



STATE OF MARYLAND

DHMH

Office of Health Services
Medical Care Programs

Maryland Department of Health and Mental Hygiene
201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

MARYLAND MEDICAL ASSISTANCE PROGRAM
Medical Day Care Transmittal No. 60
February 8, 2008

TO: Medical Day Care Centers
FROM: Susan J. Tucker, Executive Director
Office of Health Services

NOTE: Please ensure that appropriate staff members in your organization are informed of the contents of this transmittal.

RE: Adoption of Amendments to COMAR 10.09.07 Medical Day Care Services

The Maryland Medical Assistance Program has adopted amendments to Regulations .01 and .02, repealed Regulations .03, — .05 and .10 — .13, adopted new Regulations .03, .04 and .09 — .12, and amended and recodified Regulations .06 — .09 to be Regulations .05 — .08 under COMAR 10.09.07 Medical Day Care Services, effective January 14, 2008. These regulations were adopted as proposed with non-substantive changes to Regulations .01, .04 — .06 and .09.

These regulations will limit the administrative burden placed on medical day care providers by making regulatory requirements consistent with COMAR 10.12.04 Day Care for the Elderly and Adults with a Medical Disability and COMAR 10.09.54 Home/Community Based Services Waiver for Older Adults.

The Notice of Proposed Action and the Final Action are attached for your review. You may also visit the Division of State Documents' website at www.dsd.state.md.us/comar to review the revised regulations.

Any questions regarding this transmittal may be directed to Medical Day Care staff at (410) 767-1444.

Attachment
cc: League for Excellence in Adult DayCare
Maryland Association of Adult Day Services

	Benefit (+)	
	Cost (-)	Magnitude

- D. On regulated industries or trade groups: (+) Undeterminable
- E. On other industries or trade groups: NONE
- F. Direct and indirect effects on public: NONE

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

D. Providers will benefit from the elimination of inconsistencies and additional requirements for Medicaid participation for centers licensed in compliance with COMAR 10.12.04. Medicaid payment is unaffected, but certain administrative requirements may be reduced.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

Many medical day care centers are small businesses and will benefit from reduction of administrative burden.

Impact on Individuals with Disabilities

The proposed action has an impact on individuals with disabilities as follows:

The proposed action to allow Home/Community Based Services Waiver for Older Adults' case managers to preauthorize and determine the frequency of medical day care service for waiver participants may help to ensure that participants receive services appropriate to their plans of care.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulations and Policy Coordination, DHMH, 201 W. Preston St., Room 512, Baltimore, MD 21201, or call 410-767-6499, or email to regs@dnhm.state.md.us, or fax to 410-333-7687. Comments will be accepted through September 17, 2007. A public hearing has not been scheduled.

.01 Definitions.

- A. (text unchanged)
- B. Terms Defined.

(1) "Adult Day Care Assessment and Planning System (ADCAPS)" means a comprehensive assessment of a participant's strengths, needs, and abilities.

(2) "Advance directive" has the meaning stated in Health-General Article, §5-601, Annotated Code of Maryland.

(3) "Daily attendance record" means a daily attendance account of the physical presence of each medical day care participant that:

- (a) Is designed by the provider;
- (b) Is signed and dated by the staff designated to take attendance or by the medical day care director; and
- (c) Includes the name, medical assistance number, date of service, and arrival and departure times, of each participant, including documentation of time of temporary absences.

(1) (4) (text unchanged)

(5) "Licensed social worker" means an individual who is licensed to practice social work under Health Occupations Article, Title 19, Annotated Code of Maryland.

(2) (6) "Licensed practical nurse" means [a person who holds a license to practice licensed practical nursing in the state in which services are provided] an individual licensed to practice licensed practical nursing under Health Occupations Article, Title 8, Annotated Code of Maryland.

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.07 Medical Day Care Services

Authority: Health-General Article, §§2-104(b), 15-103, 15-105, and 15-111,
Annotated Code of Maryland

Notice of Proposed Action

[07-221-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01 and .02, repeal existing Regulations .03, .04, .05, and .10 — .13, adopt new Regulations .03, .04, and .09 — .12, and amend and recodify Regulations .06 — .09 to be Regulations .05 — .08 under **COMAR 10.09.07 Medical Day Care Services.**

Statement of Purpose

The purpose of this action is to limit the administrative burden placed on medical day care providers by making regulatory requirements consistent with COMAR 10.12.04 Day Care for the Elderly and Adults with a Medical Disability and COMAR 10.09.54 Home/Community Based Services Waiver for Older Adults.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed changes reduce the administrative burden of operating medical day care centers and may have a positive impact on most centers' costs.

II. Types of Economic Impact.

Revenue (R+/R-)	
Expenditure (E+/E-)	Magnitude

- A. On issuing agency: NONE
- B. On other State agencies: NONE
- C. On local governments: NONE

[(7) "Medical social worker" means a person who is in compliance with the social work licensing requirements in the state in which the service is provided.]

[(3)] (7) — [(6)] (10) (text unchanged)

(11) "Medical director" means an individual who is:

(a) Licensed to practice medicine under Health Occupations Article, Title 14, Annotated Code of Maryland; and

(b) Employed by the medical day care center either as a staff member or by a contractual agreement.

[(8)] (12) "Medically handicapped adult" [means a chronically ill or disabled person eligible for day care services under Health-General Article, Title 14, Subtitles 2 and 3, Annotated Code of Maryland, whose illness or disability may not require 24-hour inpatient care, but which in the absence of medical day care services may precipitate admission to or prolong stay in a hospital, nursing facility, or other long term care facility] has the meaning stated in Health-General Article, §14-301(c), Annotated Code of Maryland.

(13) "Medically necessary" means that a service or benefit is:

(a) Directly related to diagnostic, preventive, curative, palliative, rehabilitative, or ameliorative treatment of an illness, injury, disability, or health condition;

(b) Consistent with current accepted standards of good medical practice;

(c) The most cost efficient service that can be provided without sacrificing effectiveness or access to care; and

(d) Not primarily for the convenience of the consumer, family, or provider.

[(9)] (14) (text unchanged)

[(10)] (15) "Occupational therapist" means [a person currently certified by the American Occupational Therapy Association as a registered occupational therapist who is licensed to practice in the state in which the service is provided if licensure exists in that state] an individual who practices occupational therapy under Health Occupations Article, Title 10, Annotated Code of Maryland.

[(11)] (16) (text unchanged)

[(12)] (17) "Participant" means a recipient:

(a) Who [meets the definition of] is a medically handicapped adult [pursuant to Health-General Article, Title 14, Subtitle 3, Annotated Code of Maryland, as limited by Health-General Article, §15-111, to those who are] as defined under §B(13) of this regulation and who is certified by the Department or its designee as requiring nursing facility services, as defined [in] under COMAR 10.09.10 [and 10.09.11], but whose condition does not require [24-hour] institutional care unless Medical Day Care Services[, as defined in §B(5) of this regulation,] or other services that provide alternatives to institutional care are not available; and

(b) (text unchanged)

[(13)] "Participant register" means a daily certifiable attendance account of the physical presence of each medical day care participant, designed by the provider and subject to approval and audit by the Program.

(14) "Personal hygiene care" means services including bathing, showering, back rubs, toileting, dressing, and care of mouth, teeth and dentures, performed by an employee of the medical day care center under the supervision of a registered nurse.]

(18) "Personal care services" means assistance with activities of daily living.

[(15)] (19) "Personal physician" means [a person currently authorized to practice medicine in the state in which the service is provided, who] an individual who:

(a) Is licensed to practice medicine under Health Occupations Article, Title 14, Annotated Code of Maryland; and

(b) [accepts] Accepts primary medical responsibility for a recipient [by ordering medical day care and signing the individual plan of care].

[(16)] (20) "Physical therapist" means [a person who is licensed as a physical therapist in the state in which services are provided] an individual licensed to practice physical therapy under Health-General Article, Title 13, Annotated Code of Maryland.

[(17)] (21) (text unchanged)

[(18)] (22) "Plan of care" means a written plan which is:

(a) (text unchanged)

(b) Approved by the personal physician as indicated by the physician's dated signature; and

[(c) Updated at least every 90 days;

(d) A comprehensive] (c) An assessment of the participant's health status [including all pertinent diagnoses, prognosis, frequency and types of services required, treatment goals for each type of service ordered, rehabilitation potential, functional limitations, level of activity permitted, diet, medications and treatments, and projected date of discharge, all of which are entered in the participant's medical day care record] and all of the participant's special care requirements, including all services or interventions necessary to maintain the participant at, or to restore the participant to, optimal capability for self care.

[(19)] (23) — [(23)] (27) (text unchanged)

(28) "Referral" means to direct a participant, family member, or caretaker to the appropriate community agency or health care provider, or to contact the agency or provider on the participant's behalf, to facilitate access to needed services.

[(24)] (29) "Registered nurse" means [a person who is licensed to provide skilled nursing care in the state in which services are provided] an individual licensed to practice as a registered nurse under Health Occupations Article, Title 8, Annotated Code of Maryland.

[(25)] (30) — [(26)] (31) (text unchanged)

[(27)] "Staff physician" means the physician who is employed by the medical day care center either as a staff member or by a contractual agreement to provide the required medical services. The staff physician shall be currently authorized to practice medicine in the state in which service is provided.

(28) "State-Only recipients" means those recipients in the Program administered and financed by the State who do not meet the technical requirements of Title XIX of the Social Security Act, for whom the State does not claim federal financial participation, and who are identified by an "S" on their Medical Assistance cards.]

[(29)] (32) "Supervision" means initial direction or periodic [inspection] monitoring of the actual activity.

(33) "Unit of care" means 5 hours of service per day delivered to participants at:

(a) The day care center; or

(b) An off-site activity sponsored and supervised by the center.

.02 Licensing Requirements.

The provider shall be licensed [pursuant to Health-General Article, Title 14, Subtitles 2 and 3, Annotated Code of Maryland] under COMAR 10.12.04.

.03 Conditions for Participation.

Requirements for providing medical day care services are that the providers shall:

A. Meet the licensure requirements as provided in Regulation .02 of this chapter;

B. Meet the requirements of COMAR 10.09.36;

C. Be open to participants at least 6 hours a day, 5 days a week, and post hours of operation;

D. Verify the licenses and credentials for all professionals employed by or contracting with the medical day care center;

E. Provide or arrange for the provision of any covered service, as specified in Regulation .05 of this chapter, or any other service which is required by a plan of care;

F. Have a written agreement with each participant which includes the following:

(1) Dated signature of the participant or responsible representative and provider representative;

(2) Name, address, and telephone number of the participant and the medical day care center;

(3) Medical Assistance number of the participant;

(4) Frequency of attendance authorized by:

(a) A physician in accordance with §I(4)(b) of this regulation; or

(b) The participant's case manager in accordance with §I(3) of this regulation;

(5) A statement that the participant or responsible representative shall have access to the individual's plan of care; and

(6) A statement that enrollment is voluntary, but that a participant or a participant's caregiver shall notify the medical day care center when the participant is unable to attend;

G. Demonstrate to the satisfaction of the Program that a need exists for medical day care in the service area and that the provider has the necessary expertise to deliver the service;

H. Have policies and procedures as required under COMAR 10.12.04;

I. Maintain medical records for each participant which shall include, as a minimum, the following:

(1) An application for admission;

(2) The medical day care center's plan of care as required under §N(3) — (4) of this regulation;

(3) The current waiver plan of care and the approved medical day care preauthorization form for a participant enrolled in the Home/Community Based Services Waiver for Older Adults who is receiving medical day care services;

(4) Physician orders for all services rendered which may include, but is not limited to, the:

(a) Type and duration of service;

(b) Frequency of service; and

(c) Dosage and frequency of medications when prescribed;

(5) The medical history, chronic illnesses, principal and significant diagnoses, prognoses, prescribed medications, special diets, allergies, and assessments of the recipient's physical and mental status specifying the general types of activities the recipient can and cannot do;

(6) The documentation of daily nursing observations for the first 5 days of attendance, and monthly after the first 5 days of attendance; and

(7) The initial social history, quarterly ADCAPS assessment and, when needed, social service and activity progress notes;

J. Have an emergency plan for each participant which includes, as a minimum, an easily located file on each participant, listing:

(1) The name and telephone number of the participant's personal physician;

(2) The advance directive in accordance with Health-General Article, §5-602, if requested or made by the participant;

(3) All allergies identified by the participant or the participant's personal physician;

(4) The treatments or medications for a participant's conditions; and

(5) The name and telephone number of a family member, caregiver, or friend to be notified in case of emergency;

K. Provide training for medical day care staff in emergency procedures, including cardiopulmonary resuscitation and first aid;

L. Have accurate daily attendance records that are easily retrievable and available for review by the Program;

M. Have accurate daily transportation records that are easily retrievable and available for review by the Program, and shall include, as a minimum, each participant's transportation plan;

N. Establish a multidisciplinary team consisting of all appropriate medical day care staff who shall:

(1) Assess the participant to determine the appropriateness of the medical day care center's program;

(2) Determine the medical, psychosocial, and functional status of each participant by conducting quarterly ADCAPS evaluations;

(3) Develop an individual plan of care in conjunction with the personal physician's orders and the participant or participant's representative; and

(4) Review and update with the participant or participant's representative, the individual plan of care semi-annually or more frequently when there is a change in the participant's condition;

O. Have a quality assurance program which includes, as a minimum, health care audits and utilization reviews that:

(1) Consist of a review of medical records on all participants that evaluate the appropriateness of admissions, the efficiency, adequacy, and coordination of provided services, and the length of stay and discharge practices, as needed;

(2) Include the following elements:

(a) Development of outcome criteria for presenting problems common to the medical day care center's participants;

(b) Description of actual outcomes as abstracted from the medical day care center's medical records for all the participants served over a specific time period for each presenting problem for which outcome criteria have been developed;

(c) Evaluation of actual outcomes compared with the outcome criteria to identify problem areas or reasons for sub-optimal care;

(d) Documented submission of recommended corrective action to the program director; and

(e) Reassessment of the appropriateness of the recommended corrective action as revealed by the outcomes of the next audit; and

(3) Is signed and dated by the program director or designee; and

P. Have a signed and dated corrective action plan transferring the participant to the appropriate service, if it is determined that the medical day care center's program is not appropriate for an individual participant.

.04 Staffing Requirements.

A. The medical day care center shall have adequate staffing capability to monitor the participants at all times. The composition of the staff depends in part on the needs of the

participants and on the number of participants the program serves. At a minimum, the medical day care center shall meet the requirements of COMAR 10.12.04.13.

B. The medical day care center shall also have:

(1) A full-time or part-time licensed social worker, who has at least 1 year of experience providing services to adults in a health care setting; and

(2) A full-time, part-time, or contractual medical director who:

(a) Has 1 year of experience in the care of impaired adults;

(b) May function as personal physician for those participants who do not have a personal physician, consult with staff regarding a participant's condition and medical needs, and assist with the development of the medical day care center's health care policies; and

(c) Arrange for orientation and ongoing in-service training of staff, students, and volunteers.

C. The medical day care center is required under COMAR 10.12.04 to have a director who has a bachelor's degree or is a registered nurse. When the director is not a registered nurse, the center shall designate a health director who is a registered nurse. The health director shall:

(1) Establish, develop, and amend the center's health care policies and procedures;

(2) Supervise health care services;

(3) Manage the delivery of all required health care services to ensure that needed services are provided in a timely manner by appropriate personnel consistent with each individual's plan of care; and

(4) Consult with other health care providers to coordinate care, services, and referrals.

[.06] .05 Covered Services.

A. The Program reimburses for a [day] unit of care which includes the following services:

(1) [Medical] Health care services supervised by the [staff physician] director, medical director, or health director, which emphasize primary prevention, early diagnosis and treatment, rehabilitation and continuity of care, including the following:

(a) (text unchanged)

(b) Participation in the determination of the participant's medical, psychosocial, and functional status; and

(c) (text unchanged)

(2) Health care services performed by the medical director, which include consultation with:

(a) Staff regarding a participant's condition and health care needs; and

(b) A participant's personal physician;

[(2)] (3) Nursing services performed by a registered nurse or by a licensed practical nurse under the supervision of a registered nurse which include:

(a) — (h) (text unchanged)

(i) Discharge planning; and

(j) Nursing services [as appropriate] that may be delegated to other staff, if supervised by the registered nurse, in accordance with the Maryland Nurse Practice Act, Health Occupations Article, Title 8, Annotated Code of Maryland;

[(3)] (4) (text unchanged)

[(4)] (5) Occupational therapy services, performed by [a registered] an occupational therapist, [who is licensed in the state in which the service is provided if licensure exists,] that meet the following conditions:

(a) — (d) (text unchanged)

[(5)] (6) Personal care services [will] which include assistance with activities of daily living such as [walking, eating, toileting, grooming, and supervision of personal hygiene.]:

(a) Bathing;

(b) Eating;

(c) Toileting;

(d) Dressing; and

(e) Ambulation;

[(6)] (7) Nutrition services [will] which include the following:

(a) [The medical day care center shall provide meals] Meals and snacks as specified [in] under COMAR [10.12.04.05L] 10.12.04.19;

(b) [Special diets and supplemental feeding will be made available as ordered by the physician involved in the documentation of the individualized plan of treatment and supervised by the medical day care center's nurse or nursing staff,] Therapeutic diets as specified under COMAR 10.12.04.19; and

(c) Dietary counseling and education [will be provided to all participants.];

[(7)] (8) [Medical social] Social work services performed by a [medical] licensed, certified social worker or licensed social work associate which include:

(a) Screening and interviewing [of] or assisting designated staff with screening and interviewing all referrals to determine the general appropriateness of the prospective participant for the full assessment process and medical day care participation;

(b) Ongoing services to include:

(i) [Continued identification of] Identifying the emotional and social needs of participants during the rendering of medical day care services[.];

(ii) Maintaining linkages with community support resources for the participant including relatives, friends, and other care providers[.];

(iii) Counseling to improve the participant's [disposition] response to the plan of care, chronic condition, and prospects for recovery or stabilization, but does not include diagnosing or treating mental disorders;

(iv) Counseling a participant and a participant's family in the availability and utilization of public and private community agency services, referral to, and coordination of these services[.];

(v) Assisting participants in obtaining those [medical] health care services which are not available through the medical day care center (such as vision care, podiatry, medical equipment, etc.) [but which are available through the Program,];

(vi) [Individual counseling to assist participant's adaptation] Counseling participants individually to assist with acclimation to the medical day care center's services and to promote active involvement in their [health care] plan of care;

(vii) Coordinating and implementing group and family counseling in conjunction with plan of care goals;

(viii) Writing notes in the participant's records that reflect the social work activities performed; and

(ix) Participating in the multidisciplinary team meetings; and

(c) Discharge planning and referral services including:

(i) Written procedures for discharge, referral, and follow-up[.];

(ii) A discharge summary with post discharge goals[.];

(iii) Recommendations for continuing care[.]; and

(iv) Referral to appropriate community service agencies and health care providers to facilitate the participant's return to more independent living[.];

(d) Social work activities as appropriate may be delegated to other staff if supervised by the medical social worker[.];

[(8) Activity Program.

(a) Activity programs shall be provided which offer social, recreational, educational, and leisure activities suited to the needs of the participants, designed to encourage physical exercise, social interaction, maximize self-awareness and level of functioning, and to complement community resources.

(b) A current weekly or monthly schedule of activities shall be posted at a location convenient to participants, staff, and families.

(c) Activities may include, but not be limited to:

(i) Opportunities for arts and crafts;

(ii) Development of hobbies;

(iii) Discussion groups;

(iv) Speakers and films;

(v) Periodic excursions or outings;

(vi) Involvement of participants in community services projects which can be carried out at the medical day care center.

(d) The activities program will be coordinated with the plan of care goals.]

(9) Activity programs in accordance with COMAR 10.12.04.14C.

[(9) Transportation Services.

(a) [(10) Transportation services [will be] that:

(a) Are provided or arranged for [participants] a participant by the medical day care staff[.];

(b) [The provider shall maximize the use of] Maximize the following types of transportation services in an effort to achieve the least costly, yet appropriate means of transportation for [its participants] a participant:

(i) [Persons] Walking, for a person who [live] lives within walking distance of the medical day care center and who [are] is sufficiently mobile [will be encouraged to walk];

(ii) [Transportation supplied by family, friends, neighbors, or volunteers] Family-supplied transportation provided by friends, neighbors, or volunteers; and

(iii) [Free community] Public transportation services[.];

(b) After every effort made by the provider to procure the types of transportation mentioned above has failed, the Department will reimburse the medical day care center by the per diem rate for the participant's traveling costs, to and from the center, by taxi, van or specially equipped vehicles. It shall be the responsibility of the provider to:]

(c) Are procured by the provider after options described in §A(10)(b) of this regulation have been exhausted;

(d) Are the responsibility of the provider to:

(i) Arrange [special low-cost contract] contractual agreements with transportation providers to meet the transportation needs of the participants; and

(ii) (text unchanged)

[(c)] (e) [Records shall] Are provided in accordance with records that clearly indicate both a primary transportation plan and a back-up plan[.];

(f) [The provider shall keep accurate records which include] Are documented, indicating the type of transportation used by each participant[.];

[(d)] (g) [Transportation to and from the participant's home shall be scheduled] Are scheduled to ensure that [participant's] a participant's one-way transit time does not exceed 1 hour[.] as specified under COMAR 10.12.04.27; and

[(e)] (h) [Transportation may be used for excursions and outings which are part of the activities program as well as for delivery of the participants to and from the medical day care center.] Are included in the unit of care for:

(i) Trips and outings which are part of the activities program; and

(ii) A participant's medical appointment escorted by center staff.

B. The Department [will] shall reimburse for a [day] unit of care when this care is:

(1) Ordered by a participant's personal physician [and provided according to a written plan of care, which is part of the medical day care center's permanent record on the participant, and is reviewed by the physician every 90 days] semi-annually;

(2) — (3) (text unchanged)

(4) Provided to [participants] a participant certified annually by the Department as requiring nursing facility care [under the Program] as specified [in] under COMAR 10.09.10 [or 10.09.11];

(5) Provided to [participants certified present at the medical day care center a minimum of 4 hours a day by an adequately maintained and documented participant register.] a participant certified as present at the day care center and who receives 5 hours of service a day unless there is contemporaneous documentation in the center's records of extenuating circumstances such as, but not limited to:

(a) The need to attend a medical appointment;

(b) A day shortened due to illness of participant;

(c) A day shortened, or transportation lengthened, due to inclement weather; or

(d) Transportation time lengthened due to exceptional traffic conditions such as road construction or accidents.

C. Services shall be:

(1) Preauthorized by the participant's waiver case manager for a participant enrolled in the Home/Community Based Services Waiver for Older Adults; or

(2) Provided in accordance with a written plan of care for individuals who are not enrolled in Home/Community Based Services Waiver for Older Adults.

[(.07) .06 Limitations.

A. The Medical Day Care program does not cover the following persons:

(1) Recipients [not eligible for day care services under Health-General Article, Title 14, Subtitles 2 and 3, Annotated Code of Maryland] younger than 16 years old;

(2) Recipients receiving services in an out-of-State day care facility unless a provider agreement is executed between the Department and the day care facility, and the out-of-State day care facility's staff is licensed to provide services in the state the service is rendered;

(3) — (5) (text unchanged)

(6) Recipients eligible as a Qualified Medicare Beneficiary in accordance with COMAR 10.09.24.03-3E;

(7) Recipients eligible as a Specified Low-Income Medicare Beneficiary in accordance with COMAR 10.09.24.03-3F; and

[(6)] (8) State-only recipients *who do not meet the requirements of Title XIX of the Social Security Act, and for whom the State does not claim federal financial participation, with the exception of those recipients who are:*

(a) *In subsidized adoption or foster care placements;*
or

(b) *Pregnant women and children not qualified for federal coverage due to their alien status.*

B. The Medical Day Care program does not cover the following [services]:

(1) [Services which are not part of a participant's written plan of care as established by the multidisciplinary team and approved by the participant's physician] *Days of service in excess of the frequency specified by a participant's personal physician or, for a participant enrolled in the Home/Community Based Services Waiver for Older Adults, days of service in excess of the frequency authorized by the participant's case manager;*

(2) Services which are not part of those services listed in Regulation [.06] .05 of this chapter[.];

(3) *More than one unit of care, per participant, per day; and*

(4) *A unit of care provided on the same day that the following services are provided and billed to the Department:*

(a) *Day habilitation services under COMAR 10.09.26;*

(b) *Supported employment services under COMAR 10.09.26;*

(c) *Programs of All-Inclusive Care for the Elderly under COMAR 10.09.44;*

(d) *Senior center plus services under COMAR 10.09.54;*

(e) *Adult day care reimbursed under the State of Maryland's human service contracts; or*

(f) *On-site psychiatric rehabilitation services under COMAR 10.09.59.*

[.08] .07 [Preauthorization] Authorization Requirements.

A. (text unchanged)

B. The Department or its designee [will] *shall annually certify as medically eligible only those financially eligible participants who require [intermediate care as specified in COMAR 10.09.11, or skilled services] nursing facility services as [specified in] defined under COMAR 10.09.10.*

[.09] .08 Payment Procedures.

A. Requests for Payment.

(1) All requests for payment of services rendered shall be submitted [according to procedures established by the Department. Payment requests that are not properly prepared or submitted may not be processed, but returned unpaid to the provider] *in accordance with COMAR 10.09.36.*

[(2)] (2) Requests for payment shall be submitted on the form designated by the Department.]

[(3)] (2) (text unchanged)

B. Payment to a provider shall be limited [to the maximum number of days each recipient is certified eligible for medical day care services, and subject] to the number of days each [recipient actually attends a medical day care center and receives services] *participant attends the medical day care center, as authorized by a participant's physician's order or Home/Community Based Services Waiver for Older Adults case manager's authorization for receipt of services.*

C. Payment [will] *shall be made only to a qualified medical day care provider. Payment may not be made to a [recipient] participant, or to individual nurses, physicians, so-*

cial workers, activity coordinators, or aides for services rendered in connection with the provision of medical day care.

D. — E. (text unchanged)

.09 Recovery and Reimbursement.

A. *Recovery and Reimbursement shall be in accordance with COMAR 10.09.36.*

B. *The Program shall recover payments for a unit of care when requirements of this chapter or COMAR 10.12.04 are not met.*

.10 Cause for Suspension or Removal and Imposition of Sanctions.

Cause for suspension or removal and imposition of sanctions shall be in accordance with COMAR 10.09.36.

.11 Appeal Procedures.

Appeal procedures shall be in accordance with COMAR 10.09.36.

.12 Interpretive Regulation.

State regulations shall be interpreted in accordance with COMAR 10.09.36.

JOHN M. COLMERS
Secretary of Health and Mental Hygiene

Symbol Key

- Roman type indicates text already existing at the time of the proposed action.
- *Italic type* indicates new text added at the time of proposed action.
- Single underline, italic indicates new text added at the time of final action.
- Single underline, roman indicates existing text added at the time of final action.
- ~~[[Double brackets]]~~ indicate text deleted at the time of final action.

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 06 DISEASES

10.06.01 Communicable Diseases and Related Conditions of Public Health Importance

Authority: Health-General Article, §18-214.1,
Annotated Code of Maryland

Notice of Final Action

[07-214-F]

On December 18, 2007, the Secretary of Health of Mental Hygiene adopted amendments to Regulation .02 and new Regulation .17-1 under **COMAR 10.06.01 Communicable Diseases and Related Conditions of Public Health Importance**. This action, which was proposed for adoption in 34:22 Md. R. 1983 (October 26, 2007), has been adopted as proposed.

Effective Date: January 14, 2008.

JOHN M. COLMERS
Secretary of Health and Mental Hygiene

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.07 Medical Day Care Services

Authority: Health-General Article, §§2-104(b), 15-103, 15-105, and 15-111,
Annotated Code of Maryland

Notice of Final Action

[07-221-F]

On December 12, 2007, the Secretary of Health and Mental Hygiene adopted amendments to Regulations .01 and .02, repealed existing Regulations .03 — .05, and .10 — .13, adopted new Regulations .03, .04, and .09 — .12, and amended and recodified Regulations .06 — .09 to be Regulations .05 — .08 under **COMAR 10.09.07 Medical Day Care Services**. This action, which was proposed for adoption in 34:17 Md. R. 1520 — 1525 (August 17, 2007), has been adopted with the nonsubstantive changes below.

Effective Date: January 14, 2008.

Attorney General's Certification

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the Attorney General certifies that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:

Regulation .01B(20) is amended to change a reference to Health-General Article, Title 13, Annotated Code of Maryland, to a reference to the Health Occupations Article of the

Annotated Code of Maryland. This change corrects an erroneous cross reference.

Regulation .01B(33) is amended to delete the definition of "Unit of care". The current regulations require a provider to be open to a participant a minimum of 6 hours a day, but require that a minimum of 4 hours be provided for a day of care to be reimbursed. The proposed definition of unit of care requires 5 hours a day of services before a provider can be reimbursed. In response to comments, the Department has decided not to move forward with the "unit of care" changes in the proposed regulations. These changes are not substantive because they maintain the status quo, could have reasonably been anticipated by the affected parties and because they lessen the burden that would have been imposed on the affected parties by the proposed rule.

Regulation .04B(2) is amended to delete the requirement in the proposed rule that the provider arrange for ongoing inservice training. As indicated in the preamble to the proposed rule, the intent of these regulations is to lessen the administrative burden on providers. Elimination of this additional burden on providers is consistent with that intent and, for that reason, the change is not substantive.

Regulations .05A, A(9)(h), B, B(5), .06B(3), B(4), and .09B are amended to replace references to "unit" of care with references to a "day" of care. These changes are made for the reasons set forth in the discussion of Regulation .01B(33), above, and are not substantive for the same reasons.

Regulation .05A(1) is amended to delete the requirement that the medical director consult with staff regarding participants' condition. This change recognizes that other persons on the provider's staff may perform this function. As indicated in the preamble to the proposed rule, the intent of these regulations is to lessen the administrative burden on providers. Elimination of this additional burden on providers is consistent with that intent and, for that reason, the change is not substantive.

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (19) (proposed text unchanged)

(20) "Physical therapist" means [a person who is licensed as a physical therapist in the state in which services are provided] an individual licensed to practice physical therapy under [[Health-General Article]] Health Occupations Article, Title 13, Annotated Code of Maryland.

(21) — (32) (proposed text unchanged)

[[33] "Unit of care" means 5 hours of service per day delivered to participants at:

(a) The day care center; or

(b) An off-site activity sponsored and supervised by the center.]]

.04 Staffing Requirements.

A. (proposed text unchanged)

B. The medical day care center shall also have:

(1) (proposed text unchanged)

(2) A full-time, part-time, or contractual medical director who:

(a) Has 1 year of experience in the care of impaired adults; and

(b) May function as personal physician for those participants who do not have a personal physician, consult with staff regarding a participant's condition and medical needs, and assist with the development of the medical day care center's health care policies[[; and

(c) Arrange for orientation and ongoing in-service training of staff, students, and volunteers]].

.05 Covered Services.

A. The Program reimburses for a [[unit]] day of care which includes the following services:

(1) Health care services supervised by the director, medical director, or health director, which emphasize primary prevention, early diagnosis and treatment, rehabilitation and continuity of care, including the following:

(a) (text unchanged)

(b) Participation in the determination of the participant's medical, psychosocial, and functional status; [[and]]

(c) Consultation with the participant's personal physician[[.]; and

[[2) Health care services performed by the medical director, which include consultation with:

(a) Staff]] (d) Consultation with:

(i) Staff regarding a participant's condition and health care needs; and

[[b)] (ii) (proposed text unchanged)

[[3)] (2) — [[9)] (8) (proposed text unchanged)

[[10)] (9) Transportation services that:

(a) — (g) (proposed text unchanged)

(h) Are included in the [[unit]] day of care for:

(i) — (ii) (proposed text unchanged)

B. The Department shall reimburse for a [[unit]] day of care when this care is:

(1) — (4) (proposed text unchanged)

(5) Provided to [[a participant certified as present at the day care center and who receives 5 hours of service a day unless there is contemporaneous documentation in the center's records of extenuating circumstances such as, but not limited to:

(a) The need to attend a medical appointment;

(b) A day shortened due to illness of participant;

(c) A day shortened, or transportation lengthened, due to inclement weather; or

(d) Transportation time lengthened due to exceptional traffic conditions such as road construction or accidents.]]

participants certified present at the medical day care center a minimum of 4 hours a day by an adequately maintained and documented participant register.

C. (proposed text unchanged)

.06 Limitations.

A. (proposed text unchanged)

B. The Medical Day Care program does not cover the following:

(1) — (2) (proposed text unchanged)

(3) More than one [[unit]] day of care, per participant, per day; and

(4) A [[unit]] day of care provided on the same day that the following services are provided and billed to the Department:

(a) — (f) (proposed text unchanged)

.09 Recovery and Reimbursement.

A. (proposed text unchanged)

B. The Program shall recover payments for a [[unit]] day of care when requirements of this chapter or COMAR 10.12.04 are not met.

JOHN M. COLMERS
Secretary of Health and Mental Hygiene