless agreed upon by all parties, the Administration shall hold the hearing not sooner than 10 days but not later than 30 days after the mailing of the acknowledgement. The Administration may consolidate various requests for hearings made by or on behalf of a particular individual when there is significant similarity in facts or issues to be resolved.

E. The Administration shall make reasonable efforts to schedule the hearing at a time and place convenient to all parties.

F. A request for a hearing shall be made within 45 days of the postmark of the notification specified in Regulation .04A, or if Regulation .04A does not apply, within 45 days following the action. When the subject of the appeal is an inaction, a request for a hearing shall be made within 45 days after the applicant or recipient actually knew or should reasonably have known of the inaction.

G. A request for an extension of the time to request a hearing may be granted by the Secretary's designee for good cause shown.

H. The Department may dismiss a request for a hearing when it has been withdrawn or abandoned by the appellant. The Department may find that a request for a hearing has been abandoned if, after receiving proper notice, the appellant:

(1) Does not appear for the hearing on the established date; and

(2) Fails to notify the Department of the reason for nonappearance.

I. The Department is only required to grant one informal hearing as to any one action or inaction of the Secretary.

10.22.16.06

.06 Implementation of Action of the Secretary.

A. The action of the Secretary, which is the subject of a request for a hearing, may not be implemented unless the:

(1) Secretary has determined that an emergency exists when to delay action for a hearing would have a serious and adverse affect on the health or safety of any person;

(2) Applicant or recipient has withdrawn or abandoned the request for a hearing; or

(3) Applicant or recipient has failed in the applicant's or recipient's challenge of any action or inaction of the Secretary under Health-General Article, §7-406, Annotated Code of Maryland, and the enforcement of the final decision has not been stayed pursuant to State Government Article, §10-215.

B. When a request for a hearing has been made and the appellant is asking that the Secretary take certain action, the requested action need not be implemented unless the appellant is successful in the appellant's challenge under Health-General Article, §7-406.

10.22.16.07

.07 Secretary's Designee.

A. The Director shall, in response to a request for a hearing, choose an employee of the Department to conduct the hearing and issue an administrative decision.

B. An individual may not serve as the Secretary's designee if, as to this hearing, the individual:

(1) Was involved in policy or decision-making regarding the particular action or inaction of the Secretary which is the subject of the hearing;

(2) Has a personal financial interest in the matter; or

(3) Is related by blood or marriage to the appellant or to the Department's representative.

C. The appellant shall be informed before the hearing of the identity of the Secretary's designee, and shall have the right to object based on factors noted in §B of this regulation.

10.22.16.08

.08 Powers and Duties of Secretary's Designee.

A. The Secretary's designee shall have authority to:

(1) Engage in reasonable efforts to secure the attendance of witnesses;

(2) Conduct a full, fair, and impartial hearing;

(3) Take action to avoid unnecessary delay and duplication in the proceedings; and

(4) Maintain order.

B. The Secretary's designee:

(1) Shall rule on the admissibility of any documentary evidence and on the appearance and testimony of any witness;

(2) May question any party or witness; and

(3) Shall permit examination of witnesses.

10.22.16.09

.09 Prehearing.

A. The appellant and the Department's representative are encouraged to engage in informal discussions before the hearing for the purpose of sharing documentary evidence, clarifying facts, resolving issues, and making recommendations to the Secretary's designee regarding areas of agreement and disagreement and the conduct of the hearing. The appellant shall immediately notify the Secretary's designee if and when there has been a resolution of the appellant's concern which results in the appellant withdrawing the request for a hearing.

B. Written communications and substantive verbal communications between a party and the Secretary's designee shall be shared with all other parties before the hearing or, if not possible, at the hearing.

C. All parties shall make reasonable efforts to comply with the request of other parties to:

(1) Preview relevant records and other written material and to permit discussions with relevant persons before the hearing;

(2) Introduce into evidence at the hearing relevant records and other written material, and secure the appearance and cooperation of relevant witnesses, including the applicant or recipient.

10.22.16.10

.10 Hearing Procedure.

A. The appellant shall have the right to request that the hearing be closed to the public. The Secretary's designee shall grant the appellant's request for a closed hearing if the Secretary's designee, after hearing from the parties, determines that the appellant's interest in confidentiality and privacy outweighs the value to the public of an open hearing.

B. The Secretary's designee shall call the case to order and explain the issue or issues to be decided and the hearing procedure.

C. The appellant shall present the reasons the appellant objects to the Secretary's actions or inactions and the appellant's argument for the relief requested.

D. All parties shall have the opportunity to present evidence, call witnesses, and question the other party's witnesses.

E. In order to clarify relevant facts, the Secretary's designee may question any person at any time during the hearing.

F. With the consent of both parties, the Secretary's designee may allow discussion of the issues among the parties and relevant witnesses in order to seek resolution.

G. The applicant or recipient and that person's representative or representatives shall have the right to testify at the hearing.

H. The Secretary's designee may, with consent of the parties, conduct all or part of a hearing by telephone if each party in the hearing has an opportunity to participate in and hear the entire proceeding while it is taking place.

10.22.16.11

.11 Burden of Persuasion.

The appellant bears the burden of persuasion and may not prevail unless the appellant convinces the Secretary's designee by a preponderance of the evidence that the Secretary's action or inaction was incorrect.

10.22.16.12

.12 The Record.

The Secretary's designee shall:

A. Maintain the official record of the hearing;

B. Include in the official record of the hearing:

(1) Official correspondence regarding the hearing, including the request for the hearing and the Secretary's response,

(2) Written material submitted by the parties,

(3) Evidence admitted by the Secretary's designee,

(4) A tape recording of the hearing, and

(5) The decision of the Secretary's designee.

10.22.16.13

.13 Decision of the Secretary's Designee.

A. The Secretary's designee shall decide a case within 14 days of the hearing based upon the entire record in the case and according to the burden of persuasion set forth in Regulation .11. The Secretary's designee may communicate with the parties for the purpose of developing a decision agreeable to all parties provided the Secretary's designee complies with Regulation .09B.

B. The Secretary's designee shall prepare a written decision which includes the following statements:

(1) The issues presented for resolution;

(2) Whether the appellant met the burden of persuasion as to each issue;

(3) To what extent, if any, the relief requested by the appellant is being granted;

(4) What, if any, action the Department is required to take and when the action shall occur; and

(5) The appellant's right to appeal the decision of the Secretary's designee pursuant to Health-General Article, §7-406, Annotated Code of Maryland, if the relief requested was not granted.

C. The Secretary's designee shall promptly deliver or mail copies of the final decision to all parties.

10.22.16.9999

Administrative History

Effective date: February 21, 1975 (2:7 Md. R. 490)

Preface amended effective December 29, 1975 (3:4 Md. R. 217)

Chapter, Public and Private Residential Care Facilities Serving the Mentally Retarded (I.C.F—M.R.), repealed effective December 28, 1987 (14:26 Md. R. 2747)

Regulations .01—.13 Informal Hearings Under the Maryland Developmental Disabilities Law, adopted effective December 25, 1989 (16:25 Md. R. 2713)

COMAR 10.22.04 recodified to COMAR 10.22.16 effective July 26, 1999 (26:15 Md. R. 1148)

10.22.17.00 (10-21-08)

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 22 DEVELOPMENTAL DISABILITIES

Chapter 17 Fee Payment System for Licensed Residential and Day Programs

Authority: Health-General Article, §§2-104(b), 7-306.1, 7-910(c), 15-105, 15-107, and 16-201, Annotated Code of Maryland

10.22.17.01

.01 Scope.

A. This chapter establishes the methodology that the Department shall use to reimburse:

(1) Licensed residential alternative living units, residential group homes, day habilitation programs, and vocational programs that provide services to individuals with disabilities after June 30, 1998;

(2) Supported employment provided by licensed providers of services to individuals after June 30, 2001;

(3) Add-on component services for individuals in these programs; and

(4) Supplemental services for individuals in these programs.

B. Services reimbursed under this chapter are funded by Medicaid funds and, in whole or in part, by State general funds.

C. When the reimbursement for a service is based on an established rate under this chapter, the rate is based on the service needs of the individual, an allowance for indirect expenses incurred by providers, and the regional location of the services.

D. The Administration may contract for additional services according to the State procurement laws.

E. This reimbursement system is subject to the Administration's approved budget appropriation.

F. This chapter does not affect any cost settlement or litigation related to funding commenced before July 1, 1998.

10.22.17.02

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Add-on component" means one or more units of service, each one of which includes funding for at least an hour of direct service and other nondirect costs not covered by the sum of the provider and individual components.

(2) "Administration" means the Developmental Disabilities Administration.

(3) "Agreement" means a legal document setting forth the rights and responsibilities of the Administration and the provider under the fee payment system.

(4) "Appropriate evaluation" means the assessment of an individual by a qualified developmental disability professional using accepted professional standards to document the presence of a:

(a) Developmental disability as defined in Health-General Article, §7-101(e), Annotated Code of Maryland; or

(b) Severe, chronic disability that qualifies the individual for support services as defined in Health-General Article, §7-403(c), Annotated Code of Maryland.

(5) "Attendance day" means, for:

(a) Day habilitation and vocational services, when the individual is present in the program for at least 4 hours a day during a regularly scheduled period of operation, with 6 to 8 hours per day as the service goal, and with Administration approval of fewer than 6 hours per day provided the individual plan indicates this lower level of service is necessary;

(b) Residential programs, as of October 1, 2001, when the individual is present for at least 6 hours in the home or spends the night in the home, which is the primary residence for the individual; and

(c) Supported employment, when the individual is engaged in supported employment for at least 4 hours a day, with 6 to 8 hours per day as the service goal, and with Administration approval of fewer than 6 hours per day provided the individual plan indicates this lower level of service is necessary.

(6) "Copayment" means that portion of the provider's charge for services for which the individual is responsible.

(7) "Cost report" means a document on a form approved by the Administration that details a provider's allowable operating expenses for a single fiscal year using prescribed cost centers.

(8) "Department" means the Department of Health and Mental Hygiene.

(9) "Day habilitation" means services for individuals with developmental disabilities licensed under COMAR 10.22.07 and for purposes of COMAR 10.09.26 includes prevocational services.

(10) "Direct services" means staff services provided directly to the individual.

(11) "Existing service" means a service continuously provided to an individual by the same provider beginning on or before June 30, 1998.

(12) "Existing supported employment service" means a service provided continuously to an individual by the same provider beginning before July 1, 2001.

(13) "Fee payment system" means the system for rate setting and reimbursement for services provided by licensed residential, day habilitation, vocational, and supported employment programs.

(14) "Fiscal management services (FMS)" means a person approved by the Administration and designated as an Organized Health Care Delivery System under COMAR 10.22.20 that:

(a) Assists individuals and families in managing their funds and paying for services; and

(b) Is responsible for submitting financial reports to the individual and Administration.

(15) "Funding level" means the total annual amount of money awarded by the Administration under the prospective payment system or under a contract for a day habilitation, vocational, or residential program.

(16) "Individual" means a person who receives services funded by the Administration from a residential, day habilitation, vocational, or supported employment program.

(17) "Individual component" means one of the two parts of the rate that is based on an assessment of an individual's level of need as documented in the approved individual information form.

(18) "Individual indicator rating scale" means the instrument, approved by the Administration, to assess an individual's level of need.

(19) "Individual information form" means the form, approved by the Administration, used for documenting the results of an assessment using the individual indicator rating scale.

(20) "Individual plan (IP)" means the written plan of specific action that is developed and modified by an individual's team.

(21) "Individual's team" means:

(a) The individual;

(b) The individual's proponent;

(c) Representatives of the licensee;

(d) The resource coordinator; and

(e) Others the individual may choose to develop the IP.

(22) "New individuals" means those individuals starting service with a new provider.

(23) "Personal needs allowance" means the amount per month that a provider must allow an individual to retain from their monthly income for personal needs.

(24) "Professional services" means services provided by an individual authorized to perform these services under the Health Occupations Article, Annotated Code of Maryland.

(25) "Provider" means a person that is licensed and funded by the Administration to provide services to individuals under COMAR 10.22.08 or 10.22.07.

(26) "Provider component" means one of two parts of the rate that reimburses providers for indirect expenses.

(27) "Rate" means the reimbursement amount for an attendance day of service.

(28) "Regional director" means the designee of the Director of the Administration who is responsible for the administration of services in an assigned area of the State.

(29) "Residential program" means services for individuals with developmental disabilities licensed under COMAR 10.22.08.

(30) "Self-directed services" means services, as approved by the Administration:

(a) That an individual arranges; and

(b) For which the individual reimburses the provider.

(31) "Service approval" means the Administration's written approval for an individual to receive services from a provider.

(32) "Supplemental security income (SSI)" means income paid to the aged, blind, or disabled under Title XVI of the Social Security Act.

(33) "Supplemental services" means preauthorized services that directly benefit the individual and are not covered by the rate.

(34) "Support broker" means a person employed by individuals and families, who have been determined eligible by the Administration, that helps them:

(a) Decide what services and supports are best for them; and

(b) Access and manage the chosen services and supports.

(35) Supported Employment.

(a) "Supported employment" means services licensed under COMAR 10.22.07 when the individual is employed outside of the individual's home.

(b) "Supported employment" includes volunteer work when the volunteer work is for job training and preparation.

(36) "Utilization review" means the examination of an individual indicator rating scale to ascertain if the service needs level is appropriate and to verify that the indicated level of service is being provided.

(37) "Vocational services" means services provided by a licensed provider under COMAR 10.22.07 that are provided outside of the individual's home and for purposes of COMAR 10.09.26 are part of habilitation services.

10.22.17.03 (03/30/09)

.03 General.

A. The provider shall sign an agreement with the Administration.

B. The rights of the Administration include but are not limited to the following:

(1) Approving the individuals to be served;

(2) Performing a utilization review of individual indicator rating scales; and

(3) Auditing provider operations.

C. Personal Needs Allowance.

(1) On January 1, 2008, the Administration set the personal needs allowance at $262 per month for an individual.

(2) The Administration may increase this amount annually not to exceed the:

(a) Social Security Administration's cost-of-living increase to Supplemental Security Income; or

(b) Medically needy income level as set forth in COMAR 10.09.24.

(3) The Administration shall notify all licensees whenever any increase to the personal needs allowance takes effect.

10.22.17.04 (03/30/09)

.04 Licensure Requirements.

To receive reimbursement under this chapter, a provider shall:

A. Be licensed in accordance with Health-General Article, Title 7, Annotated Code of Maryland, and COMAR 10.22.08 or 10.22.07; and

B. Comply with COMAR 10.09.26 and all other applicable regulations under COMAR 10.09.

10.22.17.05 (03/30/09)

.05 Reporting Requirements and Record Keeping.

A. The provider shall submit an annual cost report not later than 6 months after the end of the State fiscal year that:

(1) Documents the provider's actual expenditures for the fiscal year being reported;

(2) Is based on the provider's audited financial statement;

(3) Includes a worksheet reconciling the cost report to the financial statement; and

(4) Contains a certification by an independent certified public accountant, who is not an employee of the licensee or any affiliated organization, for the:

(a) Individual copayments collected, and

(b) Actual attendance days.

B. The provider shall:

(1) Maintain a record for each individual that includes but is not limited to the:

(a) Results of the individual indicator rating scale,

(b) Appropriate evaluation, with approval by the regional director responsible for the individual's service approval, and

(c) Individual plan that identifies the individual's service needs, signed and dated by the provider; and

(2) Report to the Administration regarding the individual's eligibility for Supplemental Security Income (SSI).

C. The provider shall submit an annual wage and benefits survey in a format approved by the Administration by the later of 60 days after:

(1) The last day of the pay period for which the data is requested; or

(2) Receipt of a request from the Administration for wage survey information.

D. The Administration may require a provider to complete other reports and furnish information relating to the provider and the cost of services in formats approved by the Administration.

E. For reports and data required under this chapter, the Administration may, with notice, suspend payment of the provider component until the report or data is received.

F. For the annual cost report and the annual wage and benefits survey, the Administration may, after notice and an opportunity to be heard, fiscally sanction providers as set forth in Health-General Article, §7-910(c), Annotated Code of Maryland.

10.22.17.06

.06 Determination of Individual Component.

A. The individual component is for costs the provider incurs in providing direct services to the individual.

B. The Administration shall establish an individual component for new and existing services that is based on the:

(1) Individual indicator rating scale; and

(2) Geographic region in which the service is provided.

C. Individuals who have been receiving services from a provider and who are transferring to a different provider shall retain the individual component established by the Administration.

D. Except as set forth in §C of this regulation, the following apply:

(1) The regional director shall establish a temporary individual component for each service the individual is to receive by taking the average of the individual components for all the individuals served by the provider in the service category;

(2) The provider shall forward the individual information form reflecting the results of the individual indicator rating scale assessment to the regional director within 35 days for approval;

(3) The Administration shall establish a permanent individual component within 6 months based on the approved individual indicator rating scale assessment; and

(4) The permanent individual component shall be retroactive to the date the individual entered service.

E. The geographic regions are as follows:

(1) Region 1 represents Baltimore City, Baltimore County, Anne Arundel County, Harford County, Howard County, Carroll County, and Queen Anne's County;

(2) Region 2 represents Calvert County, Frederick County, Prince George's County, Montgomery County, and Charles County;

(3) Region 3 represents St. Mary's County, Garrett County, Caroline County, Dorchester County, Kent County, Somerset County, Talbot County, Wicomico County, and Worcester County;

(4) Region 4 represents Allegany County;

(5) Region 5 represents Cecil County; and

(6) Region 6 represents Washington County.

F. For purposes of this regulation, levels 1-5 in supervision/assistance and levels 1-5 in health/medical in §G of this regulation represent levels of services needed by individuals as assessed by the individual indicator rating scale.

G. Table of Individual Components Effective July 1, 2007.

(1) Residential Programs.

Region 1—Baltimore Metro (Baltimore City, Baltimore County, Anne Arundel, Harford, Howard, Carroll, and Queen Anne's counties)

Supervision/Assistance Level						
		1	2	3	4	5
	1	$16.23	$29.80	$51.46	$83.94	$120.75
Health/	2	$17.84	$31.41	$53.07	$85.55	$122.36
Medical	3	$20.44	$34.01	$55.66	$88.15	$124.96
Level	4	$23.94	$37.51	$59.16	$91.65	$128.46
	5	$27.02	$40.59	$62.25	$94.73	$131.54

Region 2—Washington D.C. Metro (Calvert, Frederick, Prince George's, Montgomery, and Charles counties)

Supervision/Assistance Level						
		1	2	3	4	5
	1	$17.51	$32.15	$55.52	$90.56	$130.28
Health/	2	$19.25	$33.89	$57.26	$92.30	$132.01

Medical	3	$22.05	$36.69	$60.05	$95.11	$134.82
Level	4	$25.83	$40.47	$63.83	$98.88	$138.60
	5	$29.15	$43.79	$67.16	$102.20	$141.92

Region 3—Rural (St. Mary's, Caroline, Garrett, Dorchester, Kent, Somerset, Talbot, Wicomico, and Worcester counties)

Supervision/Assistance Level						
		1	2	3	4	5
	1	$16.23	$29.80	$51.46	$83.94	$120.75
Health/	2	$17.84	$31.41	$53.07	$85.55	$122.36
Medical	3	$20.44	$34.01	$55.66	$88.15	$124.96
Level	4	$23.94	$37.51	$59.16	$91.65	$128.46
	5	$27.02	$40.59	$62.25	$94.73	$131.54

Region 4—Pittsburgh Metro (Allegany County)

Supervision/Assistance Level						
		1	2	3	4	5
	1	$16.23	$29.80	$51.46	$83.94	$120.75
Health/	2	$17.84	$31.41	$53.07	$85.55	$122.36
Medical	3	$20.44	$34.01	$55.66	$88.15	$124.96
Level	4	$23.94	$37.51	$59.16	$91.65	$128.46
	5	$27.02	$40.59	$62.25	$94.73	$131.54

Region 5—Wilmington Metro (Cecil County)

Supervision/Assistance Level						
		1	2	3	4	5
	1	$17.25	$31.67	$54.70	$89.22	$128.35
Health/	2	$18.96	$33.39	$56.41	$90.93	$130.06
Medical	3	$21.73	$36.15	$59.16	$93.69	$132.82
Level	4	$25.45	$39.87	$62.88	$97.41	$136.54
	5	$28.72	$43.14	$66.17	$100.69	$139.81

Region 6—Hagerstown Metro (Washington County)

Supervision/Assistance Level						
		1	2	3	4	5

	1	$16.23	$29.80	$51.46	$83.94	$120.75
Health/	2	$17.84	$31.41	$53.07	$85.55	$122.36
Medical	3	$20.44	$34.01	$55.66	$88.15	$124.96
Level	4	$23.94	$37.51	$59.16	$91.65	$128.46
	5	$27.02	$40.59	$62.25	$94.73	$131.54

(2) Day and Supported Employment Programs.

Region 1—Baltimore Metro (Baltimore City, Baltimore County, Anne Arundel, Harford, Howard, Carroll, and Queen Anne's counties)

Supervision/Assistance Level						
		1	2	3	4	5
	1	$11.22	$14.22	$20.07	$26.09	$37.97
Health/	2	$12.83	$15.83	$21.69	$27.70	$39.58
Medical	3	$15.43	$18.43	$24.28	$30.30	$42.18
Level	4	$18.94	$21.94	$27.79	$33.81	$45.69
	5	$22.03	$25.02	$30.87	$36.90	$48.77

Region 2—Washington D.C. Metro (Calvert, Frederick, Prince George's, Montgomery, and Charles counties)

Supervision/Assistance Level						
		1	2	3	4	5
	1	$12.11	$15.34	$21.65	$28.15	$40.97
Health/	2	$13.84	$17.08	$23.40	$29.89	$42.70
Medical	3	$16.65	$19.88	$26.20	$32.69	$45.51
Level	4	$20.43	$23.67	$29.98	$36.48	$49.29
	5	$23.77	$26.99	$33.31	$39.81	$52.62

Region 3—Rural (St. Mary's, Caroline, Garrett, Dorchester, Kent, Somerset, Talbot, Wicomico, and Worcester counties)

Supervision/Assistance Level						
		1	2	3	4	5
	1	$11.22	$14.22	$20.07	$26.09	$37.97
Health/	2	$12.83	$15.83	$21.69	$27.70	$39.58
Medical	3	$15.43	$18.43	$24.28	$30.30	$42.18
Level	4	$18.94	$21.94	$27.79	$33.81	$45.69
	5	$22.03	$25.02	$30.87	$36.90	$48.77

Region 4—Pittsburgh Metro (Allegany County)

Supervision/Assistance Level						
		1	2	3	4	5
	1	$11.22	$14.22	$20.07	$26.09	$37.97
Health/	2	$12.83	$15.83	$21.69	$27.70	$39.58
Medical	3	$15.43	$18.43	$24.28	$30.30	$42.18
Level	4	$18.94	$21.94	$27.79	$33.81	$45.69
	5	$22.03	$25.02	$30.87	$36.90	$48.77

Region 5—Wilmington Metro (Cecil County)

Supervision/Assistance Level						
		1	2	3	4	5
	1	$11.93	$15.12	$21.33	$27.73	$40.36
Health/	2	$13.64	$16.83	$23.06	$29.44	$42.07
Medical	3	$16.40	$19.59	$25.81	$32.21	$44.84
Level	4	$20.13	$23.32	$29.54	$35.94	$48.57
	5	$23.42	$26.60	$32.81	$39.22	$51.84

Region 6—Hagerstown Metro (Washington County)

Supervision/Assistance Level						
		1	2	3	4	5
	1	$11.22	$14.22	$20.07	$26.09	$37.97
Health/	2	$12.83	$15.83	$21.69	$27.70	$39.58
Medical	3	$15.43	$18.43	$24.28	$30.30	$42.18
Level	4	$18.94	$21.94	$27.79	$33.81	$45.69
	5	$22.03	$25.02	$30.87	$36.90	$48.77

10.22.17.07

.07 Provider Components.

Effective July 1, 2007, the provider components for all regions are as follows:

A. The residential program provider component is $55.34; and

B. The day habilitation, vocational, and supported employment program provider component is $30.49.

10.22.17.08

.08 Add-on Component.

A. An add-on component is for:

(1) Residential programs;

(2) Day habilitation, vocational, and supported employment programs; and

(3) Professional services.

B. The Administration may preauthorize and approve one or more units of add-on components for additional support:

(1) Not to exceed 1 year for individuals whose need for additional support is the result of a temporary condition; or

(2) Exceeding 1 year for individuals whose need for additional support is on-going.

C. The per-unit amounts have been calculated to cover all costs incidental to providing the service.

D. In order to preauthorize and approve one or more units of add-on components for an individual, the Administration shall determine that the:

(1) Individual's particular circumstances warrant units of add-on components to implement the IP; and

(2) Individual requires more services than the provider can provide with the sum of the provider and individual components.

E. Circumstances that warrant units of add-on components include a need for:

(1) Additional support for an individual whose individual component is less than level 5 and for whom approval of an add-on component would be more cost effective than an increase in the individual component;

(2) Ongoing, intensive support, such as one-to-one support, for an individual whose individual component is level 5;

(3) Ongoing support in a residential program for an individual who does not attend day services;

(4) Awake-overnight support for an individual; and

(5) Professional services not covered by Medicaid or other payers.

F. Procedures for Requesting Authorization of Add-On Components.

(1) On forms approved by the Administration, the provider shall submit documentation that justifies the request for add-on components.

(2) For all requests for add-on components, the justification shall include:

(a) Recommendations from the individual's team and appropriate professionals;

(b) Services the provider can provide with existing resources; and

(c) Any other information required by the Administration.

(3) For requests for professional add-on components, additional justification shall include:

(a) The individual's IP and any additional documentation the administration requires indicating the service is necessary; and

(b) Documentation that:

(i) The individual is not eligible for Medical Assistance;

(ii) For individuals who are Medicaid eligible, the service sought is not a service covered by the Maryland Medical Assistance Program; or

(iii) If the individual is Medicaid eligible and the service is covered by the Maryland Medical Assistance Program, the Maryland Medical Assistance Program has denied coverage, and the agency is pursuing an appeal.

G. Administration Approval of Add-on Components.

(1) In deciding whether to preauthorize an add-on component, the Administration shall:

(a) Consider the documentation submitted by the provider in §F of this regulation that identifies the needs of the individual;

(b) Consider the proposed cost for the add-on component;

(c) Consider the existing funding levels for other individuals at the service site and the availability of State funds;

(d) If appropriate, visit the individual in the setting where the service is to be provided; and

(e) Review the provider's efforts to meet the individual's needs with existing resources available at the site such as staffing levels and revenue for all services provided at the site.

(2) When determining the number of units of add-on components to authorize, the Administration shall conduct the cost analysis described in §G(1) of this regulation. The Administration may authorize the number of units of add-on components necessary to fund the amount identified by the cost analysis.

H. Review of Add-on Components. Unless justification for a less frequent review is documented, the Administration shall review the appropriateness of the add-on component:

(1) For individuals receiving temporary additional support, quarterly for up to 1 year after which the Administration shall:

(a) Reassess the appropriateness of the individual component and increase the individual component if justified;

(b) Continue the temporary additional support for up to 1 year if the individual's prognosis indicates that the condition remains temporary; or

(c) Discontinue the temporary additional support; and

(2) For other individuals, quarterly during the first year and annually after that.

I. The add-on component is calculated by multiplying the number of units of service per week approved by the Administration by the per unit amount and dividing by seven for residential programs and by the number of approved days of service per week for day habilitation, vocational, and supported employment programs.

J. Reimbursement for Add-On Components.

(1) Unless the Administration preauthorizes an add-on component, the Administration may not reimburse the provider.

(2) Effective July 1, 2007, the amount per unit of service for residential programs is as follows:

(a) In Baltimore City and Allegany, Anne Arundel, Baltimore, Caroline, Carroll, Dorchester, Garrett, Harford, Howard, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester counties — $16.49;

(b) In Cecil County — $17.37; and

(c) In Calvert, Charles, Frederick, Montgomery, and Prince George's counties — $17.59.

(3) Effective July 1, 2007, the amount per unit of service for day habilitation, vocational and supported employment is as follows:

(a) In Baltimore City and Allegany, Anne Arundel, Baltimore, Caroline, Carroll, Dorchester, Garrett, Harford, Howard, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester counties — $16.19;

(b) In Cecil County — $16.97; and

(c) In Calvert, Charles, Frederick, Montgomery, and Prince George's counties — $17.17.

(4) Effective July 1, 2007, the amount per unit of service per individual for professional services is as follows:

(a) In Baltimore City and Allegany, Anne Arundel, Baltimore, Caroline, Carroll, Dorchester, Garrett, Harford, Howard, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester counties — $26;

(b) In Cecil County — $27.47; and

(c) In Calvert, Charles, Frederick, Montgomery, and Prince George's counties — $27.84.

10.22.17.09

.09 Supplemental Services.

A. The Administration may preauthorize supplemental services.

B. Supplemental services do not include any services that are in the State Medical Assistance Plan and can be provided to an individual and reimbursed under the Medical Assistance Program, or any services covered by private insurance or federal and State funded health programs.

C. Supplemental services include:

(1) Household furnishings and equipment, normally funded once per individual;

(2) Transportation equipment and expenses;

(3) Assistive technology;

(4) Medical equipment;

(5) Structural modifications for accessibility; and

(6) Other services as preauthorized by the Administration that directly benefit the individual.

D. Procedures for Requesting Authorization of Supplemental Services. On forms approved by the Administration, the provider shall submit documentation that justifies the:

(1) Request for supplemental services, and includes:

(a) Recommendations from the individual's team;

(b) Documentation from appropriate individuals; and

(c) Any other information required by the Administration; and

(2) Basis of the proposed costs, such as:

(a) Bids from vendors;

(b) Advertisements or invoices from retail or wholesale outlets selling goods and services to the general public; and

(c) Rates of a proposed vendor.

E. Administration Approval of Supplemental Services. In deciding whether to preauthorize a supplemental service, the Administration shall:

(1) Consider the documentation submitted by the provider in §D of this regulation that identifies the needs of the individual;

(2) Consider the proposed cost for the supplemental service and the availability of State funds;

(3) If appropriate, visit the individual in the setting where the service is to be provided; and

(4) Review the provider's efforts to meet the individual's needs with existing resources available at the site.

10.22.17.10

.10 Payment for Services Reimbursed by Rates.

A. The Department shall pay the provider the rate set forth under this chapter.

B. The rate is the sum of the individual component, the provider component, and any add-on component.

C. Reimbursement for Attendance Days of Day Habilitation, Vocational Services, and Supported Employment with Fewer than the Hours as Defined in Regulation .02 of this Chapter.

(1) The Administration may:

(a) Not approve reimbursement for an attendance day if the individual receives fewer than 4 hours of service;

(b) Approve reimbursement for fewer hours than the normal attendance day if the IP:

(i) Documents that the individual is not able to engage in the program activities for the normal attendance day; and

(ii) Includes a plan for enabling the individual to be engaged in a normal attendance day; and

(c) Approve reimbursement for an attendance day of supported employment when the individual receives fewer than 4 hours of supported employment services if the:

(i) IP documents that the individual is not able to engage in supported employment activities for 4 hours a day;

(ii) IP includes a plan for enabling the individual to be engaged in supported employment for at least 4 hours with the goal being a normal attendance day; and

(iii) Individual is engaged in at least 4 hours of activity that may include day habilitation and vocational services, with the majority of time spent in supported employment.

(2) The Administration's approval of electronic or paper attendance documentation as specified by the Administration and submitted by the provider shall constitute approval of an attendance day of fewer than 6 to 8 hours if the approved individual plan indicates this lower level of service is necessary.

D. Conversion of Existing Supported Employment Services from a Contract to the Rate System.

(1) There is a presumption that the cost of care for existing supported employment services reimbursed by the Administration under the rate system will be the same as under the contract.

(2) The Administration shall reimburse the provider at least the same amount for cost of care for existing supported employment services as the Administration reimbursed the provider under the contract.

(3) The Administration shall convert the contract reimbursement for individuals into a base rate together, if appropriate, with add-on components.

(4) If a utilization review audit indicates that add-on components were not required for the individual, the Administration may recover unnecessary expenditures.

(5) A provider may request additional services as set forth in Regulation .08F of this chapter.

(6) The Administration shall review any add-on components for existing services every 3 years unless the Administration documents a need for more frequent review.

(7) The Department shall reimburse providers of existing supported employment services by converting those contracts to reimbursement under this chapter between June 30, 2001, and July 1, 2002.

E. For add-on components, the Department shall reimburse providers of existing augmentation services by converting those contracts to reimbursement under this chapter between June 30, 2001, and July 1, 2003.

F. For a single calendar day, the Administration may not reimburse a provider for two or more attendance days of any combination of:

(1) Residential services under this chapter, community supported living arrangements under COMAR 10.22.18, and personal care services under COMAR 10.09.20; or

(2) Day habilitation services under this chapter, supported employment services under this chapter, vocational services under this chapter, and medical day care services under COMAR 10.09.07.

G. Absences and Vacancies.

(1) The Department shall reimburse providers for:

(a) 35 days of absences per year per individual when the individual is unable to be in residential services due to illness, vacation, home visits, medical appointments, or other circumstances;

(b) 35 days of absences per year per individual when the individual is unable to be in one of the following services, or any combination of the following services, due to illness, vacation, home visits, medical appointments, or other circumstances:

(i) Supported employment;

(ii) Day habilitation; and

(iii) Vocational services;

(c) 4 days per year per individual per site for in-service training; and

(d) Days when day habilitation and vocational programs are closed because of inclement weather based on the lateness or closing of the public school system in the day habilitation or vocational program site's jurisdiction.

(2) For residential services, the Department may reimburse providers for:

(a) Vacancy days for an individual, not to exceed 90 days, when the individual leaves service; and

(b) More than 35 days of absence per individual, not to exceed a total of 125 days of absence annually per individual.

(3) For day services, the Department may reimburse providers for:

(a) Vacancy days for an individual, not to exceed 90 days, when an individual leaves one of the following services, or any combination of the following services:

(i) Supported employment;

(ii) Day habilitation; and

(iii) Vocational services; and

(b) More than 35 days of absence per individual, not to exceed a total of 125 days of absence annually per individual, from one of the following services, or any combination of the following services:

(i) Supported employment;

(ii) Day habilitation; and

(iii) Vocational services.

(4) Procedures for Requesting Authorization of Vacancy Days and of Absences Greater Than 35 Days. On forms approved by the Administration, the provider shall submit documentation that justifies the request for an approved absence or vacancy. The documentation shall include:

(a) The dates of absence or vacancy;

(b) An explanation for the absence or vacancy;

(c) For vacancies, a description of the:

(i) Provider's efforts to offer services to other individuals; and

(ii) Effects on the cost of services for the individuals remaining at the site; and

(d) Any other information required by the Administration.

(5) Administration Approval of Vacancy Days and of Absences Greater Than 35 Days.

(a) In deciding whether to authorize an absence or vacancy, the Administration shall consider the:

(i) Documentation submitted by the provider in §G(4) of this regulation that describes the circumstances of the absence or vacancy;

(ii) Detrimental effect of not reimbursing the provider for the absence on the individual;

(iii) Detrimental effect of not reimbursing the provider for the absence or vacancy on the other individuals at the site; and

(iv) Detrimental effect of not reimbursing the provider for the vacancy on an individual who is transitioning to the site.

(b) For more than 35 days of absence and more than 30 days of vacancy, the regional director shall approve the request only after determining that there are extraordinary circumstances that warrant reimbursement for the additional days.

(6) For approved vacancies, the Department shall reimburse a provider at a daily rate that does not include add-on components or supplemental services.

(7) As of July 1, 2003, the Department may claim federal financial participation for residential absence days as permitted by the Centers for Medicare and Medicaid Services under the Home and Community-Based Waiver.

H. The Administration shall reimburse day and supported employment programs an additional $2,000 per year per individual for transportation to and from day habilitation and vocational programs or to and from supported employment for individuals who, because of their disabilities, must use wheelchairs or motorized scooters, if the payments are consistent with the requirements under COMAR 10.09.26 and 10.09.19.

I. For residential services only, the Administration shall subtract from the payment, as appropriate, SSI contributions by individuals or other copayments.

J. The provider shall:

(1) Assist the individual in obtaining SSI, if applicable; and

(2) Collect all applicable individual copayment obligations while assuring that the individual retains the personal needs allowance.

K. To be reimbursed under this chapter, the provider shall submit:

(1) Attendance data for individuals served; and

(2) Other information as required by the Administration.

10.22.17.11

.11 Payment For Supplemental Services.

A. The Administration shall pay the lower of either:

(1) Reasonable customary and actual costs not to exceed the cost to the general public; or

(2) Medicaid-approved rates.

B. Reasonable customary and actual costs are determined and authorized by the Administration before the delivery of the service.

C. The Department shall reimburse the providers for preauthorized supplemental services upon submission of an invoice.

10.22.17.12

.12 Contract.

A. If the Department preauthorizes a professional service, the Administration shall reimburse the provider for professional services according to the rate schedule in Regulation .08J(4) of this chapter except that the Administration may procure services to be reimbursed at a higher rate if:

(1) The provider submits documentation that it cannot find a professional to render services at this rate;

(2) The usual and customary rate charged by the professional for the service is above the rate in Regulation .08J(4) of this chapter; and

(3) The rate that the Maryland Medical Assistance Program reimburses the professional for this service is higher than the rate established by Regulation .08J(4) of this chapter.

B. The Administration may procure services needed by an individual as documented in the IP and preauthorized but not covered by rates or supplemental services in accordance with the State's requirements.

10.22.17.13

.13 Rates for Self-Directed Services.

A. If there is an existing contract to buy vocational and supported employment services, the contract amount less the amount to be paid for fiscal management services shall be used in determining the amount of money available for purchasing supported employment services and support brokerage services in an individual's budget.

B. If there is no existing contract to buy vocational and supported employment services, the supported employment rates less the amount to be paid for fiscal management services shall be used in determining the amount of money available for purchasing supported employment services and support brokerage services in an individual's budget.

10.22.17.14

.14 Hearings.

If an individual is denied services, the individual may request a hearing in accordance with all applicable federal and State laws and regulations, including COMAR 10.09.24.

10.22.17.15

.15 Phase-In of Provider Component.

A. The Administration shall phase in the provider component for existing services.

B. The Administration shall determine providers' increases and decreases as described in this regulation.

C. The individual components and the day habilitation and vocational program provider component in Regulations .06 and .07 of this chapter include increases funded by allocations in the fiscal year 1999 budget. The Administration shall calculate the phase-in of provider components before adding these increases to the rate.

D. Until the rate reaches the rate in Regulation .07 of this chapter, the phase-in for providers with current provider components higher than that stated in Regulation .07 of this chapter shall be calculated as follows:

(1) Each provider's provider component for existing services given after June 30, 1998, shall be adjusted to reflect not more than a 3 percent decrease in the provider's July 1, 1997, funding level;

(2) Each provider's provider component for existing services given after June 30, 1999, shall be adjusted to reflect not more than a 7 percent decrease in the provider's July 1, 1997, funding level;

(3) Each provider's provider component for existing services given after June 30, 2000, shall be adjusted to reflect not more than a 12 percent decrease in the provider's July 1, 1997, funding level; and

(4) Beginning July 1, 2001, the provider component for all existing services is the provider component stated in Regulation .07 of this chapter.

E. Until the rate reaches the rate in Regulation .07 of this chapter, the phase-in for providers with current provider components lower than that stated in Regulation .07 of this chapter shall be calculated within the allocated budget for these services as follows:

(1) Each provider's provider component for existing services given after June 30, 1998, shall be adjusted to reflect at least a 2.5 percent increase in the provider's July 1, 1997, funding level;

(2) Each provider's provider component for existing services given after June 30, 1999, shall be adjusted to reflect at least a 5 percent increase in the provider's July 1, 1997, funding level;

(3) Each provider's provider component for existing services given after June 30, 2000, shall be adjusted to reflect at least a 7.5 percent increase in the provider's July 1, 1997, funding level; and

(4) Beginning July 1, 2001, the provider component for all existing services is the provider component stated in Regulation .07 of this chapter.

F. The provider component for new services or changes in services for any individual after April 30, 1998, is the provider component stated in Regulation .07 of this chapter.

10.22.17.9999

Administrative History

Effective date: August 10, 1987 (14:16 Md. R. 1775)

Regulations .01—.03, .06, and .08 amended as an emergency provision effective October 16, 1995 (22:22 Md. R. 1654)

Regulation .01B amended effective April 8, 1996 (23:7 Md. R. 552)

Regulation .02A amended effective April 8, 1996 (23:7 Md. R. 552)

Regulation .02F repealed effective June 21, 1993 (20:12 Md. R. 997)

Regulation .03D amended effective April 8, 1996 (23:7 Md. R. 552)

Regulation .06 amended effective April 8, 1996 (23:7 Md. R. 552)

Regulation .08C adopted effective April 8, 1996 (23:7 Md. R. 552)

Regulation .08D adopted as an emergency provision effective July 11, 1996 (23:16 Md. R. 1167); emergency status extended at 24:2 Md. R. 113; emergency status expired June 30, 1997

Chapter repealed and new chapter adopted effective July 1, 1998 (25:13 Md. R. 993)

Regulation .02B amended as an emergency provision effective July 1, 2000 (27:15 Md. R. 1397); amended permanently effective October 16, 2000 (27:20 Md. R. 1839)

Regulation .03C adopted as an emergency provision effective July 1, 2000 (27:15 Md. R. 1397); amended permanently effective October 16, 2000 (27:20 Md. R. 1839)

Regulation .06G amended as an emergency provision effective June 29, 1999 (26:15 Md. R. 1145); amended permanently effective October 4, 1999 (26:20 Md. R. 1545)

Regulation .06G amended as an emergency provision effective July 1, 2000 (27:15 Md. R. 1397); amended permanently effective October 16, 2000 (27:20 Md. R. 1839)

Regulation .07 amended as an emergency provision effective July 1, 2000 (27:15 Md. R. 1397); amended permanently effective October 16, 2000 (27:20 Md. R. 1839)

Chapter revised as an emergency provision effective July 1, 2001 (28:15 Md. R. 1394); revised permanently effective December 24, 2001 (28:25 Md. R. 2190)

Regulation .01A amended as an emergency provision effective July 1, 2003 (30:14 Md. R. 934); amended permanently effective September 29, 2003 (30:19 Md. R. 1332)

Regulation .02B amended as an emergency provision effective July 1, 2002 (29:14 Md. R. 1073); amended permanently effective September 30, 2002 (29:19 Md. R. 1524)

Regulation .02B amended effective March 13, 2006 (33:5 Md. R. 520)

Regulation .03C amended as an emergency provision effective July 1, 2002 (29:15 Md. R. 1139); amended permanently effective October 14, 2002 (29:20 Md. R. 1588)

Regulation .03C amended as an emergency provision effective July 1, 2003 (30:14 Md. R. 934); amended permanently effective September 29, 2003 (30:19 Md. R. 1332)

Regulation .03C amended effective December 20, 2004 (31:25 Md. R. 1790); March 13, 2006 (33:5 Md. R. 520); January 1, 2007 (33:26 Md. R. 1997); December 31, 2007 (34:26 Md. R. 2263)

Regulation .05 amended as an emergency provision effective July 1, 2002 (29:15 Md. R. 1139); amended permanently effective October 14, 2002 (29:20 Md. R. 1588)

Regulation .05A amended as an emergency provision effective July 1, 2003 (30:14 Md. R. 934); amended permanently effective September 29, 2003 (30:19 Md. R. 1332)

Regulation .06G repealed and new regulation.06G adopted as an emergency provision effective July 1, 2002 (29:15 Md. R. 1139); adopted permanently effective October 14, 2002 (29:20 Md. R. 1588)

Regulation .06G amended as an emergency provision effective July 1, 2003 (30:14 Md. R. 934); amended permanently effective September 29, 2003 (30:19 Md. R. 1332)

Regulation .06G amended effective December 20, 2004 (31:25 Md. R. 1790); March 13, 2006 (33:5 Md. R. 520); January 1, 2007 (33:26 Md. R. 1997); December 31, 2007 (34:26 Md. R. 2263)

Regulation .07 amended as an emergency provision effective July 1, 2002 (29:15 Md. R. 1139); amended permanently effective October 14, 2002 (29:20 Md. R. 1588)

Regulation .07 amended as an emergency provision effective July 1, 2003 (30:14 Md. R. 934); amended permanently effective September 29, 2003 (30:19 Md. R. 1332)

Regulation .07 amended effective December 20, 2004 (31:25 Md. R. 1790); March 13, 2006 (33:5 Md. R. 520); January 1, 2007 (33:26 Md. R. 1997); December 31, 2007 (34:26 Md. R. 2263)

Regulation .08J amended as an emergency provision effective July 1, 2002 (29:15 Md. R. 1139); amended permanently effective October 14, 2002 (29:20 Md. R. 1588)

Regulation .08J amended as an emergency provision effective July 1, 2003 (30:14 Md. R. 934); amended permanently effective September 29, 2003 (30:19 Md. R. 1332)

Regulation .08J amended effective December 20, 2004 (31:25 Md. R. 1790); March 13, 2006 (33:5 Md. R. 520); January 1, 2007 (33:26 Md. R. 1997); December 31, 2007 (34:26 Md. R. 2263)

Regulation .10G amended as an emergency provision effective April 8, 2004 (31:9 Md. R. 711); amended permanently effective August 2, 2004 (31:15 Md. R. 1185)

Regulations .13 and .14 recodified to be Regulations .14 and .15 respectively, and new Regulation .13 adopted effective March 13, 2006 (33:5 Md. R. 520)

10.22.18.00 (10-21-08)

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 22 DEVELOPMENTAL DISABILITIES

Chapter 18 Community Supported Living Arrangements Payment System

Authority: Health-General Article, §§2-104(b), 7-306.1, 7-714, 7-910(c), 15-105, 15-107, and 16-201, Annotated Code of Maryland; Chapter 102, Acts of 2001

10.22.18.01

.01 Scope.

A. This chapter establishes the methodology by which the Department shall reimburse licensed Community Supported Living Arrangements providers for:

(1) Services, the provision of which begins after June 30, 2000; and

(2) Existing services provided under contract which the Department shall convert to this rate system.

B. The rates are based on the service needs of the individual and an allowance for indirect expenses incurred by licensees.

C. Reimbursement for supplemental services are for services not covered by the rates.

D. Services reimbursed by the Community Supported Living Arrangements payment system established by this chapter are paid for by Medicaid funds or, in whole or in part, by State general funds.

E. This chapter does not limit the Administration's ability to contract for other services or additional services according to State procurement laws and as set forth in this chapter.

F. The Community Supported Living Arrangements payment system is subject to the budget appropriation approved by the General Assembly.

G. The Administration pays for the most effective service at the most efficient cost.

10.22.18.02

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Actual costs" means all direct and indirect costs that the provider incurs for labor performed or goods delivered.

(2) "Administration" means the Developmental Disabilities Administration.

(3) "Base services" means services covered by the rate.

(4) "Community Supported Living Arrangements (CSLA)" has the meaning stated in COMAR 10.22.01.01B(12).

(5) "Department" means the Department of Health and Mental Hygiene.

(6) "Direct services" means services provided directly to the individual.

(7) "Existing services" means a service provided continuously to an individual by the same provider beginning on or before June 30, 2000.

(8) "Fiscal management services (FMS)" means a person approved by the Administration and designated as an Organized Health Care Delivery System under COMAR 10.22.20 that:

(a) Assists individuals and families in managing their funds and paying for services; and

(b) Is responsible for submitting financial reports to the individual and Administration.

(9) "Hours of service" means the preauthorized hours of direct services made available to the individual being served as identified in the individual plan.

(10) "Individual plan (IP)" has the meaning stated in COMAR 10.22.01.01B(27).

(11) "Licensee" means a provider of Community Supported Living Arrangement services licensed under COMAR 10.22.02.01A.

(12) "New individuals" means those individuals starting Community Supported Living Arrangements services with a licensee after June 30, 2000.

(13) Professional Services.

(a) "Professional services" means services provided by an individual authorized to perform these services under Health Occupations Article, Annotated Code of Maryland.

(b) "Professional services" includes but is not limited to direct, on- going nursing services and behavioral services provided in accordance with COMAR 10.22.10.

(14) "Rate" means the amount the Department pays for an hour of CSLA service and covers all actual costs incidental to providing the service, including but not limited to coordination of the service; nursing review of services; administrative costs; staff hiring, training, travel, and supervision; and program direction. The hours of service are used to determine the rate.

(15) "Self-directed services" means services, as approved by the Administration:

(a) That an individual arranges; and

(b) For which the individual reimburses the provider.

(16) "Supplemental services" means preauthorized services not covered by the rate.

(17) "Support broker" means a person employed by individuals and families, who have been determined eligible by the Administration, that helps them:

(a) Decide what services and supports are best for them; and

(b) Access and manage the chosen services and supports.

10.22.18.03

.03 General Requirements.

A. To provide CSLA services and seek reimbursement from the Administration, a licensee shall:

(1) Be licensed in accordance with Health-General Article, Title 7, Annotated Code of Maryland, and COMAR 10.22.02;

(2) Comply with:

(a) COMAR 10.22.08; and

(b) COMAR 10.09.26;

(3) Execute an agreement with the Administration;

(4) Comply with the Administration's reporting and record-keeping requirements, including:

(a) Submitting an annual cost report on a form approved by the Administration not later than 6 months after the end of the State fiscal year that:

(i) Documents the licensee's actual expenditures for the fiscal year being reported;

(ii) Is based on the licensee's audited financial statement;

(iii) Includes a work sheet reconciling the cost report to the financial statement; and

(iv) Is certified by an independent certified public accountant, who is not an employee of the licensee or any affiliated organization, for the actual days each individual received services; and

(b) Retaining documentation of the costs for supplemental services for at least 6 years after the expenses are incurred; and

(c) Submitting an annual wage and benefits survey in a format approved by the Administration by the later of 60 days after:

(i) The last day of the pay period for which the data is requested; or

(ii) Receipt of a request from the Administration for wage survey information.

(5) Submit to the Administration for its approval the number of hours of service an individual needs per week, as documented by the individual's IP, on a form specified by the Administration.

B. For reports and data required under this chapter, the Administration may, with notice, suspend payment of 25 percent of the provider's per diem rate until the report or data is received.

C. For the annual cost report and the annual wage and benefits survey, the Administration may, after notice and an opportunity to be heard, fiscally sanction providers as set forth in Health-General Article, §7-910(c), Annotated Code of Maryland.

10.22.18.04 (03/30/09)

.04 Rates.

A. The Department shall reimburse the licensee:

(1) For new individuals served after June 30, 2000, according to the rates set forth in this regulation; and

(2) For individuals receiving existing services, by converting those contracts to the Community Supported Living Arrangements Payment System if appropriate between:

(a) July 1, 2000, and December 31, 2000, if the individuals are living in their own residences, and

(b) January 1, 2001, and June 30, 2001, if the individuals are living with their families.

B. The Administration determines the rate based on the number of preauthorized hours of service each individual needs each week as documented by the individual's IP.

C. If an individual does not need the same amount of services each week, the rate is determined by the number of preauthorized hours of service in a 4-week period divided by 4, and is at least 1 hour each week.

D. The Department shall pay a daily amount per individual calculated by multiplying the number of hours of service each week approved for the individual by the hourly rate and dividing by seven.

E. The basic rates for CSLA services are set forth in §I of this regulation. These rates do not include professional services.

F. Under the rates, the Department may pay for up to 82 hours of service each week.

G. If awake-overnight or one-to-one services are indicated in the individual's IP, and are not included in the 82 hours of base rate service, the Administration may:

(1) Preauthorize and approve additional hours of service beyond 82 hours after reviewing the IP and any additional documentation the Administration requests; and

(2) Reimburse the licensee as set forth in §J of this regulation for these services.

H. Professional Services.

(1) The Administration may preauthorize and approve professional services if:

(a) The individual's IP, and any additional documentation the administration requires indicates the service is necessary; and

(b) The provider submits documentation that:

(i) The individual is not eligible for medical assistance,

(ii) For individuals who are Medicaid eligible, the service sought is not a service covered by the Maryland Medical Assistance Program, or

(iii) If the individual is Medicaid eligible and the service is covered by the Maryland Medical Assistance Program, the provider submits documentation that the Maryland Medical Assistance Program has denied coverage, and the agency is pursuing an appeal.

(2) If the Administration approves and preauthorizes a professional service, the Administration shall reimburse the provider for professional services according to the rate schedule in §K of this regulation except that the Administration may procure services to be reimbursed at a higher rate if:

(a) The provider submits documentation that it cannot find a professional to render services at this rate;

(b) The usual and customary rate charged by the professional for the service is above the rate of this regulation; and

(c) The rate that the Maryland Medical Assistance Program reimburses the professional for this service is higher than the rate established by §K of this regulation.

I. Tables for CSLA Hourly Rates.

(1) State Fiscal Year 2009 CSLA Rates: Table for One Individual in a Dwelling Receiving CSLA Services.

	Hourly Rate Per Individual		
Hours of Service Per Week	Baltimore City and Allegany, Anne Arundel, Baltimore, Caroline, Carroll, Dorchester, Garrett, Harford, Howard, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester Counties	Cecil County	Calvert, Charles, Frederick, Montgomery, and Prince George's Counties
1—19	$25.35	$26.24	$26.47
20—22	$24.43	$25.29	$25.50
23—24	$23.61	$24.44	$24.65
25	$22.84	$23.64	$23.84
26	$22.13	$22.90	$23.10
27	$21.47	$22.22	$22.41
28—82	$21.16	$21.90	$22.09

(2) State Fiscal Year 2009 CSLA Rates: Table for Two Individuals in a Dwelling Receiving CSLA Services.

	Hourly Rate Per Individual		
Hours of Service Per Week	Baltimore City and Allegany, Anne Arundel, Baltimore, Caroline, Carroll, Dorchester, Garrett, Harford, Howard, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester Counties	Cecil County	Calvert, Charles, Frederick, Montgomery, and Prince George's Counties
1—19	$23.77	$24.60	$24.82
20—22	$22.90	$23.70	$23.91

23—24	$22.13	$22.90	$23.10
25	$21.41	$22.16	$22.35
26	$20.75	$21.48	$21.66
27	$20.13	$20.83	$21.02
28—82	$19.83	$20.52	$20.70

(3) State Fiscal Year 2009 CSLA Rates: Table for Three Individuals in a Dwelling Receiving CSLA Services.

	Hourly Rate Per Individual		
Hours of Service Per Week	Baltimore City and Allegany, Anne Arundel, Baltimore, Caroline, Carroll, Dorchester, Garrett, Harford, Howard, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester Counties	Cecil County	Calvert, Charles, Frederick, Montgomery, and Prince George's Counties
1—19	$19.04	$19.71	$19.88
20—22	$18.35	$18.99	$19.16
23—24	$17.73	$18.35	$18.51
25	$17.16	$17.76	$17.91
26	$16.62	$17.20	$17.35
27	$16.12	$16.68	$16.83
28—82	$15.89	$16.45	$16.59

J. State Fiscal Year 2009 CSLA Rates: Table for 1:1 Support or Not More Than 8 Hours of Awake-Overnight Support per Residence for Individuals Receiving CSLA Services Regardless of the Number of Individuals in a Dwelling.

	Hourly Rate Per Individual		
Hours of Service Per Week	Baltimore City and Allegany, Anne Arundel, Baltimore, Caroline, Carroll, Dorchester, Garrett, Harford, Howard, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester Counties	Cecil County	Calvert, Charles, Frederick, Montgomery, and Prince George's Counties
In Excess of 82 hours	$15.89	$16.45	$16.59

K. State Fiscal Year 2009 CSLA Rates: Table for Professional Services for Individuals Receiving CSLA Services Regardless of the Number of Individuals in a Dwelling.

	Hourly Rate Per Individual		
Hours of Service Per Week	Baltimore City and Allegany, Anne Arundel, Baltimore, Caroline, Carroll, Dorchester, Garrett, Harford, Howard, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester Counties	Cecil County	Calvert, Charles, Frederick, Montgomery, and Prince George's Counties
As preauthorized and approved	$26.16	$27.63	$28

10.22.18.05

.05 Supplemental Services.

A. Supplemental services do not include any services that are in the Maryland Medical Assistance Program and can be provided to an individual and reimbursed under the Medical Assistance Program, or any services covered by private insurance, including Medicare.

B. Supplemental services include:

(1) Respite;

(2) Expenses related to the operation and maintenance of the individual's vehicle;

(3) Medical equipment;

(4) Structural modifications for accessibility;

(5) Habitation start-up;

(6) Assistive technology;

(7) Other services as preauthorized and approved by the Administration; and

(8) Housing costs, if:

(a) The individual is unable to pay the full amount of ongoing housing costs, and

(b) There are no other State or federal resources available to pay for the ongoing housing costs.

10.22.18.07

.07 Payment for Base Services.

The licensee shall submit invoices or electronic claims in the form determined by the Administration.

10.22.18.08

.08 Payment For Supplemental Services.

A. The Administration shall pay the lower of either:

(1) Reasonable customary and actual costs not to exceed the cost to the general public; or

(2) Medicaid-approved rates.

B. Reasonable customary and actual costs are determined and authorized by the Administration before the delivery of the service.

C. The Department shall reimburse the licensee for preauthorized supplemental services upon submission of an invoice.

10.22.18.09

.09 Contract.

The Administration shall contract for services needed by an individual as documented in the IP and preauthorized but not covered by rates or supplemental services in accordance with the State's procurement requirements.

10.22.18.10

.10 Rates for Self-Directed Services.

A. If there is an existing contract for family support services or individual support services, the contract amount less the amount to be paid for fiscal management services shall be used in determining the amount of money available for purchasing support services and support brokerage services in an individual's budget.

B. If there is no existing contract for family support services or individual support services, the CSLA rates less the amount to be paid for fiscal management services shall be used in determining the amount of money available for purchasing support services and support brokerage services in an individual's budget.

10.22.18.9999

Administrative History

Effective date:

Regulations .01—.09 adopted as an emergency provision effective July 1, 2000 (27:15 Md. R. 1397); adopted permanently effective October 30, 2000 (27:21 Md. R. 1976)

Regulation .02B amended effective March 13, 2006 (33:5 Md. R. 520)

Regulation .03 amended as an emergency provision effective July 1, 2001 (28:15 Md. R. 1395); amended permanently effective October 1, 2001 (28:19 Md. R. 1684)

Regulation .03 amended as an emergency provision effective July 1, 2002 (29:15 Md. R. 1139); amended permanently effective October 14, 2002 (29:20 Md. R. 1588)

Regulation .03A amended as an emergency provision effective July 1, 2003 (30:14 Md. R. 934); amended permanently effective September 29, 2003 (30:19 Md. R. 1333)

Regulation .04 amended as an emergency provision effective July 1, 2001 (28:15 Md. R. 1395); amended permanently effective October 1, 2001 (28:19 Md. R. 1684)

Regulation .04 amended as an emergency provision effective July 1, 2002 (29:15 Md. R. 1139); amended permanently effective October 14, 2002 (29:20 Md. R. 1588)

Regulation .04 amended as an emergency provision effective July 1, 2003 (30:14 Md. R. 934); amended permanently effective September 29, 2003 (30:19 Md. R. 1333)

Regulation .04I, J, K amended effective December 20, 2004 (31:25 Md. R. 1790); March 13, 2006 (33:5 Md. R. 520); December 7, 2006 (33:24 Md. R. 1906); December 31, 2007 (34:26 Md. R. 2263)

Regulation .10 adopted effective March 13, 2006 (33:5 Md. R. 520)

10.22.19.00 (10-21-08)

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 22 DEVELOPMENTAL DISABILITIES

Chapter 19 Special Programs

Authority: Health-General Article, §§2-104(b), 7-306.1, and 7-904, Annotated Code of Maryland

10.22.19.01

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Day services" means services provided by a licensed provider under COMAR 10.22.07.03E.

(2) "Enclave" means a group of eight or fewer individuals with developmental disabilities that works as a single team in a single community work site.

(3) "Fiscal Incentive Program for Employment (FIPE)" means the program that provides a one-time fiscal incentive to eligible programs to assist individuals with developmental disabilities in securing and maintaining a job of the individual's choice in the community.

(4) "Mobile crew" means a group of eight or fewer individuals with developmental disabilities that operates as a single team moving from one work site to another, performing contracted tasks such as custodial and ground maintenance.

(5) "Self-employed" means an individual who owns and operates a business that generates revenue.

(6) "Sheltered environment" means a setting that is segregated to include only individuals with disabilities who perform work or simulated work training activities for subminimum wages.

(7) "Supported employment" has the meaning stated in COMAR 10.22.07.03C.

10.22.19.02

.02 Fiscal Incentive Program for Employment.

A. Provider Eligibility. A provider is eligible to be included in the FIPE if the provider:

(1) Is licensed as a vocational or day services program under COMAR 10.22.07; and

(2) Provides services to an eligible individual.

B. Individual Eligibility. An individual is eligible to be included in the FIPE if the individual:

(1) Has a developmental disability;

(2) Has not received a day service funded by the Administration before July 1, 2003;

(3) Is employed in the same job for 6 months which commenced on or after July 1, 2003, or if the individual was employed before entering DDA supported employment services, the 6 months of employment at the same job begins on the day in which the individual begins services, which is on or after July 1, 2003;

(4) Is receiving ongoing supports and services that are individually determined in order to attain and maintain a job of the individual's choice; and

(5) Has not been previously included in the FIPE.

C. Employment Eligibility. A job is an eligible job under the FIPE if:

(1) The job is:

(a) Located in the community;

(b) Individualized;

(c) Not an enclave, mobile crew, or in a segregated environment; and

(d) Based on the individual's interests; and

(2) The individual:

(a) Is paid a competitive salary and, if available, offered benefits directly by the employer;

(b) Does not receive salary and, if available, benefits from the provider or any organization affiliated with the licensee;

(c) Deals directly with the employer regarding working conditions such as work schedule;

(d) Has the opportunity for increased responsibility, career advancement, and increased wages based on performance; and

(e) If self-employed, the business generates revenue.

D. Reimbursement.

(1) If the provider wishes to seek reimbursement through the FIPE, the provider shall:

(a) Complete the application form provided by the Administration;

(b) Provide:

(i) Pay stubs for the last 6 months showing that an individual was employed in the community, as requested by the Administration; or

(ii) If the individual is self-employed, cash flow or other financial statements for the last 6 months;

(c) Provide evidence that ongoing supports and services that are individually determined in order to maintain the job of the individual's choice have been provided;

(d) Provide a written statement from the individual or the individual's proponent indicating that the individual is satisfied with the current job and working conditions, including pay, work schedule, and benefits; and

(e) Provide any other information required by the Administration.

E. Administration Approval. In deciding whether to authorize an individual for inclusion in the FIPE, the Administration shall consider the:

(1) Application and supporting documentation; and

(2) Availability of State funds.

F. Payment.

(1) For each preauthorized and eligible individual, the Administration may approve a payment to the provider in the amount of 10 percent of the individual's annual funding, excluding add-on components and supplemental services, for the year the individual entered the FIPE.

(2) The Administration shall approve only one payment for each preauthorized and eligible individual.

(3) The provider shall submit an invoice to the Administration to receive payment.

10.22.19.9999

Administrative History

Effective date: December 22, 2003 (30:25 Md. R. 1846)

10.22.20.00 (10-21-09)

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 22 DEVELOPMENTAL DISABILITIES

Chapter 20 Organized Health Care Delivery Systems

Authority: Health-General Article, §7-904, Annotated Code of Maryland

10.22.20.01

.01 Purpose.

The purpose of this chapter is to set forth the designation process and requirements for Organized Health Care Delivery Systems (OHCDS). Entities with this designation may subcontract with Medicaid and Non-Medicaid providers to allow individuals to receive services approved in their Individual Plans in the manner which best suits their needs and results in the more complete fulfillment of their plans.

10.22.20.02

.02 Scope.

This chapter establishes the:

A. Methodology that the Department shall use in the designation of entities as Organized Health Care Delivery Systems; and

B. Requirements to be fulfilled by Organized Health Care Delivery Systems.

10.22.20.03

.03 Additional Regulatory Compliance.

In addition to this chapter, a person who becomes an Organized Health Care Delivery System shall comply with the following regulations, as applicable:

A. COMAR 10.22.01—.10;

B. COMAR 10.22.17;

C. COMAR 10.22.18; and

D. COMAR 10.09.26.

10.22.20.04

.04 Definitions.

A. In addition to the definitions set forth in COMAR 10.22.01, in this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Administration" means the Developmental Disabilities Administration.

(2) "Organized Health Care Delivery System (OHCDS)" means, under 42 CFR §447.10, a public or private organization for delivering health services that provides at least one Medicaid service directly and utilizes its own employees rather than contractors.

(3) "Provider entity" means the OHCDS or potential OHCDS.

(4) "Provider of service" means the person who actually delivers the service to the consumer.

10.22.20.05

.05 Designation as an OHCDS.

The Administration shall designate a provider who applies to be an OHCDS if the provider entity:

A. Submits an application on a form approved by the Administration;

B. Is licensed by the Administration to provide one of the following services:

(1) Community supported living arrangements;

(2) Family and individual support services;

(3) Day services;

(4) Supported employment services;

(5) Residential services; and

(6) Other services as applicable;

C. Is a Medicaid enrolled provider and renders at least one Medicaid Service directly; and

D. Meets the requirements of this chapter.

10.22.20.06

.06 OHCDS Requirements.

An OHCDS may either provide services itself or subcontract with another entity, and shall:

A. Ensure that services provided are consistent with the consumer's Individual Plan and are detailed in the payment agreement with the Administration;

B. Submit reports and comply with record keeping in accordance with Health-General Article, §§7-306.1 and 7-910, Annotated Code of Maryland; and

C. Submit claims for Federal Financial Participation monthly or on an alternative time frame established by the Administration of which 50 percent of the OHCDS' quarterly payment may be withheld if required paperwork is not submitted within the designated time frame.

10.22.20.07

.07 OHCDS Subcontracting Requirements.

When subcontracting, the OHCDS shall:

A. Ensure that the providers of service meet all applicable provider qualifications set forth in COMAR 10.22 and 10.09.26, and any applicable industry or regulatory standards;

B. Enter into a subcontract with each provider of service that:

(1) Contains the scope, frequency, duration, and cost of the services to be provided;

(2) Documents the qualifications of the provider of service;

(3) Details service termination procedures;

(4) Is consistent with the Individual's Plan; and

(5) Is executed by the individual, the service provider, and the OHCDS; and

C. Maintain detailed records, to be available to the Administration, its designee, or the respective consumer for review at any time, on the purchase of services from qualified entities or individuals, including invoices.

10.22.20.08

.08 Freedom of Choice of Providers.

This chapter does not infringe on an individual's right to choose freely among qualified providers at any time.

10.22.20.09

.09 Termination of Designation.

The Administration may terminate OHCDS designation as set forth in COMAR 10.22.03.06 and 10.22.03.07.

10.22.02.9999 (02/17/09)

Administrative History

Effective date: July 26, 1999 (26:15 Md. R. 1148)

Regulation .01 amended and recodified to be Regulation .01-1 and new Regulation .01 adopted effective May 5, 2008 (35:9 Md. R. 897)

Regulation .02A, D amended effective January 2, 2006 (32:26 Md. R. 1997)

Regulation .02A amended as an emergency provision effective July 10, 2008 (35:16 Md. R. 1388); emergency status extended to June 1, 2009 (36:2 Md. R. 96); amended permanently effective January 26, 2009 (36:2 Md. R. 100)

Regulation .03 amended effective May 5, 2008 (35:9 Md. R. 897)

Regulation .04 amended effective January 2, 2006 (32:26 Md. R. 1997)

Regulation .05B amended effective January 2, 2006 (32:26 Md. R. 1997)

Regulation .08B, C amended effective January 2, 2006 (32:26 Md. R. 1997)

Regulation .08B, C amended as an emergency provision effective July 10, 2008 (35:16 Md. R. 1388); emergency status extended to June 1, 2009 (36:2 Md. R. 96); amended permanently effective January 26, 2009 (36:2 Md. R. 100)

Regulation .10 amended effective December 17, 2007 (34:25 Md. R. 2210)

10.07.13.00 (02/17/09)

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 07 HOSPITALS

Chapter 13 Forensic Residential Centers (FRCs)

Authority: Health-General Article, §§2-102 and 7-904; Criminal Procedure Article, §3-102; Annotated Code of Maryland

10.07.13.01 (02/17/09)

.01 Scope.

This chapter sets forth requirements for a facility to be licensed as a forensic residential center.

10.07.13.02 (02/17/09)

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Confined" means an order by the court pursuant to Criminal Procedure Article, §3-106(d)(2), Annotated Code of Maryland.

(2) "Court-ordered evaluation" means an evaluation ordered by the court under Criminal Procedure Article, §§3-105 and 3-111, Annotated Code of Maryland, to assist the court to determine if an individual is incompetent to stand trial or is not criminally responsible because of mental retardation.

(3) "Department" means the Department of Health and Mental Hygiene.

(4) "Evaluation unit" means a part of the forensic residential center dedicated to performing court-ordered evaluations pursuant to Criminal Procedure Article, Title 3, Annotated Code of Maryland.

(5) "Forensic residential center (FRC)" means a facility that is:

(a) Licensed to provide a continuum of integrative services to individuals with mental retardation:

(i) Ordered by the court for an evaluation or to be confined;

(ii) Court-committed for care or treatment to the Department as incompetent to stand trial or not criminally responsible, who are dangerous as a result of mental retardation; or

(iii) On conditional release and returned to the facility either voluntarily or on hospital warrant;

(b) A related institution as defined in Health-General Article, §19-301(o), Annotated Code of Maryland; and

(c) Not an extended care or comprehensive rehabilitation facility.

(6) "Incompetent to stand trial (IST)" has the meaning set forth in Criminal Procedure Article, §3-101(f), Annotated Code of Maryland.

(7) "Not criminally responsible (NCR)" means a verdict of not criminally responsible as set forth in Criminal Procedure Article, §3-109, Annotated Code of Maryland.

(8) "Qualified developmental disabilities professional (QDDP)" means an individual who coordinates and monitors the delivery of services for individuals with mental retardation.

(9) "Therapeutic care unit" means an FRC or part of an FRC dedicated to providing care or treatment to individuals who are court-committed or confined.

10.07.13.03(02/17/09)

.03 Licensing Procedure.

A. The Secretary shall license an FRC that meets the requirements of this chapter.

B. The license for an FRC shall be effective for 1 year.

C. The Secretary may renew the license of an FRC if it continues to meet the requirements of this chapter.

D. Approval, Denial, Revocation, and Sanctions.

(1) The Secretary may deny an application, suspend, revoke, or impose disciplinary sanctions on the license of an FRC if it fails to comply with the requirements of this chapter.

(2) Any action to deny an application, suspend, revoke, or impose sanctions on a license shall be governed by COMAR 10.22.03.

10.07.13.04 (02/17/09)

.04 Administrative Requirements.

A. In addition to the requirements of this chapter, an FRC shall comply with the applicable requirements of COMAR 10.22.02.

B. Safety and Sanitation.

(1) An FRC's grounds, fixtures, and equipment shall:

(a) Be maintained in good repair and be clean and attractive;

(b) Be free of unnecessary accumulations of personal property or debris;

(c) Be free of hazards, insects, and rodents; and

(d) Be free from fire hazards.

(2) An FRC shall comply with all applicable local fire and building codes and the Maryland State Fire Prevention Code, which is incorporated by reference in COMAR 29.06.01.

C. Living Space. An FRC shall:

(1) Have bedrooms that:

(a) Have at least one outside wall;

(b) Are equipped with or located near toilet and bathing facilities;

(c) Accommodate no more than two individuals, provided such arrangement is clinically appropriate; and

(d) Measure at least:

(i) 60 square feet per individual in multiple individuals' bedrooms; and

(ii) 80 square feet in single individual's bedrooms;

(2) Have adequate bathroom facilities and maintain water temperature that does not exceed 110 degrees Fahrenheit in areas where individuals do not demonstrate the capability to regulate water temperature;

(3) Provide adequate space and equipment for dining, living, health and therapeutic services, recreation, and other program activities; and

(4) Provide that the above described living space be:

(a) Dedicated to the sole use of individuals committed for court evaluation or committed or confined pursuant to Criminal Procedure Article, Title 3, Annotated Code of Maryland; and

(b) Separate from areas used, frequented, or occupied by individuals committed or admitted pursuant to Health-General Article, Title 10, Annotated Code of Maryland.

D. Infection Control. The FRC shall:

(1) Establish policies and procedures to investigate, control, and prevent infections in the facility;

(2) Ensure that facility staff follows these policies and procedures; and

(3) Maintain records of actions taken to address and prevent infections.

E. Food Services. The FRC shall employ a qualified dietitian either full-time or part-time, or on a consultant basis at the facility's discretion, who shall:

(1) Provide adequate food and nutrition services;

(2) Provide individuals with a nourishing, well-balanced diet including modified and specially prescribed diets;

(3) Ensure the diet is prepared in accordance with current clinical dietary standards;

(4) Ensure individuals receive at least three meals a day, at regular normal meal times;

(5) Ensure foods are served in variety, appropriate consistency, texture, quantity, in season, and at appropriate temperatures; and

(6) Prepare menus in advance and keep them on file a minimum 30 days.

F. Health Care Services. As clinically appropriate, an FRC shall provide health services for all residents including, but not limited to:

(1) Physician services, 24 hours a day;

(2) Annual physical examinations which include:

(a) Vision evaluations; and

(b) Hearing evaluations;

(3) Immunizations;

(4) Laboratory services;

(5) Nursing services and delegated nursing services in compliance with COMAR 10.27.11;

(6) Medical care or nursing care plans for each individual and reviews of each plan;

(7) Dental care;

(8) Pharmacy services; and

(9) Training or supervision of individuals to:

(a) Self administer medications;

(b) Perform routine treatments; and

(c) Provide for their health care.

G. Personnel and Staffing.

(1) The administrator of an FRC shall:

(a) Ensure appropriate employee health screenings; and

(b) Obtain certification that an employee or volunteer is free from tuberculosis in a communicable form only if the employee or volunteer will be involved in the direct care of tuberculosis patients.

(2) An FRC shall provide an adequate staffing plan in accordance with COMAR 10.22.02.11 to meet the needs of individuals served.

(3) An FRC shall employ a Maryland licensed psychologist as the supervising psychologist who shall:

(a) Supervise the evaluation and therapeutic treatment of individuals;

(b) Use clinical best practices for the FRC population;

(c) Have relevant work experiences and training in conducting and completing functional analyses, assessments, and behavior plans including experience working with individuals with co-occurring diagnoses of mental illness, substance abuse, and mental retardation;

(d) Train direct care staff to collect data, and implement behavior plans and other programs in the individual's plan;

(e) Ensure all services provided are documented appropriately in the individual's record; and

(f) Ensure all behavior plans are developed in accordance with COMAR 10.22.10.

(4) An FRC shall employ a Maryland licensed physician who:

(a) Is certified in psychiatry by the American Board of Psychiatry and Neurology or who has completed the minimum educational and training requirements to be qualified to take the Board examination; and

(b) Has the relevant work experience in providing psychiatric services to individuals with mental retardation and co-occurring disorders including mental disorders and addiction diseases.

(5) An FRC shall employ direct care staff who develop and implement an activity schedule for the individual that includes at a minimum:

(a) The individual's preferred activities;

(b) Opportunities for recreation and social activities;

(c) Times for meals;

(d) Training as indicated in the individual's plan; and

(e) The individual's waking and bedtime hours.

(6) An FRC shall employ a Maryland licensed registered nurse to:

(a) Train direct care staff on an individual's nursing care needs and any delegated nursing services; and

(b) Ensure all services provided are documented in the individual's plan.

(7) The FRC shall have a clinical team that shall include, at a minimum:

(a) A Maryland licensed psychologist;

(b) A Maryland licensed certified social worker—clinical (LCSW-C);

(c) A QDDP;

(d) Direct care staff;

(e) A Maryland licensed registered nurse; and

(f) As necessary:

(i) A psychiatrist;

(ii) A physician; or

(iii) Other licensed staff.

H. Security and Restrictions.

(1) A resident may have access to personal electronic devices according to the resident's individual plan.

(2) A resident may not have access to or possess:

(a) Illegal products;

(b) Cigarettes, alcohol, or pornography; or

(c) Items or objects that the supervising psychologist documents in the individual's record as contraindicated or designates as dangerous to the individual or others.

(3) The administrator of an FRC shall ensure a safe and secure setting for individuals by providing:

(a) Adequate staffing;

(b) Adequate supervision of individuals;

(c) Appropriate training for staff to perform their job duties competently; and

(d) Designated visitors' rooms with appropriate supervision of individuals during visits as needed.

(4) The administrator of an FRC may utilize the following environmental security measures:

(a) Security doors and windows;

(b) Security screens;

(c) Appropriate locks;

(d) Alarm systems;

(e) Electronic monitoring devices;

(f) Video monitoring systems;

(g) Outdoor gates and fences with locks; and

(h) Enclosed or locked patios.

(5) A resident's rights to communications and restrictions of communications are set forth in Health-General, §10-702, Annotated Code of Maryland, and adopted herein.

I. Emergency Management Plans. The administrator of an FRC shall develop an emergency plan for all types of emergencies and disasters in accordance with COMAR 10.07.20.05E.

J. Standing Committee Approval. An FRC shall assure that the quality assurance standing committee reviews all behavioral plans in accordance with COMAR 10.22.02.14E.

10.07.13.05 (02/17/09)

.05 Enrollment, Release, and Discharge.

A. All individuals in an FRC are ordered or committed by the court to the Department, or under the court's jurisdiction pursuant to an order of conditional release as set forth in Criminal Procedure Article, Title 3, Annotated Code of Maryland.

B. An individual on conditional release who voluntarily agrees to admission to a therapeutic care unit shall be admitted as set forth in the conditional release order.

C. Release from an FRC.

(1) Individuals court ordered for evaluation shall be released from the evaluation unit as set forth in Criminal Procedure Article, §3-105 or 3-111, Annotated Code of Maryland.

(2) Individuals committed as IST or NCR shall be released as set forth in Criminal Procedure Article, Title 3, Annotated Code of Maryland.

D. Confined individuals shall be discharged as set forth in Health-General Article, §7-503(e), Annotated Code of Maryland.

E. Individuals admitted pursuant to a hospital warrant shall be discharged as set forth in Criminal Procedure Article, §3-121, Annotated Code of Maryland.

F. Individuals who voluntarily admit themselves pursuant to a conditional release order shall be discharged as set forth in the conditional release order.

10.07.13.06 (02/17/99)

.06 Services.

A. Services provided by an FRC shall include:

(1) As set forth in Criminal Procedure, Title 3, Annotated Code of Maryland, all required evaluations and reports; and

(2) Therapeutic services designed to prepare the individual for productive community living, that address issues of dangerousness, and are based on an interdisciplinary team assessment considering least restrictive interventions, include but are not limited to:

(a) For individuals committed as IST, competency attainment services; and

(b) For all individuals, services as set forth in the Individual Plan and, as clinically appropriate, therapeutic services include, but are not limited to:

(i) Behavioral and mental health plans and services;

(ii) Physical, speech, and occupational therapies;

(iii) Habilitation services including vocational, educational, and life skills training; or

(iv) Development of an aftercare or services plan.

B. Therapeutic services for all individuals shall be conducted in space not simultaneously shared or used with individuals who are not residents of the FRC.

10.07.13.9999 (02/17/09)

Administrative History

Effective date:

Regulations .01—.06 adopted as an emergency provision effective July 10, 2008 (35:16 Md. R. 1388); emergency status extended to June 1, 2009 (36:2 Md. R. 96); adopted permanently effective January 26, 2009 (36:2 Md. R. 100)

10.07.20.00 (02/17/09)

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 07 HOSPITALS

Chapter 20 Intermediate Care Facilities Serving the Mentally Retarded

Authority: Health-General Article, §19-318, Annotated Code of Maryland

10.07.20.01 (02/17/09)

.01 Scope.

This chapter applies to any person, whether public or private, operating a facility that:

A. Provides health-related services on a regular basis to individuals:

(1) Who do not require hospital care; and

(2) Whose mental or physical condition requires services that:

(a) Are above the level of room and board, and

(b) Can be made available only through institutional facilities; and

B. Has as its primary purpose the provision of health rehabilitative services for individuals with mental retardation or related conditions.

10.07.20.02 (02/17/09)

.02 Applicability of Health-General Article, Annotated Code of Maryland.

An intermediate care facility serving the mentally retarded shall be considered:

A. A "related institution" under Health-General Article, § 19-301 and shall be governed by the provisions of Title 19, Subtitle 3 of that article; and

B. A provider of "services" under Health-General Article, § 7-101 and shall be governed by the applicable provisions of Title 7 of that article including:

(1) Subtitle 4: Provisions of Services,

(2) Subtitle 5: State Residential Centers for Individuals With Mental Retardation if the facility is operated by the State,

(3) Subtitle 8: Transfers, and

(4) Subtitle 10: Rights of Individuals.

10.07.20.03 (02/17/09)

.03 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Department" means the Department of Health and Mental Hygiene.

(2) "Facility" means an intermediate care facility serving the mentally retarded (ICF-MR) within the scope of this chapter.

(3) "License" means a license issued by the Secretary to operate a facility.

(4) "Secretary" means the Secretary of Health and Mental Hygiene.

10.07.20.04 (02/17/09)

.04 Licensing Procedure.

A. A person shall be licensed by the Secretary before the person may operate a facility in the State.

B. An applicant for a license shall:

(1) Submit to the Secretary an application:

(a) In the form and manner prescribed by the Secretary, and

(b) Signed and verified by the applicant; and

(2) Pay to the Secretary an application fee in the amount provided in COMAR 10.07.15.

C. The Secretary shall issue a license to an applicant who meets the requirements of these regulations.

D. A license authorizes the licensee to operate a facility while it is effective and is not transferable.

E. Term and Renewal of License.

(1) A license expires on the first anniversary of its effective date unless it is renewed for a 1-year term as provided in this section.

(2) Before the license expires, the licensee may renew it for another 1-year term, if the licensee submits to the Secretary:

(a) A renewal application in the form and manner prescribed by the Secretary;

(b) Satisfactory evidence of compliance with any requirement of the regulations for license renewal; and

(c) The license renewal fee provided in COMAR 10.07.15.

F. The Secretary may:

(1) Deny a license to any applicant;

(2) Deny the renewal of a license to a licensee; or

(3) Revoke a license of a licensee if the applicant or licensee does not meet the requirements of this chapter.

10.07.20.05 (02/17/09)

.05 Standards of Operation.

A. General. Whether or not a facility participates in Medicare or Medicaid, the facility shall meet the requirements set forth in 42 CFR § 483.400 et seq., which is incorporated by reference.

B. Safety and Sanitation. The facility, its grounds, fixtures and equipment shall be:

(1) Maintained in good repair, clean, and attractive;

(2) Free of unnecessary accumulations of personal property or debris; and

(3) Free of hazards, insects, and rodents.

C. Infection Control. The administrator shall:

(1) Establish policies and procedures to investigate, control, and prevent infections in the facility; and

(2) Ensure that facility staff follow these policies and procedures.

D. Personnel.

(1) The administrator shall provide orientation and training for all staff and volunteers.

(2) If the center provides care for individuals with Alzheimer's disease or related disorders:

(a) The administrator shall provide annual in-service education on the care of individuals with dementia; and

(b) Each employee shall complete an instructional unit on dementia as described in COMAR 10.07.02.40H before the later of:

(i) 180 days from beginning of employment, or

(ii) One year from the effective date of these regulations.

(3) Employee Health Screening. A facility shall obtain certification that an employee or volunteer is free from tuberculosis in a communicable form as provided in Regulation .06 only if the employee or volunteer:

(a) Will be involved in the direct care of tuberculosis patients; or

(b) Is an immigrant from Africa, Asia, or Latin America.

E. Emergency Management Plans. State residential centers shall develop an emergency plan for all types of emergencies and disasters that shall include:

(1) Procedures that will be followed before, during, and after an emergency to address the following:

(a) The evacuation, transportation, or 72-hour shelter-in-place of individuals and staff served;

(b) Holding an annual practice drill coordinated with local emergency planners for sheltering-in-place or evacuating;

(c) Preparing an after action report and improvement plan after drills that evaluates the plan and takes corrective actions;

(d) Ensuring that individuals served and staff have identification with current health, contact, and other important information that is immediately accessible in the event of evacuation;

(e) The role of the resident, family member, or legal representative in the event of evacuation;

(f) Arranging for medical needs and other accommodations for individuals served and staff at alternative facilities or shelters; and

(g) Establishing a communication protocol among all appropriate parties that includes redundant communication means;

(2) The notification to families, staff, and respective DDA regional office regarding the action that will be taken concerning the safety and well-being of the individuals served;

(3) The staff coverage, organization, and assignment of responsibilities that includes:

(a) Planning staff coverage needs for ongoing shelter-in-place or evacuations;

(b) Identifying staff members available to report for work or remain during extended periods; and

(c) Establishing staff notification and recall contingency plans and procedures;

(4) The continuity of operations, including, but not limited to, redundant communications systems, preservation of records and electronic data, the procurement of essential goods, equipment, and services, plans to secure vacated facilities, and the relocation to alternate facilities;

(5) Procedures to:

(a) Backup and electronically store off-site, appropriate records and data of consumers and staff and facility documents, for access under emergency conditions; and

(b) Ensure access to an electronic copy of the emergency plans when requested by local, State, or federal emergency management organizations;

(6) Provisions to ensure that the facility's emergency and disaster plans are shared with local emergency management organizations for the purpose of coordinating local emergency planning;

(7) An executive summary of the evacuation procedures that shall be provided to the family member of a resident on request; and

(8) A summary statement of the facility's community surge capacity abilities.

10.07.20.06 (02/17/09)

.06 Tuberculosis Screening.

A. An employee or volunteer may be certified as required in Regulation .05D(3) in one of the following four ways:

(1) If the individual has documentation of a negative tuberculin test by the Mantoux method within the past 24 months and has, by history, no contact with a person with tuberculosis in a communicable form subsequent to this documentation or no symptoms consistent with tuberculosis, the individual shall be considered to be a negative tuberculin reactor and to be free from tuberculosis in a communicable form. Further skin testing may not be necessary except for epidemiologic diagnostic purposes which may be required by the local health officer or the Department.

(2) If the individual does not have documentation of a negative tuberculin test by the Mantoux method within the past 24 months and does not have a history of having had a positive tuberculin test by the Mantoux method, the following procedure shall be done:

(a) Five Tuberculin Units (TU) of Purified Protein Derivative (PPD) shall be administered intradermally and the results read 48—72 hours subsequent to the administration of the test;

(b) An individual with induration of 5—9 mm and no history of contact with a person with tuberculosis in a communicable form or an individual with induration of 0—4 mm shall be considered to be a negative tuberculin reactor and to be free from tuberculosis in a communicable form;

(c) An individual with induration of 5—9 mm and a history of contact with a person with tuberculosis in a communicable form or an individual with induration of 10 mm or more shall be considered to be a positive tuberculin reactor and shall be handled as described in §A(3)(a),(b), and (c), below.

(3) If the individual is a positive tuberculin reactor as defined in §A(2)(c), above, or if the individual has a history of a positive tuberculin test by the Mantoux method without documentation of having received an adequate course of therapy, as defined by the local health officer, for tuberculosis disease or received adequate prophylaxis, as defined by the local health officer, for tuberculosis infection, the following procedure shall be done:

(a) If the individual does not have documentation of a negative chest X-ray within the past 12 months, the individual shall be evaluated by a chest X-ray. If the chest X-ray is negative, the individual shall be considered to be free from tuberculosis in a communicable form and shall have a repeat chest X-ray in 12 months, unless isoniazid therapy is instituted, in which case the second chest X-ray is unnecessary.

(b) If the individual has documentation of a negative chest X-ray within the past 12 months, the individual shall be considered to be free from tuberculosis in a communicable form and shall have a repeat chest X-ray 12 months after

the most recent documented chest X-ray unless isoniazid therapy has been instituted, in which case the second chest X-ray is unnecessary.

(c) If the individual has had two successive negative chest X-rays 12 months apart, no further chest X-rays are necessary and the individual shall be considered to be free from tuberculosis in a communicable form unless the individual has symptoms consistent with tuberculosis.

(4) If the individual has documentation of an adequate course of therapy, approved by the local health officer, for tuberculosis disease or adequate prophylaxis, approved by the local health officer, for tuberculosis infection, no further chest X-rays are necessary and the individual shall be considered to be free from tuberculosis in a communicable form unless the individual has symptoms consistent with tuberculosis.

B. The facility shall instruct each employee and volunteer in the signs and symptoms of active tuberculosis and advise the individual to seek immediate medical care should the individual detect these signs or symptoms.

C. If the individual meets any of the following criteria, the facility shall have written policies and procedures, acceptable to the Department, for the evaluation, management, and surveillance of this individual:

(1) A history of tuberculosis or tuberculosis infection without documentation of adequate treatment as defined and determined by the local health officer;

(2) Is currently being treated for tuberculosis disease or tuberculosis infection;

(3) Has chest X-rays consistent with tuberculosis without documentation of adequate treatment as defined and determined by the local health officer; or

(4) Symptoms consistent with tuberculosis or a history of contact with a person with tuberculosis in a communicable form within the past 12 months.

D. The facility shall maintain the following records:

(1) Results of Mantoux tests, recorded in millimeters of induration with dates of administration, dates of reading and results of tests;

(2) Results of X-rays required in §A(3)(a),(b), and (c), above; and

(3) Documentation of any Mantoux test, chest X-ray, chemotherapy, and chemoprophylaxis which is the basis for the certification that the individual is free from tuberculosis in a communicable form.

10.07.20.07 (02/17/09)

.07 Inspections.

A. The Department shall inspect each facility at least annually to determine compliance with these regulations.

B. A licensed facility and any facility applying for a license shall be open to inspection by the Department at all times.

Administrative History

Effective date: December 28, 1987 (14:26 Md. R. 2747)

(COMAR 10.07.20 amended and transferred from COMAR 10.22.04 Public and Private Residential Care Facilities Serving the Mentally Retarded (ICF-MR))

Regulation .05A amended effective February 20, 1989 (16:3 Md. R. 342)

Regulation .05E adopted effective December 17, 2007 (34:25 Md. R. 2210)