

# Maryland Register

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Volume 42 • Issue 3 • Pages 295—406

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Governor  
Open Meetings Compliance  
Board  
General Assembly  
Judiciary  
Regulations  
Errata  
Special Documents  
General Notices

Pursuant to State Government Article, §7-206, Annotated Code of Maryland, this issue contains all previously unpublished documents required to be published, and filed on or before January 16, 2015, 5 p.m.

Pursuant to State Government Article, §7-206, Annotated Code of Maryland, I hereby certify that this issue contains all documents required to be codified as of January 16, 2015.

Brian Morris  
Administrator, Division of State Documents  
Office of the Secretary of State



# Information About the Maryland Register and COMAR

## MARYLAND REGISTER

The Maryland Register is an official State publication published every other week throughout the year. A cumulative index is published quarterly.

The Maryland Register is the temporary supplement to the Code of Maryland Regulations. Any change to the text of regulations published in COMAR, whether by adoption, amendment, repeal, or emergency action, must first be published in the Register.

The following information is also published regularly in the Register:

- Governor's Executive Orders
- Attorney General's Opinions in full text
- Open Meetings Compliance Board Opinions in full text
- State Ethics Commission Opinions in full text
- Court Rules
- District Court Administrative Memoranda
- Courts of Appeal Hearing Calendars
- Agency Hearing and Meeting Notices
- Synopses of Bills Introduced and Enacted by the General Assembly
- Other documents considered to be in the public interest

## CITATION TO THE MARYLAND REGISTER

The Maryland Register is cited by volume, issue, page number, and date. Example:

- 19:8 Md. R. 815—817 (April 17, 1992) refers to Volume 19, Issue 8, pages 815—817 of the Maryland Register issued on April 17, 1992.

## CODE OF MARYLAND REGULATIONS (COMAR)

COMAR is the official compilation of all regulations issued by agencies of the State of Maryland. The Maryland Register is COMAR's temporary supplement, printing all changes to regulations as soon as they occur. At least once annually, the changes to regulations printed in the Maryland Register are incorporated into COMAR by means of permanent supplements.

## CITATION TO COMAR REGULATIONS

COMAR regulations are cited by title number, subtitle number, chapter number, and regulation number. Example: COMAR 10.08.01.03 refers to Title 10, Subtitle 08, Chapter 01, Regulation 03.

## DOCUMENTS INCORPORATED BY REFERENCE

Incorporation by reference is a legal device by which a document is made part of COMAR simply by referring to it. While the text of an incorporated document does not appear in COMAR, the provisions of the incorporated document are as fully enforceable as any other COMAR regulation. Each regulation that proposes to incorporate a document is identified in the Maryland Register by an Editor's Note. The Cumulative Table of COMAR Regulations Adopted, Amended or Repealed, found online, also identifies each regulation incorporating a document. Documents incorporated by reference are available for inspection in various depository libraries located throughout the State and at the Division of State Documents. These depositories are listed in the first issue of the Maryland Register published each year. For further information, call 410-974-2486.

## HOW TO RESEARCH REGULATIONS

An Administrative History at the end of every COMAR chapter gives information about past changes to regulations. To determine if there have been any subsequent changes, check the "Cumulative Table of COMAR Regulations Adopted, Amended, or Repealed" which is found online at [www.dsd.state.md.us/CumulativeIndex.pdf](http://www.dsd.state.md.us/CumulativeIndex.pdf). This table lists the regulations in numerical order, by their COMAR number, followed by the citation to the Maryland Register in which the change occurred. The Maryland Register serves as a temporary supplement to COMAR, and the two publications must always be used together. A Research Guide for Maryland Regulations is available. For further information, call 410-260-3876.

## SUBSCRIPTION INFORMATION

For subscription forms for the Maryland Register and COMAR, see the back pages of the Maryland Register. Single issues of the Maryland Register are \$15.00 per issue.

## CITIZEN PARTICIPATION IN THE REGULATION-MAKING PROCESS

Maryland citizens and other interested persons may participate in the process by which administrative regulations are adopted, amended, or repealed, and may also initiate the process by which the validity and applicability of regulations is determined. Listed below are some of the ways in which citizens may participate (references are to State Government Article (SG), Annotated Code of Maryland):

- By submitting data or views on proposed regulations either orally or in writing, to the proposing agency (see "Opportunity for Public Comment" at the beginning of all regulations appearing in the Proposed Action on Regulations section of the Maryland Register). (See SG, §10-112)
- By petitioning an agency to adopt, amend, or repeal regulations. The agency must respond to the petition. (See SG §10-123)
- By petitioning an agency to issue a declaratory ruling with respect to how any regulation, order, or statute enforced by the agency applies. (SG, Title 10, Subtitle 3)
- By petitioning the circuit court for a declaratory judgment on the validity of a regulation when it appears that the regulation interferes with or impairs the legal rights or privileges of the petitioner. (SG, §10-125)
- By inspecting a certified copy of any document filed with the Division of State Documents for publication in the Maryland Register. (See SG, §7-213)

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**Lawrence J. Hogan, Jr.**, Governor; **John C. Wobensmith**, Secretary of State; **Brian Morris**, Administrator; **Gail S. Klakring**, Senior Editor; **Mary D. MacDonald**, Editor, Maryland Register and COMAR; **Elizabeth Ramsey**, Editor, COMAR Online, and Subscription Manager; **Tami Cathell**, Help Desk, COMAR and Maryland Register Online.

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## PERSONS WITH DISABILITIES

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**Availability of Monthly List of Maryland Documents**

The Maryland Department of Legislative Services receives copies of all publications issued by State officers and agencies. The Department prepares and distributes, for a fee, a list of these publications under the title “Maryland Documents”. This list is published monthly, and contains bibliographic information concerning regular and special reports, bulletins, serials, periodicals, catalogues, and a variety of other State publications. “Maryland Documents” also includes local publications.

Anyone wishing to receive “Maryland Documents” should write to: Legislative Sales, Maryland Department of Legislative Services, 90 State Circle, Annapolis, MD 21401.

## CLOSING DATES AND ISSUE DATES through JULY 24, 2015

Issue Date	Emergency and Proposed Regulations 5 p.m.*	Final Regulations 10:30 a.m.	Notices, etc. 10:30 a.m.
February 20	February 2	February 11	February 9
March 6**	February 13	February 25	February 23
March 20	March 2	March 11	March 9
April 3	March 16	March 25	March 23
April 17	March 30	April 8	April 6
May 1	April 13	April 22	April 20
May 15	April 27	May 6	May 4
May 29**	May 11	May 19	May 15
June 12**	May 21	June 3	June 1
June 26	June 8	June 17	June 15
July 10	June 22	July 1	June 29
July 24	July 6	July 15	July 13

\* Due date for documents containing 8 to 18 pages — 48 hours before date shown; due date for documents exceeding 18 pages — 1 week before date shown

**NOTE: ALL DOCUMENTS MUST BE SUBMITTED IN TIMES NEW ROMAN, 9 POINT, SINGLE-SPACED FORMAT. THE REVISED PAGE COUNT REFLECTS THIS FORMATTING.**

\*\* Note closing date changes

**The regular closing date for Proposals and Emergencies is Monday.**

### COMAR Online

The Code of Maryland Regulations is available at [www.dsd.state.md.us](http://www.dsd.state.md.us) as a free service of the Office of the Secretary of State, Division of State Documents. The full text of regulations is available and searchable. Note, however, that the printed COMAR continues to be the only official and enforceable version of COMAR.

The Maryland Register is also available at [www.dsd.state.md.us](http://www.dsd.state.md.us).

For additional information, visit [www.sos.state.md.us](http://www.sos.state.md.us), Division of State Documents, or call us at (410) 974-2486 or 1 (800) 633-9657.

## REGULATIONS CODIFICATION SYSTEM

Under the COMAR codification system, every regulation is assigned a unique four-part codification number by which it may be identified. All regulations found in COMAR are arranged by title. Each title is divided into numbered subtitles, each subtitle is divided into numbered chapters, and each chapter into numbered regulations.

**09.12.01.01D(2)(c)(iii)**  
 Title                      Chapter                      Section                      Paragraph  
                                  Subtitle                      Regulation                      Subsection                      Subparagraph

A regulation may be divided into lettered sections, a section divided into numbered subsections, a subsection divided into lettered paragraphs, and a paragraph divided into numbered subparagraphs.

## Cumulative Table of COMAR Regulations Adopted, Amended, or Repealed

This table, previously printed in the Maryland Register lists the regulations, by COMAR title, that have been adopted, amended, or repealed in the Maryland Register since the regulations were originally published or last supplemented in the Code of Maryland Regulations (COMAR). The table is no longer printed here but may be found on the Division of State Documents website at [www.dsd.state.md.us](http://www.dsd.state.md.us).

### Table of Pending Proposals

The table below lists proposed changes to COMAR regulations. The proposed changes are listed by their COMAR number, followed by a citation to that issue of the Maryland Register in which the proposal appeared. Errata pertaining to proposed regulations are listed, followed by “(err)”. Regulations referencing a document incorporated by reference are followed by “(ibr)”. None of the proposals listed in this table have been adopted. A list of adopted proposals appears in the Cumulative Table of COMAR Regulations Adopted, Amended, or Repealed.

#### 05 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

**05.03.02.20** • 41:26 Md. R. 1573 (12-26-14)  
**05.04.01.19** • 41:26 Md. R. 1573 (12-26-14)  
**05.04.05.18** • 41:26 Md. R. 1573 (12-26-14)  
**05.04.06.18** • 41:26 Md. R. 1573 (12-26-14)  
**05.04.08.18** • 41:26 Md. R. 1573 (12-26-14)  
**05.04.09.18** • 41:26 Md. R. 1573 (12-26-14)  
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**05.11.01.10** • 41:26 Md. R. 1573 (12-26-14)  
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**05.13.02.11** • 41:26 Md. R. 1573 (12-26-14)  
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**05.13.04.25** • 41:26 Md. R. 1573 (12-26-14)  
**05.13.06.01—,17** • 42:3 Md. R. 321 (2-6-15)  
**05.14.01.11** • 41:26 Md. R. 1573 (12-26-14)  
**05.15.01.12** • 41:26 Md. R. 1573 (12-26-14)  
**05.17.01.10** • 41:26 Md. R. 1573 (12-26-14)  
**05.18.01.10** • 41:26 Md. R. 1573 (12-26-14)

#### 07 DEPARTMENT OF HUMAN RESOURCES

**07.01.06.02—,06** • 41:25 Md. R. 1489 (12-12-14)  
**07.02.04.08** • 41:26 Md. R. 1581 (12-26-14)  
**07.02.07.01—,26** • 42:2 Md. R. 148 (1-23-15)  
**07.02.11.03—,05** • 42:1 Md. R. 20 (1-9-15)  
**07.02.11.12** • 41:25 Md. R. 1490 (12-12-14)  
**07.02.13.01,02,04** • 42:1 Md. R. 21 (1-9-15)  
**07.02.26.01—,15** • 42:2 Md. R. 159 (1-23-15)  
**07.02.29.02—,08,10** • 42:1 Md. R. 22 (1-9-15)  
**07.03.03.16** • 41:25 Md. R. 1491 (12-12-14)  
**07.03.17.30,32,39** • 41:26 Md. R. 1582 (12-26-14)

#### 08 DEPARTMENT OF NATURAL RESOURCES

**08.01.02.02,04—,06** • 41:24 Md. R. 1429 (12-1-14)  
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#### 09 DEPARTMENT OF LABOR, LICENSING, AND REGULATION

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**09.19.04.01,02** • 42:2 Md. R. 174 (1-23-15)  
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**09.23.04.03** • 41:25 Md. R. 1500 (12-12-14)  
**09.24.02.01—,06** • 41:25 Md. R. 1501 (12-12-14)  
**09.28.04.01—,11** • 41:14 Md. R. 813 (7-11-14)

#### 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

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**10.01.03.01—,38** • 42:2 Md. R. 175 (1-23-15)  
**10.01.08.04** • 41:25 Md. R. 1504 (12-12-14)  
**10.01.17.01,02** • 42:1 Md. R. 27 (1-9-15)

10.01.18.01—.08 • 41:22 Md. R. 1322 (10-31-14)  
 10.06.02.01—.04,.06,.07,.09—.11,.13 • 42:2 Md. R. 177 (1-23-15)  
 10.06.03.01—.09 • 42:3 Md. R. 326 (2-6-15)  
 10.07.01.33 • 41:25 Md. R. 1505 (12-12-14)

**Subtitle 09 (2nd volume)**

10.09.02.05 • 42:2 Md. R. 181 (1-23-15)  
 10.09.05.01,.04,.07 • 42:1 Md. R. 29 (1-9-15) (ibr)  
 10.09.08.01—.14 • 42:1 Md. R. 30 (1-9-15)  
 10.09.10.01,.03—.07,.07-2,.08,.08-1,.09,.09-1,.09-2,.10,.10-1,.11,  
 .11-2,.11-7,.11-8,.12,.12-1,.13,.14,.14-1, .14-2,.15,.15-1,.16,  
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# The Governor

## EXECUTIVE ORDER 01.01.2015.01

### Zero Waste Plan for Maryland

WHEREAS, Marylanders generate significantly more municipal solid waste per person than the United States as a whole and continue to dispose of more than half of that waste each year, the majority of which goes into landfills;

WHEREAS, Statewide, there is an estimated 36 years of remaining municipal landfill capacity at current disposal rates;

WHEREAS, Eliminating inefficient and harmful disposal of waste into landfills is possible through progressive source reduction (avoiding waste before it occurs), recycling, and reuse;

WHEREAS, Maryland's Zero Waste Plan, issued in 2014 after extensive consultation with businesses, local governments, non-profits, and individual citizens, outlined cost-effective strategies to nearly eliminate disposal of waste in Maryland by 2040;

WHEREAS, Implementation of Maryland's Zero Waste Plan is already underway in key areas, including the establishment of clearer permitting pathways for composting facilities; adoption of higher county and State government recycling rates; provision of recycling opportunities at apartments, condominiums, and special events; and the procurement of compost and other recycled products;

WHEREAS, According to a recent study by the Tellus Institute and Sound Resource Management Group, diverting material from disposal to reuse, recycling, and composting results in more jobs, with a direct impact of 1.1 million added jobs nationwide if the United States meets a recycling rate of 75% by 2030;

WHEREAS, The United Nations Intergovernmental Panel on Climate Change (IPCC) has determined that methane emissions are a significant contributing factor to climate change, and landfills are the third largest source of methane emissions in the United States; WHEREAS, Maryland's people, property, natural environment, and public investments are extremely vulnerable to the impacts of climate change and are already experiencing its effects including sea level rise of more than one foot over the last century, increased storm intensity, wind, and rainfall events, water shortages, droughts, heat waves, and increased water temperatures;

WHEREAS, Improper handling of solid waste can pose direct threats to both the public health and the quality of Maryland's environment, including odor problems, soil erosion, surface and ground-water pollution, and the propagation of disease-bearing vectors;

WHEREAS, Composting organic materials, including land clearing debris, improves soil quality, increases water retention, and reduces erosion; and

WHEREAS, Operation of new or expanded municipal and land clearing debris landfills would harm public health and the environment.

NOW, THEREFORE, I, MARTIN O'MALLEY, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, HEREBY PROCLAIM THE

FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:

A. Maryland shall endeavor to ensure that all waste generated in the State is increasingly reduced and reused rather than discarded in a manner that adversely impacts our health and environment.

B. Maryland shall have a goal of 85% waste diversion and 80% recycling by 2040.

(1) State Government Recycling. To ensure progress toward the overall statewide goal, State government shall achieve a waste recycling rate of at least 65% by 2020.

(2) State Government Organics Recycling. To ensure progress toward the overall statewide recycling goal, State government shall divert at least 60% of its organic waste through recycling, composting, or anaerobic digestion by 2020.

C. State Government Source Reduction. By December 1, 2015, the Maryland Department of the Environment in consultation with the Maryland Green Purchasing Committee shall create a source reduction checklist for use by State agencies to track and encourage source reduction.

(1) In accordance with relevant laws and Maryland's Green Purchasing Guidelines, State government shall consider source reduction in procurement, including the avoidance of unnecessary packaging and the return of reusable packaging to vendors.

D. Landfill Permitting. Except for permit applications submitted to the Maryland Department of the Environment before January 19, 2015, the Department will not issue a permit for any new municipal or land clearing debris landfill capacity in the State.

(1) Municipal Landfill. Defined in COMAR as a solid waste acceptance facility that is designed, installed, and operated so that it can accept most types of waste generated by a community, with exceptions as noted in the regulations.

(2) Land Clearing Debris Landfill. Defined in COMAR as a solid waste acceptance facility that is restricted to accepting earthen material such as clays, sands, gravels, and silts; topsoil; tree stumps; root mats; brush and limbs; logs; vegetation; and rock.

E. The Maryland Department of the Environment will provide local governments with information on alternatives to land-filling.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 13th Day of January, 2015.

MARTIN O'MALLEY  
Governor

ATTEST:

JOHN P. MCDONOUGH  
Secretary of State

[15-03-52]

## EXECUTIVE ORDER 01.01.2015.02

### State Fleet Goals for Zero-Emission Vehicles

WHEREAS, Emissions from the State's transportation sector produce approximately one-third of all ozone and greenhouse gas emissions in the State, contribute to the high rate of respiratory and cardiac disease among Marylanders, are a significant contributor to nitrogen deposition in the Chesapeake Bay, increase the State's vulnerability to sea level rise and other impacts of climate change, and are projected to increase in future years;

WHEREAS, Most Marylanders live in ozone non-attainment areas as measured against the National Ambient Air Quality Ozone Standard for ozone established under the federal Clean Air Act to protect public health and the environment;

WHEREAS, Regulations adopted under the Maryland Clean Cars Act, enacted in 2007, incorporated California's stringent vehicle emissions standards for passenger vehicles designed to significantly reduce tailpipe emissions of ozone-forming compounds, greenhouse gases and other air pollutants;

WHEREAS, The Clean Cars Program, which implements the Clean Cars Act, includes a Zero-Emission Vehicle (ZEV) mandate that requires car manufacturers to provide an increasing percentage of ZEVs for sale in Maryland. ZEVs, which include plug-in hybrid electric vehicles, plug-in battery electric vehicles and hydrogen fuel cell vehicles, produce zero or near zero tailpipe emissions when operating on electricity;

WHEREAS, Maryland's Greenhouse Gas Emissions Reduction Act of 2009 requires the State to reduce its emissions of greenhouse gases Statewide 25 percent from 2006 levels by 2020 and to develop a plan for achieving this goal, while also facilitating job creation and growth of the State's economy;

WHEREAS, The 2012 Greenhouse Gas Emissions Reduction Act Plan includes a suite of programs to accelerate the deployment of ZEVs and fueling infrastructure in Maryland;

WHEREAS, The State has assumed a leadership role in promoting ZEVs through financial incentives, infrastructure investment, the establishment of the Electric Vehicle Infrastructure Council and, together with seven other states, the signing of the multi-state Zero-Emission Vehicle Memorandum of Understanding, which commits the signatory states to work collectively to deploy 3.3 million ZEVs in their states by 2025, of which approximately 300,000 are to be deployed in Maryland; and

WHEREAS, Accelerating the ZEV market is essential to achieve the State's goals to reduce emissions of greenhouse gases, ozone forming compounds and other transportation-related pollutants; improve public health; reduce nitrogen pollution to the Chesapeake Bay; save consumers money by reducing fuel costs; and stimulate the growth of jobs and Maryland's economy by redirecting transportation investments away from out-of-state petroleum-based industries and into the State's growing ZEV economic sector.

NOW, THEREFORE, I, MARTIN O'MALLEY, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, HEREBY PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:

A. State Leadership. The purpose of this Executive Order is to ensure that State agencies exercise leadership in the purchase and use of Zero-Emission Vehicles (ZEVs).

B. Zero-Emission Vehicles Defined. For the purpose of this Executive Order, ZEVs shall mean plug-in hybrid electric vehicles, plug-in battery electric vehicles, hydrogen fuel cell vehicles and other low- and zero-emitting vehicles that meet California's low emissions standards, as may, from time to time, be amended and incorporated by reference into Maryland regulations.

C. Zero-Emission Vehicle State Fleet Goal.

(1) 2025 Goal. Consistent with operational requirements, and the provisions and requirements of this Executive Order, State

agencies shall increase the number of ZEVs in their fleets through the normal course of fleet replacement so that at least 25 percent of annual fleet purchases of light duty vehicles will be ZEVs by 2025.

(2) Milestones. To the greatest extent practicable, and consistent with operational requirements and the provisions and requirements of this Executive Order, State agencies shall increase the percentage of ZEVs in their fleets through the normal course of fleet replacement by three percent each year from FY 2016 through FY 2020 so that at least 15 percent of annual fleet purchases of light duty vehicles will be ZEVs by FY 2020.

D. Approval of Vehicle Specifications. The Department of Budget and Management shall, in consultation with the Maryland Energy Administration, the Department of the Environment, and the Department of Transportation, approve and annually update for State agencies, vehicle specifications in order to provide reasonable and practical options for the purchase of ZEVs.

E. Vehicle Procurement and Fueling Infrastructure. The Department of General Services and the Department of Transportation shall procure approved ZEVs, electric vehicle charging equipment, and other necessary fueling infrastructure for ZEVs for State agency fleets.

F. Reporting. The Department of Budget and Management and Department of Transportation shall annually submit a report to the Governor, Maryland Energy Administration, and the Department of the Environment summarizing the number and types of ZEVs purchased in the reporting fiscal year, the total number of ZEVs in the State vehicle fleet, the agencies to which the ZEVs have been assigned and the progress toward achieving the milestones and goals set forth in this Executive Order.

G. Implementation of Executive Order. The Department of Budget and Management shall, in consultation with the Maryland Energy Administration, the Department of the Environment, the Department of Transportation, and the Department of General Services, be responsible for coordinating the requirements of this Executive Order and for informing and encouraging the University System of Maryland and county and local governments to join in purchasing ZEVs under the State contract.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 20th day of January, 2015.

MARTIN O'MALLEY  
Governor

ATTEST:

JOHN P. MCDONOUGH  
Secretary of State

[15-03-53]

## EXECUTIVE ORDER 01.01.2015.03

### Commutation of Sentence of Death

WHEREAS, Heath William Burch (Grantee) was convicted of two counts of first-degree murder on March 22, 1996, for the murders of Robert and Cleo Davis and subsequently was sentenced to two death sentences in the Circuit Court for Prince George's County; and

WHEREAS, One of Grantee's death sentences was vacated by the Court of Appeals of Maryland.

NOW, THEREFORE, Pursuant to the authority vested in me by the Constitution and Laws of the State of Maryland, and having considered all options available to me under my constitutional

authority, I, MARTIN O'MALLEY, GOVERNOR OF MARYLAND, HEREBY COMMUTE HEATH WILLIAM BURCH'S SENTENCE OF DEATH TO A SENTENCE OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

My intention in issuing this Executive Order is that Grantee serve the remainder of his natural life in prison. This Order shall not affect any other sentences to which Grantee is subject, which shall remain in full force and effect.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 20th Day of January, 2015.

MARTIN O'MALLEY  
Governor

ATTEST:

JOHN P. MCDONOUGH  
Secretary of State

[15-03-54]

**EXECUTIVE ORDER 01.01.2015.04**

**Commutation of Sentence of Death**

WHEREAS, Vernon Lee Evans, Jr. (Grantee) was convicted of two counts of first-degree murder on May 8, 1984, for the murders of David Scott Piechowicz and Susan Kennedy and subsequently was sentenced to two death sentences in the Circuit Court for Worcester County;

WHEREAS, Those sentences were vacated; and

WHEREAS, Grantee was later sentenced to two death sentences in 1992 in the Circuit Court for Baltimore County.

NOW, THEREFORE, Pursuant to the authority vested in me by the Constitution and Laws of the State of Maryland, and having considered all options available to me under my constitutional authority, I, MARTIN O'MALLEY, GOVERNOR OF MARYLAND, HEREBY COMMUTE VERNON LEE EVANS, JR.'S SENTENCES OF DEATH TO SENTENCES OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

My intention in issuing this Executive Order is that Grantee serve the remainder of his natural life in prison. This Order shall not affect any other sentences to which Grantee is subject, which shall remain in full force and effect.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 20th Day of January, 2015.

MARTIN O'MALLEY  
Governor

ATTEST:

JOHN P. MCDONOUGH  
Secretary of State

[15-03-55]

**EXECUTIVE ORDER 01.01.2015.05**

**Commutation of Sentence of Death**

WHEREAS, Anthony Grandison (Grantee) was convicted of two counts of first-degree murder on May 22, 1984, for the murders of David Scott Piechowicz and Susan Kennedy and subsequently was sentenced to two death sentences in the Circuit Court for Somerset County;

WHEREAS, Those sentences were vacated; and

WHEREAS, Grantee was later sentenced to two death sentences in 1994 in the Circuit Court for Somerset County.

NOW, THEREFORE, Pursuant to the authority vested in me by the Constitution and Laws of the State of Maryland, and having considered all options available to me under my constitutional authority, I, MARTIN O'MALLEY, GOVERNOR OF MARYLAND, HEREBY COMMUTE ANTHONY GRANDISON'S SENTENCES OF DEATH TO SENTENCES OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

My intention in issuing this Executive Order is that Grantee serve the remainder of his natural life in prison. This Order shall not affect any other sentences to which Grantee is subject, which shall remain in full force and effect.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 20th Day of January, 2015.

MARTIN O'MALLEY  
Governor

ATTEST:

JOHN P. MCDONOUGH  
Secretary of State

[15-03-56]

**EXECUTIVE ORDER 01.01.2015.06**

**Commutation of Sentence of Death**

WHEREAS, Jody Lee Miles (Grantee) was convicted of first-degree murder on March 12, 1998, for the murder of Edward Joseph Atkinson and subsequently was sentenced to death in the Circuit Court for Queen Anne's County.

NOW, THEREFORE, Pursuant to the authority vested in me by the Constitution and Laws of the State of Maryland, and having considered all options available to me under my constitutional authority, I, MARTIN O'MALLEY, GOVERNOR OF MARYLAND, HEREBY COMMUTE JODY LEE MILES'S SENTENCE OF DEATH TO A SENTENCE OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

My intention in issuing this Executive Order is that Grantee serve the remainder of his natural life in prison. This Order shall not affect any other sentences to which Grantee is subject, which shall remain in full force and effect.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 20th Day of January, 2015.

MARTIN O'MALLEY  
Governor

ATTEST:

JOHN P. MCDONOUGH  
Secretary of State

[15-03-57]

**EXECUTIVE ORDER 01.01.2015.08**

(Amends Executive Order 01.01.2015.07)

**Standards of Conduct for Executive Branch Employees and Reporting of Misconduct**

WHEREAS, Everyone who enters into public service for the State of Maryland has a duty to maintain the highest standards of integrity in Government;

WHEREAS, Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain;

WHEREAS, Marylanders have the right to expect honest and honorable conduct in the performance of State business, free of the existence or perception of any corruption or other misconduct;

WHEREAS, It is imperative that any criminal or unethical conduct by any State employee or contractor be promptly reported to the appropriate authorities for investigation; and

WHEREAS, All Maryland State employees, regardless of position or pay, and all State contractors should act in accordance with both letter and spirit of the laws and regulations of this State.

NOW, THEREFORE, I, LAWRENCE J. HOGAN, JR., GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, HEREBY AMEND EXECUTIVE ORDER 01.01.2015.07 AND PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:

A. An employee shall not, except as permitted by applicable law or regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

B. Employees shall exhibit exemplary conduct and use honest efforts in the performance of their duties.

C. Employees shall not hold financial interests that conflict with the conscientious performance of duty.

D. Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

E. Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

F. Employees shall act impartially and not give preferential treatment to any private organization or individual.

G. Employees shall protect and conserve State property and shall not use it for other than authorized activities.

H. Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, which conflict with official Government duties and responsibilities.

I. Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

J. Employees shall satisfy in good faith their civic and legal obligations, including payment of federal, State, or local taxes that are imposed by law.

K. Employees shall adhere to all applicable laws and regulations that provide equal opportunity for all Marylanders regardless of race, color, religion, gender, national origin, age, disability, [or] sexual orientation, MARITAL STATUS, OR GENDER IDENTITY.

L. Employees shall endeavor to avoid any actions creating the appearance of any impropriety or that violate applicable laws, regulations, and ethical standards.

M. Employees shall conduct intra-agency and interagency relations with civility, collaboration, and cooperation. These same principles shall apply to interactions with officials and employees of the legislative and judicial branches.

N. Upon leaving state service, executive branch employees shall be bound by the restrictions of the Annotated Code of Maryland, [State Government] GENERAL PROVISIONS Article, Section [15-504] 5-504, with respect to lobbying and other forms of representation.

O. All departments and agencies of the State shall immediately refer to the Principal or Deputy Counsel of the department or agency or to the Deputy Attorney General with supervisory responsibility for the Attorney General's Criminal Investigations Division, any instance of possible criminal or unethical conduct by any employee or contractor of this State, for such action as the Office of the Attorney General deems appropriate. All departments and agencies shall also immediately advise the Chief Legal Counsel to the Governor of any such referrals.

P. All departments and agencies shall require each employee to report to the Secretary or Director of such department or agency as to any arrest of an employee and as to each legal proceeding in which an employee is involved, as a party or otherwise, if the arrest or legal proceeding affects, or reflects on, the employee's job fitness or performance.

Q. Consistent with all applicable substantive and procedural laws, violations of this Executive Order are grounds for employee disciplinary action, including termination from State employment.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 23rd Day of January, 2015.

LAWRENCE J. HOGAN, JR.  
Governor

ATTEST:

JOHN C. WOBENSMITH  
Acting Secretary of State

[15-03-58]

# Open Meetings Compliance Board

## SUMMARY OF OPINIONS ISSUED FROM OCTOBER 1 — DECEMBER 31, 2014\*

### *9 Official Opinions of the Compliance Board 171 (2014)*

**Anne Arundel County Board of Education (Janis Sartucci and Colin Murphy, Complainants)**

**November 3, 2014**

**Topics discussed:** Applicability of Act to budget discussions

### *9 Official Opinions of the Compliance Board 175 (2014)*

**Prince George's County Telecommunications Transmission Facility Coordinating Committee (Janis Z. Sartucci, Complainant)**

**November 19, 2014**

**Topics discussed:** Requirements that minutes be kept, that copy of notice be retained, and that notice of meetings be given by the public body; insufficiency of meeting notice given by entity appearing before the public body

### *9 Official Opinions of the Compliance Board 178 (2014)*

**Board of Commissioners of the Housing Authority of Prince George's County (David Prater and Sabina Wear, Complainants)**

**December 10, 2014**

**Topic discussed:** Failure to provide notice of meeting

### *9 Official Opinions of the Compliance Board 180 (2014)*

**Mayor and City Council of Town of Rock Hall and Ethics Commission of Rock Hall (Grenville B. Whitman, Complainant)**

**December 10, 2014**

**Topics discussed:** Violation of Act by meeting in closed session without making the required disclosures; requirement that meeting notice make clear that the public may observe the public body's vote to meet in closed session; permissibility of making the post-session disclosures in the minutes of the open meeting that was closed; applicability of Act to various functions that an ethics commission might perform

### *9 Official Opinions of the Compliance Board 186 (2014)*

**Mayor and City Council of Town of Rock Hall (Susan A. Francis, Complainant)**

**December 22, 2014**

**Topics discussed:** Applicability of Act to every stage of the deliberative process; inability of Compliance Board to assess whether sequentially-held discussions were intended as an "evasive device"; limits of "legal advice" exception to the Act's open-meeting requirement; inapplicability of any exception to a closed meeting when the public body has not closed the meeting properly; authority of Compliance Board to address complaint when the same violation has been alleged in an action in circuit court; inability of Compliance Board to resolve questions of fact

### *9 Official Opinions of the Compliance Board 195 (2014)*

**Annapolis Exploration Committee (Mary and William Powell, Complainants)**

**December 22, 2014**

**Topics discussed:** Failure of task force to comply with the Act's notice, open-meeting, and minutes requirements; advisability of designating a new member, officer or employee to take training on the Act's requirements when the prior designee's service to the public body ends; advisability of assigning staff to task forces, when possible, or else providing newly-created task forces with guidance on open meetings

\*The full text of these opinions can be found at <http://www.oag.state.md.us/Opengov/Openmeetings/index.htm>, through the link for "Opinions." A summary of the opinions issued in Fiscal Year 2014 is attached to the Compliance Board's Annual Report, which is posted at [http://www.oag.state.md.us/Opengov/Openmeetings/22Annual\\_Report\\_FY2014.pdf](http://www.oag.state.md.us/Opengov/Openmeetings/22Annual_Report_FY2014.pdf).

[15-03-34]

# The General Assembly

For additional up-to-date information concerning bills introduced in the General Assembly, log on to <http://mlis.state.md.us> and click on Bill Information and Status. You may then enter a specific bill number for information about that bill. You may also click on Senate Synopsis or House Synopsis for the most recent synopsis list for each house, or click on Synopsis Index for a listing of all bill synopses since the beginning of the legislative session.

## SYNOPSIS NO. 1

### House Bills

- HB0001** Del Glenn. Higher Education - Hattie N. Harrison Memorial Scholarship - Establishment.
- HB0002** Del Stein. Income Tax Credit - Preservation and Conservation Easements.
- HB0003** Del Schulz. Prescription Drug Monitoring Program - Prescribers and Dispensers - Required Query.
- HB0004** Del Glenn. Maryland Wage and Hour Law - State Minimum Wage Rate - Increase.
- HB0005** Del O'Donnell. Department of Health and Mental Hygiene - Newborn Screening Program Fund - Establishment.
- HB0006** Del Glenn. Family Law - Unattended Child Under the Age of 3 Years.
- HB0007** Del Sophocleus. Family Law - Child Abuse and Neglect - Expungement of Reports and Records - Time Period.
- HB0008** Del Rosenberg. Uniform Act to Secure the Attendance of Witnesses From Without the State in Criminal Proceedings - News Media Privilege.
- HB0009** Del Kelly. Maryland Home Birth Safety Act.
- HB0010** Del Jones. Institutions of Higher Education - Fully Online Distance Education - Definition.
- HB0011** Del O'Donnell. Edward T. Conroy and Jean B. Cryor Memorial Scholarship Programs - Eligibility.
- HB0012** Del Cluster. Workers' Compensation - Baltimore County Deputy Sheriff.
- HB0013** Del Schulz. Regulated Firearms - Licensed Dealer or Secondary Seller - National Instant Criminal Background (NICS) Check.
- HB0014** Del O'Donnell. Hunting Licenses - Exemption for Retired Members of the Armed Forces.
- HB0015** Del McConkey. Maryland Transportation Authority - Chesapeake Bay Bridge - Toll Collection.
- HB0016** Del Glenn. Vehicle Laws - Baltimore City - Prohibition on Sale of Unlawful Vehicles.
- HB0017** Del McConkey. State Real Estate Commission - Continuing Education - Comparative Law Course.
- HB0018** Del Cluster. Baltimore County - Sunday Hunting.
- HB0019** Del Glenn. Truant Students - System of Active Intervention - Requirements.
- HB0020** Del Glenn. Crimes - Elder Abuse or Neglect - Increased Penalties.
- HB0021** Del Schulz. Public Safety - Handgun Qualification License - Qualified Handgun Instructors and Permit Holders.
- HB0022** Del Schulz. Education - Privacy of Education Records and Personal Information of Students.
- HB0023** Del Glenn. Criminal Procedure - Vulnerable Adult Abuse Registry.
- HB0024** Del McConkey. Estates and Trusts - Allowance for Funeral Expenses.
- HB0025** Del Schulz. Public Safety - Assault Weapons - Replacements.
- HB0026** Del A. Miller. Clean Indoor Air Act - Use of Electronic Smoking Devices - Prohibition.
- HB0027** Del McConkey. Task Force on the Disposition of the Crownsville Hospital Center Property.
- HB0028** Del Cluster. Primary and Secondary Education - Security - School Resource Officers.
- HB0029** Del Schulz. Election Law - Voter Registration and Absentee Voting - Proof of Citizenship.
- HB0030** Del Schulz. Frederick County Public Charter School Program - Establishment.
- HB0031** Del Glenn. Crimes - Elder Abuse or Neglect - Restrictions on Pretrial Release.
- HB0032** Del Schulz. Criminal Procedure - Bail Bonds - Minimum.
- HB0033** Del Vitale. Housing and Community Development - Community Development Projects and Public Purpose Projects.
- HB0034** Del Schulz. Education - Implementation of the Common Core State Standards - Prohibition.
- HB0035** Del Barkley. Public Service Commission - Hearing Examiners - Change of Job Title.
- HB0036** Del Schulz. Procurement - Veteran-Owned Small Business Enterprises - Participation Goal.
- HB0037** Del Schulz. Frederick Center for Research and Education in Science and Technology.
- HB0038** Del Schulz. Crimes - Use of a Firearm in the Commission of a Crime - Diminution Credits and Sentencing.
- HB0039** Del Schulz. Public Safety - Handgun Identification Requirements - Repeal.
- HB0040** Del Rosenberg. Courts - Certificate of Merit - Provider of Professional Services.
- HB0041** Del Rosenberg. Immunities - Associations, Organizations, and Charities - Liability of Agents and Volunteers.
- HB0042** Del Rosenberg, et al. Fair Employment Preservation Act of 2015.
- HB0043** Dels Rosenberg and Parrott. Election Law - Petitions - Prohibited Actions.
- HB0044** Del Luedtke. Special Education - Translations of Individualized Education Programs or Individualized Family Service Plans - Native Language.
- HB0045** Del Morhaim, et al. General Provisions - Commemorative Days - National Healthcare Decisions Day.
- HB0046** Dels Jones and A. Miller. Joint Committee on Fair Practices and State Personnel Oversight - Revisions.
- HB0047** Del Luedtke, et al. Special Education - Loan Assistance Repayment and Paraprofessional Training.
- HB0048** Chr JUD (Md Jud Conf). Clerks of the Circuit Courts - Collection of Appearance Fees.
- HB0049** Chr JUD (Md Jud Conf). Clerks of the Circuit Courts - Water and Sewer Lien Registers - Fees.
- HB0050** Chr JUD (Md Jud Conf). Active Armed Forces Member - Exemption From Payment of Fees for Certain Court Records.
- HB0051** Chr JUD (Md Jud Conf). Circuit Court Real Property Records Improvement Fund - Funding.
- HB0052** Chr JUD (Md Jud Conf). Clerks of the Circuit Courts - Hospital Lien Docket - Repeal.
- HB0053** Chr JUD (Md Jud Conf). Real Property - Manufactured Homes - Recording of Affidavits of Affixation and Severance - Fees.
- HB0054** Chr JUD (Md Jud Conf). Circuit Court Real Property Records Improvement Fund - Funding.
- HB0055** Del O'Donnell, et al. Calvert and St. Mary's Counties - Archery Hunting - Safety Zone.

**HB0056** Del Reznik, et al. Tanning Devices - Use by Minors - Prohibition.

**HB0057** Del Reznik, et al. University System of Maryland - Pay It Forward Pilot Program and Tuition Freeze - Studies.

**HB0058** Del Reznik, et al. Health Occupations - Members of Boards and Advisory Committees - Prohibition Against Concurrent Service.

**HB0059** Del Reznik, et al. Criminal Law - Gaming - Home Games.

**HB0060** Del McIntosh, et al. Creation of a State Debt - Baltimore City - Baltimore Jewelry Center.

**HB0061** Dels O'Donnell and Fisher. Vehicle Laws - Single Registration Plate.

**HB0062** Dels O'Donnell and Fisher. Vehicle Laws - Displaying Front Registration Plate - Exemption for Class L (Historic) and Class N (Street Rod) Vehicles.

**HB0063** Del O'Donnell. Presidential Elections - Agreement Among the States to Elect the President by National Popular Vote - Repeal.

**HB0064** Del Vitale, et al. Alcoholic Beverages - Local Licensing Boards - Judicial Review.

**HB0065** Del Vitale, et al. Education - Maintenance of Effort - Lease Payment Exclusion.

**HB0066** Del Rosenberg. Human Services - No Wrong Door Pilot Program.

**HB0067** The Spkr, et al. General Assembly - Mandated Reports by State Agencies.

**HB0068** The Spkr (DLS). State Board of Examiners of Nursing Home Administrators - Sunset Extension and Program Evaluation.

**HB0069** Dels Fisher and O'Donnell. Calvert County - Personal Property Tax - Exemption.

**HB0070** The Spkr (Admin). Budget Bill (Fiscal Year 2016).

**HB0071** The Spkr (Admin). Creation of a State Debt - Maryland Consolidated Capital Bond Loan of 2015, and the Maryland Consolidated Capital Bond Loans of 2004, 2005, 2008, 2009, 2010, 2011, 2012, 2013, and 2014.

**HB0072** The Spkr (Admin). Budget Reconciliation and Financing Act of 2015.

**HB0073** Del Rosenberg, et al. Voters' Rights Protection Act of 2015.

**HB0074** Del Rosenberg, et al. Walter Sondheim Jr. Public Service Internship Scholarship Program - Expansion of Scope.

**HB0075** Calvert County Delegation. Calvert County - Board of License Commissioners - Notice and Hearing on Proposed Legislation.

**HB0076** Del B. Barnes (Chr Jt Com on Pnsns). State Retirement and Pension System - Accumulated Contributions of Nonvested Former Members.

**HB0077** Del B. Barnes (Chr Jt Com on Pnsns). Judges' Retirement System - Membership, Accrual of Interest, and Reemployment.

**HB0078** Del B. Barnes (Chr Jt Com on Pnsns). State Retirement and Pension System - Noncontributory Pension Benefit - Definition.

**HB0079** Del B. Barnes (Chr Jt Com on Pnsns). Correctional Officers' Retirement System - Membership.

**HB0080** Del Carr, et al. Creation of a State Debt - Montgomery County - Warner Manor.

**HB0081** Del Krebs. Ethics Commission, Judicial Ethics Committee, and Joint Ethics Committee - Duties.

**HB0082** Montgomery County Delegation. Montgomery County - Free-Play Pinball Machines - Placement Restrictions - Repeal MC 2-15.

**HB0083** Del Krebs. Public Records - Inspection.

**HB0084** Del Krebs. Annotated Code of Maryland - Captions and Catchlines - Interpretation.

**HB0085** Montgomery County Delegation. Montgomery County - Board of Education - Primary Election Ballots MC 6-15.

**HB0086** Montgomery County Delegation. Montgomery County Board of Education - Student Member - Voting MC 7-15.

**HB0087** Montgomery County Delegation. Maryland Income Tax Refunds - Montgomery County - Warrant Intercept Program MC 8-15.

**HB0088** Montgomery County Delegation. Montgomery County - Alcoholic Beverages - Refillable Wine Containers MC 19-15.

**HB0089** Montgomery County Delegation. Montgomery County - Alcoholic Beverages - Class BD-BWL License MC 18-15.

**HB0090** Montgomery County Delegation. Montgomery County - Alcoholic Beverages - Waiver of License Requirements MC 17-15.

**HB0091** Montgomery County Delegation. Montgomery County - Alcoholic Beverages Licenses - Laytonsville MC 12-15.

**HB0092** Montgomery County Delegation. Montgomery County - Alcoholic Beverages - Wine Auction Permits MC 9-15.

**HB0093** Montgomery County Delegation. Montgomery County - Alcoholic Beverages - 1-Day License for Schools, Places of Worship, and Youth Centers MC 10-15.

**HB0094** Del B. Wilson. Commission on African American History and Culture - Duties.

**HB0095** Montgomery County Delegation. City of Gaithersburg - Licensed Alcoholic Beverages Restaurants - Distance from Churches or Other Places of Worship MC 23-15.

**HB0096** Del Hammen, et al. Creation of a State Debt - Baltimore City - Banner Neighborhoods Community Center.

**HB0097** Del Rosenberg, et al. Vehicle Laws - Window Tinting Restrictions - Medical Exemption for Vehicle Owner's Family.

**HB0098** Del Pendergrass. State Board of Morticians and Funeral Directors - Orders of Summary Suspension - Prohibition on Stays.

**HB0099** Del Hixson, et al. Income Tax Subtraction Modification - Retirement Income of Law Enforcement, Correctional Officer, Fire, Rescue, and Emergency Services Personnel (Hometown Heroes).

**HB100** Del Hammen. Developmental Disabilities Administration - Medicaid Fair Hearings.

**HB0101** Del Anderson. Baltimore City School Police Force - Carrying of Firearms - Scope.

**HB0102** Dels Dumais and Smith. Civil Action - Wrongfully Selling or Furnishing Alcoholic Beverages.

**HB0103** Del S. Robinson. Chesapeake Bay Trust - Restrictions on Investments - Repeal.

**HB0104** Montgomery County Delegation. Montgomery County - Transit Authority MC 24-15.

**HB0105** Del Anderson, et al. Criminal Law - Drug Paraphernalia Possession With Marijuana - Civil Offense.

**HB0106** Montgomery County Delegation. Montgomery County - Illegal Dumping and Litter Control Law - Adoption of Local Ordinance MC 11-15.

**HB0107** Montgomery County Delegation. Medical Professional Liability Insurance for Nonprofit Health Care Providers MC 4-15.

**HB0108** Dels Luedtke and Frush. Tobacco Taxes - Healthy Maryland Initiative.

**HB0109** Dels Dumais and Vallario. Guardianship of the Person - Disabled Persons - Attorney's Fees.

**HB0110** The Spkr (Admin). Creation of a State Debt - Qualified Zone Academy Bonds.

[15-03-51]

**Senate Bills**

**SB0001** Sen Conway. Health Occupations - Pharmacists - Refills of Prescriptions During State of Emergency.

**SB0002** Sen McFadden. Higher Education Investment Tax Credit Program.



- SB0003** Sen Getty. State Minimum Wage Rate - Exceptions - Social Service Nonprofit Organizations.
- SB0004** Carroll County Senators. Carroll County - Gaming Events.
- SB0005** Sen Getty. Election Law - Canvass of Votes - Public Observation.
- SB0006** Sen Klausmeier. Income Tax - Credit for Long-Term Care Premiums.
- SB0007** Sen Middleton. Electronic Cigarettes - Sale to Minors - Components, Supplies, and Enforcement.
- SB0008** Sen Getty. Public Health - Regulation of Milk Products - Revisions.
- SB0009** Sen McFadden. Gas and Electricity - Smart Meters - Customer Rights and Required Reports.
- SB0010** Sen Brochin. Motor Fuel Tax Rates - Consumer Price Index Adjustment - Repeal.
- SB0011** Sens Astle and Middleton. Public Service Commission - Hearing Examiners - Change of Job Title.
- SB0012** Sen DeGrange. Family Law - Child Abuse and Neglect - Expungement of Reports and Records - Time Period.
- SB0013** Sens Conway and Pinsky. Institutions of Higher Education - Fully Online Distance Education - Definition.
- SB0014** Sen Conway. Health Occupations - Board of Pharmacy - Pharmacist Rehabilitation Committee - Definition.
- SB0015** Sen Conway, et al. Task Force to Study the Implementation of a Dyslexia Education Program.
- SB0016** Sen Conway. Criminal Procedure - Expungement - Misdemeanor and Felony Convictions.
- SB0017** Sen Conway. Baltimore City School Police Force - Carrying of Firearms - Scope.
- SB0018** Sen Conway. State Board of Dental Examiners - Dentists and Dental Hygienists - Grounds for Discipline.
- SB0019** Sen Conway. University System of Maryland - Chancellor - Appointment.
- SB0020** Sen Hershey. Kent County - Board of Elections - Membership.
- SB0021** Sens Hershey and Norman. Cecil County and Queen Anne's County - Intergovernmental Cooperation and Acceptance of Funds.
- SB0022** Sen Madaleno. Earned Income Tax Credit - Tax Year 2014 - Technical Correction.
- SB0023** Sen Young. Estates - Closing - Statement of Compensation and Reporting of Income (Mike Cady Act).
- SB0024** Sens Young and Hough. Creation of a State Debt - Frederick County - Weinberg Center HVAC Project.
- SB0025** Sens Young and Hough. Frederick Center for Research and Education in Science and Technology.
- SB0026** Sen Young. Criminal Law - Animal Cruelty - Leaving Dogs Outside in Extreme Temperatures.
- SB0027** Sens Brochin and Zirkin. Baltimore County Public Schools - Revocation of Magnet Status - Approval.
- SB0028** Sen Simonaire. Chesapeake and Atlantic Coastal Bays 2010 Trust Fund - Use of Funds.
- SB0029** Sen Brochin, et al. Environment - Hydraulic Fracturing - Prohibitions.
- SB0030** Sen Peters. Procurement - Veteran-Owned Small Business Enterprise Participation - Award of Contracts.
- SB0031** Sen Peters. Income Tax - Subtraction Modification - Military Retirement Income - Individuals at Least 65 Years Old.
- SB0032** Sens Hough and Young. Creation of a State Debt - Frederick County - Northwest Trek Conservation and Education Center.
- SB0033** Sen Kasemeyer. Creation of a State Debt - Baltimore County - Good Shepherd Boys Unit Renovation.
- SB0034** Carroll County Senators. Creation of a State Debt - Carroll County - The Arc of Carroll County Building Renovation.
- SB0035** Sen Brochin, et al. Baltimore County - Miscellaneous Business Licenses - Fees.
- SB0036** Sen Brochin, et al. Stormwater Management - Watershed Protection and Restoration Program - Repeal.
- SB0037** Sen Madaleno. Tobacco Taxes - Healthy Maryland Initiative.
- SB0038** Sen Mathias. Worcester County - Alcoholic Beverages - Veterans' License - Fee.
- SB0039** Sens Young and Hough. Creation of a State Debt - Frederick County - Culler Lake Stormwater Management Project.
- SB0040** Sen Pugh, et al. Labor and Employment - Maryland Healthy Working Families Act.
- SB0041** Sen Ferguson. Higher Education - Nancy Grasmick Teacher Award - Eligibility.
- SB0042** Sen Norman. Stormwater Management - Watershed Protection and Restoration Program - Repeal.
- SB0043** Sen Norman. State Government - Governor - Approval of Duplicative Bills.
- SB0044** Sen Edwards, et al. Vehicle Laws - Maximum Speed Limits on Highways.
- SB0045** Sens Miller and Middleton. Creation of a State Debt - Charles County - Benedict Volunteer Fire Department and Rescue Squad and Auxiliary Facility.
- SB0046** Sen Brochin, et al. Alcoholic Beverages - Baltimore County - License Fees.
- SB0047** Sen Brochin, et al. Election Law - Fair Campaign Financing Fund - Income Tax Checkoff.
- SB0048** Sen Conway. State Board of Physical Therapy Examiners - Failure to Pass Licensure Examination - Prohibition on Issuance of License.
- SB0049** Sen Conway. State Board of Professional Counselors and Therapists - Examination of Applicants, Licensees, Certificate Holders, and Trainees.
- SB0050** Sen Conway. State Acupuncture Board - Disciplinary Procedures - Judicial Appeals and Prohibition on Stays.
- SB0051** Sen Shank, et al. Commission on African American History and Culture - Duties.
- SB0052** Sen Gladden. Creation of a State Debt - Baltimore City - Liberty Elementary Early Childhood Center.
- SB0053** Sen Gladden. Creation of a State Debt - Baltimore City - MSSDAR Headquarters Restoration.
- SB0054** Sen Middleton. Public Service Commission - Restrictions After Service.
- SB0055** The Pres (Admin). Budget Bill (Fiscal Year 2016).
- SB0056** The Pres (Admin). Creation of a State Debt - Maryland Consolidated Capital Bond Loan of 2015, and the Maryland Consolidated Capital Bond Loans of 2004, 2005, 2008, 2009, 2010, 2011, 2012, 2013, and 2014.
- SB0057** The Pres (Admin). Budget Reconciliation and Financing Act of 2015.
- SB0058** Sen Simonaire. Housing and Community Development - Notice of Proposed Projects.
- SB0059** The Pres (DLS). State Board of Examiners of Nursing Home Administrators - Sunset Extension and Program Evaluation.
- SB0060** Chr JPR (Md Jud Conf). Clerks of the Circuit Courts - Collection of Appearance Fees.
- SB0061** Chr JPR (Md Jud Conf). Active Armed Forces Member - Exemption From Payment of Fees for Certain Court Records.
- SB0062** Chr JPR (Md Jud Conf). Clerks of the Circuit Courts - Water and Sewer Lien Registers - Fees.
- SB0063** Chr JPR (Md Jud Conf). Real Property - Manufactured Homes - Recording of Affidavits of Affixation and Severance - Fees.

- SB0064** Chr JPR (Md Jud Conf). Circuit Court Real Property Records Improvement Fund - Funding.
- SB0065** Chr JPR (Md Jud Conf). Clerks of the Circuit Courts - Hospital Lien Docket - Repeal.
- SB0066** Chr JPR (Md Jud Conf). Circuit Court Real Property Records Improvement Fund - Funding.
- SB0067** Sen Lee. Crime of Violence - Home Invasion.
- SB0068** Sen Conway. Charles County and St. Mary's County - Deer Hunting - Repeal.
- SB0069** Sen Conway. State Board of Pharmacy - Sterile Compounding - Compliance by Nonresident Pharmacies and Repeal of Permit Requirement.
- SB0070** Sen Conway. State Board of Morticians and Funeral Directors - Orders of Summary Suspension - Prohibition on Stays.
- SB0071** Sen Edwards. Reappointment of Washington County Superintendent of Schools - Exemption.
- SB0072** Sens Astle and Rosapepe. Motor Vehicle Administration - Selective Service Registration - Driver's License and Identification Card Applicants.
- SB0073** Sen Feldman. Commission on Tax Policy, Reform, and Fairness.
- SB0074** Sen Feldman, et al. Task Force to Study Maternal Mental Health.
- SB0075** Sens Feldman and Jennings. Task Force to Study a Program for Interest-Free Loans to STEM College Students in Maryland.
- SB0076** Sen Peters (Chr Jt Com on Pnsns). State Retirement and Pension System - Noncontributory Pension Benefit - Definition.
- SB0077** Chr FIN (Md Jud Conf). Commercial Law - Secured Transactions - False Records.
- SB0078** Sen Raskin, et al. Rape Survivor Family Protection Act.

[15-03-50]

# The Judiciary

## COURT OF APPEALS OF MARYLAND

### DISCIPLINARY PROCEEDINGS

This is to certify that by an Order of the Court dated January 22, 2015, **DUANE TIMOTHY PHILLIPS**, 609 New Road, Suite 2, Linwood, New Jersey 08221, and 22 N. Shore Road, Floor 2, Abescon, New Jersey 08201, has been indefinitely suspended, effective immediately from the further practice of law in the State, and his name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-760(e)).

\* \* \* \* \*

This is to certify that by an Order of the Court dated January 16, 2015, **RONALD CLAUDE BRIGERMAN, JR.**, 104 Oak Street, Cambridge, Maryland 21613, has been disbarred by consent, effective immediately from the further practice of law in the State, and his name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-772(d)).

[15-03-46]

# Final Action on Regulations

## 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 03 COMPTROLLER OF THE TREASURY

### Subtitle 02 ALCOHOL AND TOBACCO TAX

#### 03.02.01 Alcoholic Beverages

Authority: Article 2B, §§2-101, 16-301, 16-302, and 16-303; Tax-General Article, §2-103; Annotated Code of Maryland

#### Notice of Final Action

[14-353-F]

On January 15, 2015, the Comptroller of Maryland adopted amendments to Regulation **.20** under **COMAR 03.02.01 Alcoholic Beverages**. This action, which was proposed for adoption in 41:24 Md. R. 1429 (December 1, 2014), has been adopted as proposed.

**Effective Date: February 16, 2015.**

PETER FRANCHOT  
Comptroller of the Treasury

### Subtitle 06 SALES AND USE TAX

#### 03.06.01 Sales and Use Tax

Authority: Tax-General Article, §§2-102, 2-103, and 11-226, Annotated Code of Maryland

#### Notice of Final Action

[13-431-F]

On January 27, 2015, the Comptroller of the Treasury adopted new Regulation **.44** under **COMAR 03.06.01 Sales and Use Tax**. This action, which was proposed for adoption in 40:26 Md. R. 2167—2168 (December 27, 2013) and repropoed in 41:25 Md. R. 1488—1489 (December 12, 2014), has been adopted as repropoed.

**Effective Date: February 16, 2015.**

PETER FRANCHOT  
Comptroller of the Treasury

## Title 08 DEPARTMENT OF NATURAL RESOURCES

### Subtitle 02 FISHERIES SERVICE

#### 08.02.01 General

Authority: Natural Resources Article, §4-701, Annotated Code of Maryland

#### Notice of Final Action

[14-382-F]

On January 27, 2015, the Acting Secretary of Natural Resources adopted amendments to Regulation **.05** under **COMAR 08.02.01 General**. This action, which was proposed for adoption in 41:25 Md. R. 1491—1492 (December 12, 2014), has been adopted as proposed.

**Effective Date: February 16, 2015.**

FRANK W. DAWSON III  
Acting Secretary of Natural Resources

### Subtitle 02 FISHERIES SERVICE

#### 08.02.13 Fishing Licenses — Point Assignment, License Revocation and Suspension Schedule and Criteria, and Hearing Procedure

Authority: Natural Resources Article, §§4-220 and 4-701, Annotated Code of Maryland

#### Notice of Final Action

[14-357-F]

On January 27, 2015, the Acting Secretary of Natural Resources adopted amendments to Regulations **.03**, **.05**, **.07**, and **.08** under **COMAR 08.02.13 Fishing Licenses — Point Assignment, License Revocation and Suspension Schedule and Criteria, and Hearing Procedure**. This action, which was proposed for adoption in 41:25 Md. R. 1493—1498 (December 12, 2014), has been adopted as proposed.

**Effective Date: February 16, 2015.**

FRANK W. DAWSON III  
Acting Secretary of Natural Resources

**Subtitle 02 FISHERIES SERVICE****08.02.22 Sharks**

Authority: Natural Resources Article, §4-2A-03, Annotated Code of Maryland

**Notice of Final Action**

[14-373-F]

On January 27, 2015, the Acting Secretary of Natural Resources adopted amendments to Regulation .03 under **COMAR 08.02.22 Sharks**. This action, which was proposed for adoption in 41:25 Md. R. 1498—1499 (December 12, 2015), has been adopted as proposed.

**Effective Date: February 16, 2015.**

FRANK W. DAWSON III  
Acting Secretary of Natural Resources

**Subtitle 18 BOATING — SPEED LIMITS AND OPERATION OF VESSELS****08.18.33 Deep Creek Lake**

Authority: Natural Resources Article, §§5-209, 8-703, and 8-704, Annotated Code of Maryland

**Notice of Final Action**

[14-337-F]

On January 27, 2015, the Acting Secretary of Natural Resources adopted Regulation .03 under **COMAR 08.18.33 Deep Creek Lake**. This action, which was proposed for adoption in 41:23 Md. R. 1381 (November 14, 2014), has been adopted as proposed.

**Effective Date: February 16, 2015.**

FRANK W. DAWSON III  
Acting Secretary of Natural Resources

**Subtitle 18 BOATING — SPEED LIMITS AND OPERATION OF VESSELS****08.18.36 Blackwater River**

Authority: Natural Resources Article, §§8-703 and 8-704, Annotated Code of Maryland

**Notice of Final Action**

[14-336-F]

On January 27, 2015, the Acting Secretary of Natural Resources adopted Regulations .01 and .02 under **COMAR 08.18.36 Blackwater River**. This action, which was proposed for adoption in 41:23 Md. R. 1382 (November 14, 2014), has been adopted as proposed.

**Effective Date: February 16, 2015.**

FRANK W. DAWSON III  
Acting Secretary of Natural Resources

**Title 09****DEPARTMENT OF LABOR, LICENSING, AND REGULATION****Subtitle 10 RACING COMMISSION****09.10.03 Prohibited Acts**

Authority: Business Regulation Article, §11-210, Annotated Code of Maryland

**Notice of Final Action**

[14-333-F]

On January 20, 2015, the Maryland Racing Commission adopted amendments to Regulation .02 under **COMAR 09.10.03 Prohibited Acts**. This action, which was proposed for adoption in 41:23 Md. R. 1383-1384 (November 14, 2014), has been adopted as proposed.

**Effective Date: February 16, 2015.**

J. MICHAEL HOPKINS  
Executive Director

**Title 10****DEPARTMENT OF HEALTH AND MENTAL HYGIENE****Subtitle 09 MEDICAL CARE PROGRAMS****10.09.23 Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services**

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

**Notice of Final Action**

[14-340-F]

On January 27, 2015, the Secretary of Health and Mental Hygiene adopted amendments to Regulation .06 under **COMAR 10.09.23 Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services**. This action, which was proposed for adoption in 41:24 Md. R. 1431—1432 (December 1, 2014), has been adopted as proposed.

**Effective Date: February 16, 2015.**

VAN T. MITCHELL  
Secretary of Health and Mental Hygiene

## Subtitle 09 MEDICAL CARE PROGRAMS

### 10.09.36 General Medical Assistance Provider Participation Criteria

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

#### Notice of Final Action

[14-329-F]

On January 13, 2015, the Acting Secretary of Health and Mental Hygiene adopted amendments to Regulation .03 under **COMAR 10.09.36 General Medical Assistance Provider Participation Criteria**. This action, which was proposed for adoption in 41:23 Md. R. 1384 (November 14, 2014), has been adopted with the nonsubstantive changes shown below.

**Effective Date: February 16, 2015.**

#### 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 .03A(8): "Gender identity" is being added to remain consistent with the Fairness for All Marylanders Act of 2014.

#### .03 Conditions for Participation.

A. To participate in the Program, the provider shall comply with the following criteria:

(1)—(7) (proposed text unchanged)

(8) Provide services without regard to race, color, age, sex, national origin, *religion*, *sexual orientation*, *gender identity*, marital status, or physical or mental *disability*;

(9)—(18) (proposed text unchanged)

B.—E. (proposed text unchanged)

LAURA HERRERA SCOTT, M.D., MHP  
Acting Secretary of Health and Mental Hygiene

## Subtitle 09 MEDICAL CARE PROGRAMS

### 10.09.41 Employed Individuals with Disabilities

Authority: Health-General Article, §15-138, Annotated Code of Maryland

#### Notice of Final Action

[14-328-F]

On January 13, 2015, the Acting Secretary of Health and Mental Hygiene adopted amendments to Regulations .02, .06—.09, .12, and .13 under **COMAR 10.09.41 Employed Individuals with Disabilities**. This action, which was proposed for adoption in 41:23 Md. R. 1384—1386 (November 14, 2014), has been adopted as proposed.

**Effective Date: February 16, 2015.**

LAURA HERRERA SCOTT, M.D., MHP  
Acting Secretary of Health and Mental Hygiene

## Subtitle 09 MEDICAL CARE PROGRAMS

#### Notice of Final Action

[14-332-F]

On January 27, 2015, the Secretary of Health and Mental Hygiene adopted:

(1) The repeal of existing Regulations .01—.24 under **COMAR 10.09.60 Primary Adult Care Program Eligibility**;

(2) Amendments to Regulation .01 under **COMAR 10.09.62 Maryland Medicaid Managed Care Program: Definitions**;

(3) Amendments to Regulations .01, .02, .03, .05, and .06 under **COMAR 10.09.63 Maryland Medicaid Managed Care Program: Eligibility and Enrollment**;

(4) Amendments to Regulations .05, .06, .07, and .10 under **COMAR 10.09.64 Maryland Medicaid Managed Care Program: MCO Application**;

(5) Amendments to Regulations .02, .04, .05, .08, .10, .12, .14, .15, .19-5, .20, and .21 and the repeal of existing Regulations .01, .11, .11-1, and .11-2 under **COMAR 10.09.65 Maryland Medicaid Managed Care Program: Managed Care Organizations**;

(6) Amendments to Regulations .02, .04, .05, and .07 under **COMAR 10.09.66 Maryland Medicaid Managed Care Program: Access**; and

(7) Amendments to Regulations .01, .04, .12, and .26—.28, the repeal of Regulation .10, and new Regulation .06 under **COMAR 10.09.67 Maryland Medicaid Managed Care Program: Benefits**.

This action, which was proposed for adoption in 41:23 Md. R. 1386—1394 (November 14, 2014), has been adopted with the nonsubstantive changes shown below.

**Effective Date: February 16, 2015.**

#### 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:

COMAR 10.09.67.10: Repealed. The provisions within Regulation .10 were replaced by the recently adopted amendments to COMAR 10.09.80. This action was addressed in the Statement of Purpose in the proposal printed in 41:20 Md. R. 1158—1162 (October 3, 2014) and adopted in 41:25 Md. R. 1480—1485 (December 12, 2014).

VAN T. MITCHELL  
Secretary of Health and Mental Hygiene

## Subtitle 09 MEDICAL CARE PROGRAMS

### 10.09.65 Maryland Medicaid Managed Care Program: Managed Care Organizations

Authority: Insurance Article, §§15-112, 15-605, and 15-1008; Health-General Article, §§2-104, 15-102.3, and 15-103; Annotated Code of Maryland

#### Notice of Final Action

[14-330-F]

On January 13, 2015, the Acting Secretary of Health and Mental Hygiene adopted amendments to Regulation .19 under **COMAR 10.09.65 Maryland Medicaid Managed Care Program: Managed Care Organizations**. This action, which was proposed for adoption

in 41:23 Md. R. 1395—1399 (November 14, 2014), has been adopted as proposed.

**Effective Date: February 16, 2015.**

LAURA HERRERA SCOTT, M.D., MHP  
Acting Secretary of Health and Mental Hygiene

## Title 12 DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

### Subtitle 04 POLICE TRAINING COMMISSION

#### 12.04.05 Electronic Control Device Training

Authority: Correctional Services Article, §2-109; and Public Safety Article, §§3-207 and 3-208; Annotated Code of Maryland

##### Notice of Final Action

[14-277-F]

On January 7, 2015, the Acting Secretary of Public Safety and Correctional Services, in cooperation with the Police Training Commission, adopted amendments to Regulation .02 under **COMAR 12.04.05 Electronic Control Device Training**. This action, which was proposed for adoption in 41:19 Md. R. 1091 (September 19, 2014), has been adopted as proposed.

**Effective Date: February 16, 2015.**

CARROLL A. PARRISH  
Acting Secretary of Public Safety and Correctional Services

## Title 13A STATE BOARD OF EDUCATION

### Subtitle 03 GENERAL INSTRUCTIONAL PROGRAMS

#### 13A.03.05 Administration of Home and Hospital Teaching for Students

Authority: Education Article, §§2-205, 6-704, 7-101, 7-301, and 8-403, Annotated Code of Maryland

##### Notice of Final Action

[14-334-F]

On January 27, 2015, the Maryland State Board of Education adopted amendments to Regulations .01, .03, and .04 and the repeal of Regulation .05 under **COMAR 13A.03.05 Administration of Home and Hospital Teaching for Students**. This action, which was proposed for adoption in 41:23 Md. R. 1399—1400 (November 14, 2014), has been adopted as proposed.

**Effective Date: February 16, 2015.**

LILLIAN M. LOWERY, Ed.D.  
State Superintendent of Schools

## Subtitle 04 SPECIFIC SUBJECTS

### 13A.04.08 Program in Social Studies

Authority: Education Article, §2-205(h), Annotated Code of Maryland

##### Notice of Final Action

[14-335-F]

On January 27, 2015, the Maryland State Board of Education adopted amendments to Regulation .01 under **COMAR 13A.04.08 Program in Social Studies**. This action, which was proposed for adoption in 41:23 Md. R. 1400—1401 (November 14, 2014), has been adopted as proposed.

**Effective Date: February 16, 2015.**

LILLIAN M. LOWERY, Ed.D.  
State Superintendent of Schools

## Title 17 DEPARTMENT OF BUDGET AND MANAGEMENT

### Subtitle 04 PERSONNEL SERVICES AND BENEFITS

#### 17.04.13 State Employees' Health Benefits

Authority: State Personnel and Pensions Article, Title 2, Subtitle 5, Title 4, Subtitle 1, §4-106, and Title 8, Subtitle 1, Annotated Code of Maryland

##### Notice of Final Action

[14-348-F]

On January 21, 2015, the Secretary of Budget and Management adopted amendments to Regulations .03, .03-1, and .04 and the repeal of Regulation .06 under **COMAR 17.04.13 State Employees' Health Benefits**. This action, which was proposed for adoption in 41:24 Md. R. 1439—1442 (December 1, 2014), has been adopted as proposed.

**Effective Date: February 16, 2015.**

DAVID R. BRINKLEY  
Secretary of Budget and Management

**Title 18  
DEPARTMENT OF  
ASSESSMENTS AND  
TAXATION**

**Subtitle 03 PERSONAL PROPERTY  
ASSESSMENTS**

**18.03.02 Filings**

Authority: Tax-Property Article, §§2-201, 2-202, and 11-101, Annotated Code of Maryland

**Notice of Final Action**  
[14-350-F]

On January 20, 2015, the Acting Director of Assessments and Taxation adopted amendments to Regulation .01 under **COMAR 18.03.02 Filings**. This action, which was proposed for adoption in 41:24 Md. R. 1442 (December 1, 2014), has been adopted as proposed.

**Effective Date: February 16, 2015.**

ROBERT E. YOUNG  
Director of Assessments and Taxation

**Title 20  
PUBLIC SERVICE  
COMMISSION**

**Subtitle 79 APPLICATIONS  
CONCERNING THE CONSTRUCTION  
OR MODIFICATION OF  
GENERATING STATIONS AND  
OVERHEAD TRANSMISSION LINES**

**20.79.01 General**

Authority: Public Utilities Article, §§2-113, 2-121 and 7-205—7-208, Annotated Code of Maryland

**Notice of Final Action**  
[14-346-F]

On January 21, 2015, the Public Service Commission adopted amendments to Regulation .02 under **COMAR 20.79.01 Applications Concerning the Construction or Modification of Generating Stations and Overhead Transmission Lines**. This action, which was proposed for adoption in 41:24 Md. R. 1443 (December 1, 2014), has been adopted as proposed.

**Effective Date: February 16, 2015.**

DAVID J. COLLINS  
Executive Secretary  
Public Service Commission

**Title 26  
DEPARTMENT OF THE  
ENVIRONMENT**

**Subtitle 11 AIR QUALITY**

**26.11.34 Low Emissions Vehicle Program**

Authority: Environment Article, §§1-404, 2-102, 2-103, 2-301, 2-1102, and 2-1103, Annotated Code of Maryland

**Notice of Final Action**  
[14-351-F-I]

On January 20, 2015, the Secretary of the Environment adopted amendments to Regulation .02 under **COMAR 26.11.34 Low Emissions Vehicle Program**. This action, which was proposed for adoption in 41:24 Md. R. 1447—1449 (December 1, 2014), has been adopted as proposed.

**Effective Date: February 16, 2015.**

DAVID COSTELLO  
Acting Secretary of the Environment

**Title 34  
DEPARTMENT OF  
PLANNING**

**Subtitle 04 HISTORICAL AND  
CULTURAL PROGRAMS**

**34.04.07 Sustainable Communities Tax Credit  
Certifications**

Authority: State Finance and Procurement Article, §5A-303, Annotated Code of Maryland

**Notice of Final Action**  
[14-327-F]

On January 16, 2015, the Maryland Department of Planning adopted the repeal of existing Regulations .01—.07 and new Regulations .01—.08 under **COMAR 34.04.07 Sustainable Communities Tax Credit Certifications**. This action, which was proposed for adoption in 41:23 Md. R. 1404—1409 (November 14, 2014), has been adopted with the nonsubstantive changes shown below.

**Effective Date: February 16, 2015.**

**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 .04E(1): This change was based on drafting error and made to correct the cross-reference to a different section of the regulation.

Regulation .04I: This change was based on drafting error and made to correct the cross-reference to a different section of the regulation.

Regulation .05A(1): The word "the" was changed to "an" in order to more correctly reflect the review process.



**.04 Procedures for Application for and Review of Certifications of Eligibility of Certified Historic Structure Rehabilitations (Part 2).**

A.—D. (proposed text unchanged)

E. In reviewing applications for certification of proposed competitive commercial rehabilitations, the Director shall:

(1) Award initial credit certificates for available credits to those rehabilitations that rank competitively in the order that the rehabilitations meet the criteria of [[§G]] §H of this regulation; and

(2) (proposed text unchanged)

F.—H. (proposed text unchanged)

I. The Director may assign differing weights to the criteria set forth in [[§F]] §H of this regulation.

J.—M. (proposed text unchanged)

**.05 Procedures for Certification of Completed Rehabilitation (Part 3).**

A. Certification of Completed Rehabilitation.

(1) For any substantial rehabilitation certified under Regulation .04 of this chapter, [[the]] an applicant may file an application with the Director requesting the Director to issue a certificate that a completed substantial rehabilitation of a certified historic structure is a certified rehabilitation.

(2)—(3) (proposed text unchanged)

B.—E. (proposed text unchanged)

RICHARD E. HALL  
Secretary of Planning

## Title 36

# MARYLAND STATE LOTTERY AND GAMING CONTROL AGENCY

## Subtitle 01 GENERAL PROVISIONS

### 36.01.01 General

Authority: State Government Article, §§9-110(a) and 9-111(a)(7), Annotated Code of Maryland

#### Notice of Final Action

[14-345-F]

On January 5, 2015, the Maryland Lottery and Gaming Control Agency adopted amendments to Regulation .04 under COMAR 36.01.01 General. This action, which was proposed for adoption in 41:24 Md. R. 1454 (December 1, 2014), has been adopted as proposed.

**Effective Date: February 16, 2015.**

STEPHEN L. MARTINO  
Director  
Maryland State Lottery and Gaming Control Agency

## Subtitle 04 VIDEO LOTTERY TERMINALS

### 36.04.01 Video Lottery Terminal Technical Standards

Authority: State Government Article, §§9-1A-02(b) and 9-1A-04(d), Annotated Code of Maryland

#### Notice of Final Action

[14-343-F]

On January 5, 2015, the Maryland Lottery and Gaming Control Agency adopted amendments to Regulation .20 under COMAR 36.04.01 Video Lottery Terminal Technical Standards. This action, which was proposed for adoption in 41:24 Md. R. 1455 (December 1, 2014), has been adopted as proposed.

**Effective Date: February 16, 2015.**

STEPHEN L. MARTINO  
Director  
Maryland State Lottery and Gaming Control Agency

## Subtitle 05 TABLE GAMES

### 36.05.02 Table Game Equipment

Authority: State Government Article, §§9-1A-02(b) and 9-1A-04(d), Annotated Code of Maryland

#### Notice of Final Action

[14-342-F]

On January 5, 2015, the Maryland Lottery and Gaming Control Agency adopted Regulation .16 under COMAR 36.05.02 Table Game Equipment. This action, which was proposed for adoption in 41:24 Md. R. 1455—1457 (December 1, 2014), has been adopted as proposed.

**Effective Date: February 16, 2015.**

STEPHEN L. MARTINO  
Director  
Maryland State Lottery and Gaming Control Agency

## Subtitle 05 TABLE GAMES

### 36.05.03 Table Game Procedures

Authority: State Government Article, §§9-1A-02(b) and 9-1A-04(d), Annotated Code of Maryland

#### Notice of Final Action

[14-347-F]

On January 5, 2015, the Maryland Lottery and Gaming Control Agency adopted amendments to Regulations .03, .05, and .23 under COMAR 36.05.03 Table Game Procedures. This action, which was proposed for adoption in 41:24 Md. R. 1457 (December 1, 2014), has been adopted with the nonsubstantive changes shown below.

**Effective Date: February 16, 2015.**

#### 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 .03F(4): This change was made based on the Agency's subsequent review of the regulation. The change made to .03F(2) deleted the requirement that a security department employee witness

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a recount. Consistent with that change, the change to .03F(4) eliminates the requirement that a "correct copy" be signed by a security department employee who witnessed the recount.

**.03 Procedures for Opening a Table Game.**

A. — E. (text unchanged)

F. If there is a discrepancy between the amount of gaming chips and plaques counted and the amount of the gaming chips and plaques recorded on the duplicate copy of the Table Inventory Slip:

(1) — (3) (proposed text unchanged)

(4) The "Correct Copy" shall be signed by the dealer or boxperson who recounted the table inventory, [[the security department employee who witnessed the recount]] and the floorperson or above.

(5) (proposed text unchanged)

G. — H. (proposed text unchanged)

STEPHEN L. MARTINO

Director

Maryland State Lottery and Gaming Control Agency

# Proposed Action on Regulations

For information concerning citizen participation in the regulation-making process, see inside front cover.

## Symbol Key

- Roman type indicates existing text of regulation.
- *Italic type* indicates proposed new text.
- [Single brackets] indicate text proposed for deletion.

## Promulgation of Regulations

An agency wishing to adopt, amend, or repeal regulations must first publish in the Maryland Register a notice of proposed action, a statement of purpose, a comparison to federal standards, an estimate of economic impact, an economic impact on small businesses, a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations. The opportunity for public comment must be held open for at least 30 days after the proposal is published in the Maryland Register.

Following publication of the proposal in the Maryland Register, 45 days must pass before the agency may take final action on the proposal. When final action is taken, the agency must publish a notice in the Maryland Register. Final action takes effect 10 days after the notice is published, unless the agency specifies a later date. An agency may make changes in the text of a proposal. If the changes are not substantive, these changes are included in the notice of final action and published in the Maryland Register. If the changes are substantive, the agency must repropose the regulations, showing the changes that were made to the originally proposed text.

Proposed action on regulations may be withdrawn by the proposing agency any time before final action is taken. When an agency proposes action on regulations, but does not take final action within 1 year, the proposal is automatically withdrawn by operation of law, and a notice of withdrawal is published in the Maryland Register.

## Title 05

# DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

## Subtitle 13 NEIGHBORHOOD BUSINESS DEVELOPMENT

### 05.13.06 Food Desert Designation and Financing

*Authority: Housing and Community Development Article, §6-308(a)(2),  
Annotated Code of Maryland*

#### Notice of Proposed Action

[15-087-P]

The Acting Secretary of Housing and Community Development proposes to adopt new Regulations .01—.17 under a new chapter, **COMAR 05.13.06 Food Desert Designation and Financing**.

#### Statement of Purpose

The purpose of this action is to provide guidance for implementation of Ch. 228, Acts of 2014. The statute allows the Department to establish partnerships with community-based lenders as intermediaries that would administer loans to food-related enterprises under the Neighborhood Business Development Program. It also prescribes the policies, procedures, and authorizations for designating areas as food deserts and providing financial assistance to eligible small businesses and other food-related enterprises that provide fresh fruits, vegetables, and other healthy foods to residents in food deserts. The new regulations will encourage more investment in start-up and expansion of food-related enterprises in Maryland.

#### 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 regulations would expand access to capital for establishing and expanding food-related enterprises in designated food deserts within Priority Funding Areas. Food deserts are generally defined as communities that do not have easy access to healthy foods, including fresh fruits and vegetables, typically in the form of a supermarket or grocery store. The regulations would also make it easier for the Department to partner with third-party intermediaries with the experience and capacity to provide technical assistance to food-related enterprises, increasing successful outcomes, while easing the administrative burden on State agencies.

Because food deserts may be located outside of sustainable communities, the requirement that loans to food-related enterprises under the Neighborhood Business Development Program be located in a designated sustainable community represents a substantial barrier to food-related enterprises. The proposed regulations would eliminate that barrier for loans to food-related enterprises in designated food deserts, resulting in a positive economic impact on food-related enterprises; however, the magnitude of that impact cannot be determined. The legislation would also allow the Department to partner with experienced local lending intermediaries to originate and administer loans to food-related enterprises, resulting in ease of administration and improved technical support to borrowers. The Program would, however, retain the authority to originate, underwrite, and service the loans directly.

Small businesses will benefit from improved access to capital and local governments may benefit from increased local revenue due to new business activity; however the magnitude of these benefits cannot be determined. The proposed regulations would be implemented with existing staff and program resources.

#### 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:	(R+)	Indeterminable
	Benefit (+)	
	Cost (-)	Magnitude
<hr/>		
D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups:		
Small businesses	(+)	Indeterminable
F. Direct and indirect effects on public:	NONE	

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

C. Local governments may benefit from increased local revenue due to new business activity; however, the magnitude of this benefit cannot be determined.

E. Small businesses will benefit from improved access to capital; however, the magnitude of this benefit cannot be determined.

**Economic Impact on Small Businesses**

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

The proposed regulations would improve access to capital for loans to small businesses seeking financing through the Neighborhood Business Development program for food-related enterprises, resulting in a positive economic impact to food-related enterprises; however, the magnitude of that impact cannot be determined. The legislation would also allow the Department to partner with experienced local lending intermediaries to originate and administer microloans. This would ease administration and benefit borrowers who would receive direct technical assistance and loan administration through intermediaries; however, the magnitude of that impact cannot be determined.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to John Papagni, Program Officer, Division of Neighborhood Revitalization, Department of Housing and Community Development, 100 Community Place, Crownsville, MD 21032, or call 410-209-5807, or email to John.Papagni@Maryland.gov, or fax to 410-685-8270. Comments will be accepted through March 9, 2015. A public hearing has not been scheduled.

**.01 General.**

*This chapter prescribes the policies, procedures, and authorizations for designating areas as food deserts and providing financial assistance to eligible small businesses and other food-related enterprises that provide fresh fruits, vegetables, and other healthy foods to residents in food deserts.*

**.02 Definitions.**

A. In this chapter, the following words have the meanings indicated and as defined in the Act.

B. Terms Defined.

(1) "Advisory Committee" means the Interagency Food Desert Advisory Committee established under Housing and Community Development Article, §6-308.2, Annotated Code of Maryland.

(2) "Business" means a commercial or industrial enterprise.

(3) "Department" means the Department of Housing and Community Development, a principal department of the State.

(4) "Financial assistance" means any form of grant, loan, assurance, guarantee, or other credit enhancement, reduction in the principal obligation of or in the rate of interest payable on a loan or portion of a loan, and prepayment of interest on a subordinate or superior loan or portion of a loan.

(5) "Financial assistance documents" means those documents executed by an approved applicant and the Department which set forth the terms and conditions of financial assistance under the Program.

(6) "Food desert" means that part of priority funding area designated by the Secretary under Regulation .05 of this chapter.

(7) "Food desert project" or "project" means a project or activity which qualifies for financial assistance under the Program.

(8) "Local jurisdiction" means:

(a) A municipal corporation subject to the provisions of the State Constitution, Article XI-E; or

(b) Any of the 23 counties of the State and the Mayor and City Council of Baltimore.

(9) "Nonprofit organization" means a corporation, foundation, or other entity that specifies in its charter or bylaws that no part of the net earnings may inure to the benefit of any private shareholder or individual holding any interest in the entity.

(10) "Program" means the Business Development Program, also known as the Neighborhood Business Works Program.

(11) "Small business" means a business that employs a number of employees, or has annual gross receipts, no greater than the limits set forth by the U.S. Small Business Administration.

(12) "Secretary" means the Secretary of Housing and Community Development.

(13) "State" means the State of Maryland.

**.03 Food Desert Designation Application.**

A. An application for a food desert designation shall be submitted by a local government or local governments.

B. An application for a food desert designation shall be submitted to the Department on forms prescribed by the Department and in accordance with the schedule that the Department establishes.

C. An application for a designation shall provide:

(1) A detailed map and description of the proposed food desert demonstrating the proposed areas within a priority funding area;

(2) Information and data on the:

(a) Availability of fresh fruit, vegetables, and other healthy foods in the area;

(b) Income levels of local residents; and

(c) Transportation needs of local residents and the availability of public transportation;

(3) Any comments the applicant has received from the local governments or community; and

(4) Any other information that the Department considers relevant.

**.04 Food Desert Designation Application Processing.**

A. Application Evaluation.

(1) Each application shall be submitted to the Department to determine whether all of the information required under Regulation .03 of this chapter is contained in the application.

(2) Upon receipt of all required information, the Department shall:

(a) Convene the Advisory Committee to:

(i) Review applications;

(ii) Provide assistance and guidance to applicants; and

(iii) Make recommendations to the Secretary;

(b) Refer the application to other State agencies for comment, as the Department considers appropriate;

(c) Consider any recommendation from a State unit; and

(d) Analyze each application to determine whether the proposed food desert merits designation.

(3) The Advisory Committee or the Department may request additional information from the applicant concerning an application, including oral presentations.

(4) Upon completion of the requirements in §A(1)—(3) of this regulation, the Advisory Committee shall make a recommendation on the application to the Secretary after considering the:

(a) Availability of fresh fruit, vegetables, and other healthy foods in the area;

(b) Income levels of local residents;

(c) Transportation needs of local residents and the availability of public transportation;

(d) Comments from local governments and other State agencies; and

(e) Any other factors that the Advisory Committee considers relevant.

B. Upon receipt of the recommendation from the Advisory Committee, the Secretary may request additional information from the applicant concerning the application, including oral presentations.

**.05 Designation of a Food Desert.**

A. The Secretary, on the recommendation of the Advisory Committee, may designate an area as a food desert.

B. If the Secretary determines not to designate all or part of an area as a food desert, the Secretary shall issue a written notice of denial with an evaluation and explanation of the denial.

**C. Reconsiderations.**

(1) An applicant may request initial reconsideration of a denial by submitting a written request to the Secretary.

(2) The request for reconsideration must be received within 30 days following the date of the denial notice.

(3) The request for reconsideration shall address each reason for the denial and provide documentation supporting reasons for reconsideration of the application.

(4) The Secretary shall respond in writing to the applicant's request for reconsideration within 90 days of receipt of the request for reconsideration.

(5) An initial decision or reconsideration of a decision is not a contested case within the meaning of the Administrative Procedure Act or COMAR 05.01.01.02.

**.06 Modification of a Food Desert Designation.**

A. An applicant may submit modifications to a food desert designation to the Department in accordance with the schedule that the Department establishes.

B. The Secretary, on the recommendation of the Advisory Committee, may approve modifications to a food desert designation.

C. Regulations .03—.05 of this chapter shall apply to the procedures and approval process for modifying a food desert designation.

D. The Department may establish an abbreviated application for modifying a food desert designation.

**.07 Eligible Projects.**

In order to be eligible for financial assistance, a project shall satisfy the following requirements:

A. The project is in a food desert;

B. The project will provide fresh fruits, vegetables, and other healthy foods to residents in food deserts;

C. The project has a commitment of monies from private, local, or federal funds so that upon receipt of financial assistance under the Program there will be adequate funding to assure completion of the project;

D. As determined by the Department, the project is not feasible but for the financial assistance from the Program and the financial assistance requested is the least amount of money necessary to complete the project;

E. The financial assistance from all State government sources, including but not limited to the Program, may not exceed 50 percent of total project costs;

F. The project is ready to proceed upon receipt of financial assistance under the Program;

G. Each local jurisdiction in which the project is located has adopted a local resolution, or its authorized designee has delivered a letter to the Program, expressing support for the project;

H. The operating income and expenses projected for the project show income sufficient, in the sole discretion of the Department, to repay on schedule any loans authorized or guaranteed by the Program; and

I. Upon completion, the project will be in compliance with all applicable zoning requirements and standards as well as the applicable building code of the local jurisdiction in which the project is located.

**.08 Terms and Conditions of Financial Assistance.**

A. The financial assistance from the Program shall be on such terms as the Department considers necessary to make the project financially feasible.

B. Financial assistance in the form of a loan from the Program may be secured, at the discretion of the Department, by a security instrument described in §C of this regulation, which may be subordinate to other security interests.

C. The security shall be acceptable to the Department and may be:

(1) A mortgage or deed of trust lien;

(2) A cash escrow;

(3) A letter of credit;

(4) A pledge of depository accounts;

(5) A pledge of accounts receivable;

(6) An assignment of income;

(7) A security interest in machinery and equipment; or

(8) Any other form of security or collateral acceptable to the Department.

D. The principal and interest of a loan made or guaranteed under the Program shall:

(1) Be repayable out of revenues specified by an approved applicant;

(2) Bear interest at a rate determined to be necessary and reasonable for the project which may be as low as zero percent; and

(3) Be repayable in accordance with a schedule determined by the Department and may be on a deferred payment schedule.

E. In order to facilitate the successful completion or operation of a project, the Department may modify:

(1) The rate of interest;

(2) The time or amount of payment; or

(3) Any other term of a loan.

F. Default. In the event of default, the Department shall have the right to modify the rate of interest, the time or amount of payment, or any other term of financial assistance in order to ensure repayment and achieve the purposes of the Program.

**G. Property, Liability, and Other Insurance.**

(1) At or before closing of the financial assistance, and at such other times as required by the Department, the applicant shall provide evidence that the applicant, contractor, and other parties have obtained and maintained the following insurance:

(a) Owner's liability;

(b) Owner's property or hazard or contractor's builder's risk;

(c) Contractor's liability;

- (d) Business income;
- (e) Architect's errors and omissions; and
- (f) Engineer's errors and omissions.

(2) All insurance required under §G(1) of this regulation shall meet the following requirements:

- (a) Be written by a company registered with the Maryland Insurance Administration, or a company approved by the Department in the event the property and company are located out of State;
- (b) Be in force at the time of closing;
- (c) Not be terminable without prior notification to the Department; and
- (d) Contain such other terms and coverage satisfactory to the Department.

(3) In addition to the requirements of §G(2) of this regulation, owner's liability and business income insurance shall:

- (a) Name the Department as an additional insured; and
- (b) Remain in force for the duration of the loan.

(4) In addition to the requirements of §G(2) of this regulation, contractor's liability insurance shall:

- (a) Name the Department as an additional insured; and
- (b) Remain in place through final closing or such later date as the Department requires.

(5) In addition to the requirements of §G(2) of this regulation, owner's property or hazard insurance and builder's risk insurance shall:

- (a) Name the Department as an additional insured, loss payee, and mortgagee; and
- (b) Remain in force for the duration of the loan.

**.09 Limitations on Financial Assistance.**

**A. Minimum Amount of Financial Assistance.**

(1) The minimum amount of financial assistance from the Program to a project is \$1,000.

(2) The maximum amount of financial assistance from the Program to a project may not exceed 50 percent of total project costs.

**B. Disbursement of Financial Assistance.** Financial assistance may be disbursed in accordance with the terms and conditions set forth in the financial assistance documents.

**C.** The Secretary may approve an exception to the maximum amount of the financial assistance, up to 65 percent of total project costs, on the basis that other potential sources of funds have been sought and clearly are not available and it is not feasible to reduce the size or scope of the project.

**D.** The Secretary may approve an exception to the minimum amount of the financial assistance on the basis that it is not feasible to increase the size or scope of the project.

**.10 Food Desert Project Applications and Processing.**

**A.** An application for financial assistance shall be submitted to the Department and shall be made upon standard forms prescribed by the Department.

**B.** Each application shall:

(1) Contain the applicant's organizational documents, including as applicable its articles of incorporation and bylaws, its articles of organization and operating agreement, its certificate of limited partnership and limited partnership agreement, or its partnership or joint venture agreement;

(2) Contain a description of the project;

(3) Contain proof of the dollar amount committed to the project from private and non-State public resources, and proof of any applications submitted to private and non-State public sources of financing for the project except that if the applicant is not applying to any private or non-State public resources, the Program may request additional information which would have been contained in those applications;

(4) Contain sufficient information to determine that the:

- (a) Project is located in a food desert;
- (b) Project is eligible in accordance with Regulation .07 of this chapter; and

(c) Terms and requirements of financial assistance as set forth in Regulation .08 of this chapter can be met; and

(5) Contain the following additional information:

(a) The number and types of jobs to be created or retained by the project;

(b) The amount, size, and types of commercial or industrial space to be created or retained;

(c) The cost of the project;

(d) A project budget identifying all sources and uses of project development funds;

(e) Except for projects seeking financial assistance for minor rehabilitation, a pro forma showing anticipated project revenue, expenses, and debt service and other indebtedness of the project;

(f) Identification of the revenues which can be used to repay the financial assistance provided by the Program; and

(g) Other and further information as the Program may request.

**C. Application Evaluation.**

(1) Each application submitted shall be reviewed by the Program to determine whether all of the information required under §B of this regulation is contained in the application.

(2) Upon submission of all required information, the Program shall undertake an analysis of each application and make a recommendation to the Secretary, as to whether, in accordance with this section, a project is eligible for financial assistance, the amount of financial assistance, and any special terms and conditions for a project.

(3) The Program may take the information set forth in an application and the following factors into consideration in recommending an award of financial assistance:

(a) The ratio, as permitted under Regulation .07E of this chapter, of Program and other State funds to both private and other non-State public funds;

(b) The relationship of a project to area revitalization plans, efforts, and strategies;

(c) The capability of an applicant to administer a project;

(d) The potential of the business to serve the needs of the food desert in which it is situated;

(e) A plan to seek out sources of Maryland-grown produce and Maryland-produced foods;

(f) A strategy to encourage hiring local residents; and

(g) Other factors which the Program determines are desirable in fostering commercial and economic revitalization within each local jurisdiction in which the project is located.

**D. Approval of Applications.**

(1) If the Program determines to recommend approval of a project for financial assistance, the Program shall present the project to the Secretary.

(2) The Secretary, in the sole discretion of the Secretary, may delegate to an authorized officer of the Department the authority to approve, disapprove, or approve with modifications financial assistance provided under the Program.

**E. Rejection of Applications.** If the Program determines not to recommend approval of a project for financial assistance, the Program shall issue a written notice of rejection with an evaluation and explanation for rejection.

**F. Reconsideration.**

(1) An applicant may request reconsideration of a rejection by submitting a written request, to the Secretary, which is received within 30 days following the date of the rejection notice. The request

for reconsideration shall address each reason for the rejection and provide documentation supporting reasons for reconsideration of the issues. The Secretary shall respond in writing to the applicant's request for reconsideration within 30 days of receipt by the Secretary of the request for reconsideration.

(2) An initial decision or reconsideration of a decision is not a contested case within the meaning of the Administrative Procedure Act or COMAR 05.01.01.02.

(3) The Secretary, in the sole discretion of the Secretary, may delegate to an authorized officer of the Department the authority to approve, disapprove, or approve with modifications a request for reconsideration of a rejection under the Program.

G. Closing. The closing of an award of financial assistance shall be scheduled at a time acceptable to the Department and the Office of the Attorney General.

**.11 Books and Accounts.**

Applicants, contractors, and subcontractors shall maintain such books, accounts, and records and shall file with the Department such financial and other reports as the Department may from time to time require. All of these books, accounts, and records shall be open to the inspection of representatives of the Department or other agencies of the State during reasonable working hours. Books, accounts, and records of contractors and subcontractors shall be maintained and made available for inspection for 3 years past the date of termination of the contractual relationship between the contractor and the applicant.

**.12 Fees and Charges.**

The Department may charge fees related to the processing of an application for financial assistance and servicing of financial assistance.

**.13 Loan Administration by Approved Entities.**

A. General. The Department may approve non-profit and for-profit entities to originate and administer loans to food desert projects in accordance with this chapter.

B. To be eligible to administer a loan program, the entity must submit an application to the Department and meet the following minimum criteria to the satisfaction of the Department:

(1) Provide evidence satisfactory to the Department supporting the entity's demonstrated ability to:

(a) Manage a performing portfolio of business loans for a minimum period of 5 years;

(b) Evaluate loan applications, underwrite loans, and administer a loan program;

(c) Leverage Program proceeds with other private or public sources of funding;

(d) Comply with Program statutes, regulations, guidelines, and policies;

(e) Provide adequate resources and staff to implement the Program, including staff trained to efficiently:

(i) Process loan applications, draw schedules, and other loan documentation;

(ii) Evaluate loan portfolio performance; and

(iii) Monitor the work performed with the loan proceeds;

(f) Provide substantive technical assistance to borrowers;

(g) Obtain coverage by a fidelity bond or employee dishonesty liability insurance in an amount to be determined by the Department; and

(h) Be duly organized and in good standing in the State of Maryland; and

(2) Provide audited financial statements for a period of 3 years that demonstrates the entity's ability to maintain consistent:

(a) Revenues;

(b) Operating reserves;

(c) Net assets;

(d) Unrestricted assets; and

(e) Portfolio delinquency rates.

C. An approved entity shall execute and comply with the terms of an administration agreement, loan agreement, loan note, assignment, and other documents governing the duties of the entity under the Program, as required by the Department.

D. An approved entity shall be directly responsible for fulfilling all of its duties and responsibilities under the Program and may not assign its responsibilities without the prior written consent of the Department.

E. The Department may monitor an approved entity's administration of loans funded by the Department, and may enforce its remedies under the Program loan documents including revoking the entity's approval to administer a loan program under this chapter.

F. Other Requirements.

(1) An approved entity shall:

(a) Maintain financial records of loan disbursements for at least 5 years, and shall make them available for review by the Department at all reasonable times; and

(b) Provide the Department with periodic reporting on:

(i) Loan disbursements; and

(ii) Other information required by the Department.

(2) Upon notice to an approved entity, and during normal business hours, the Department may inspect the files of an approved entity relating to any loans originated under the Program.

G. To fund loans under this regulation the Department may:

(1) Directly fund a loan that is originated by an approved entity; or

(2) Provide financial assistance to an approved entity for the purpose of the approved entity making a loan for a food desert project.

**.14 Program Administration.**

The Program may establish, from time to time, detailed Program guidelines containing underwriting standards, processing requirements, and other requirements or matters relating to providing financial assistance.

**.15 Nondiscrimination.**

A. An applicant may not discriminate against a person on the basis of race, color, religion, national origin, sex, sexual orientation, marital status, physical or mental disability, or age, except with regard to age as permitted under the federal Housing for Older Persons Act, as amended from time to time, in any aspect of the Program.

B. An applicant shall comply with all applicable federal, State, and local laws and Department policies and programs regarding discrimination and equal opportunity in employment, housing, credit practices, and drug and alcohol free workplaces, including:

(1) Titles VI and VII of the Civil Rights Act of 1964, as amended;

(2) Title VIII of the Civil Rights Acts of 1968, as amended;

(3) The Fair Housing Amendments Act of 1988, as amended;

(4) The Department's Minority Business Enterprise Program, as amended;

(5) The Governor's Executive Order 01.01.1989.18 on Drug and Alcohol Free Workplaces, and any Department or State regulations adopted or to be adopted to carry out the requirements of that Order;

(6) State Government Article, Title 20, Annotated Code of Maryland, as amended; and

(7) The Americans with Disabilities Act of 1990, as amended.

C. Covenants implementing these requirements, including affirmative action measures, shall be included in appropriate agreements between the Department and other parties.

**.16 Waiver.**

The Secretary may waive or vary provisions of these regulations to the extent that the waiver or variance is consistent with the Act and if, in the written determination of the Secretary, the application of a regulation in a specific case or in an emergency situation would be inequitable or contrary to the purposes of the Act.

**.17 False Statements.**

A. A person may not knowingly make or cause to be made a false statement or report in any document required to be furnished to the Department by an agreement relating to financial assistance.

B. A person applying for or benefiting from financial assistance under the Program may not knowingly make or cause to be made a false statement or report for the purpose of influencing the action of the Department on an application or for the purpose of influencing the action of the Department affecting financial assistance already provided.

C. A person who violates §A or B of this regulation is:

(1) Subject to immediate cancellation or acceleration of the form of financial assistance provided by the Program; and

(2) Guilty of a misdemeanor and upon conviction is subject to a fine not exceeding \$50,000, imprisonment not exceeding 5 years, or both.

CLARENCE J. SNUGGS

Acting Secretary of Housing and Community Development

# Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

## Subtitle 06 DISEASES

### 10.06.03 ImmuNet

Authority: Health-General Article, §18-109; Health Occupations Article, §12-508, Annotated Code of Maryland

**Notice of Proposed Action**

[15-043-P]

The Secretary of Health and Mental Hygiene proposes to adopt new Regulations .01 — .09 under a new chapter, **COMAR 10.06.03 ImmuNet**.

**Statement of Purpose**

The purpose of this action is to establish a new chapter that governs ImmuNet, the State’s computer-based registry of immunizations. This proposal will specify the type and kind of information contained in ImmuNet, define the permissible use of information compiled by ImmuNet, ensure the confidentiality of information in ImmuNet, and establish standards for maintaining the security and reliability of information collected in ImmuNet.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through March 9, 2015. A public hearing has not been scheduled.

**.01 Scope.**

This chapter governs ImmuNet, a computer-based registry of immunizations, as established in Health-General Article, §18-109, Annotated Code of Maryland.

**.02 Definitions.**

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

B. Terms Defined.

(1) “Authorized user” means:

- (a) A child care facility;
- (b) A health care provider;
- (c) A health insurer;
- (d) A health maintenance organization;
- (e) An institution of higher learning;
- (f) A local health department;
- (g) A long-term care facility;
- (h) A managed care organization;
- (i) A nonprofit health service plan;
- (j) A patient;

(k) A pharmacist authorized to administer vaccinations in accordance with Health Occupations Article, §12-508, Annotated Code of Maryland;

- (l) A school;
- (m) A school-based health center;
- (n) In the case of a minor child, a parent or guardian; and
- (o) Any other authorized user designated by the Secretary.

(2) “Department” means the Maryland Department of Health and Mental Hygiene.

(3) “ImmuNet” means a computerized information and reminder system to:

- (a) Improve the timely and appropriate delivery of immunizations;
- (b) Provide a coordinated network for reminder notices when immunizations are due;
- (c) Provide and collect information to be shared by authorized users; and
- (d) Provide a quality indicator for the insurers’ health care provider practices and public health purposes.

(4) “Refusal to permit disclosure of information” means the right of an individual or the parent or guardian of a minor to prevent disclosure to authorized users of individual identifiable information that was reported to ImmuNet.

(5) Regional Registry.

(a) “Regional registry” means a database that contains immunization information for individuals residing in an area of Maryland.

(b) “Regional registry” includes an immunization database or registry maintained and operated by a local health department.

(6) “Secretary” means the Secretary of Health and Mental Hygiene.

(7) “Vaccine information statement (VIS)” means a document that:

- (a) Is created and updated by the U.S. Centers for Disease Control and Prevention; and
- (b) Relates:
  - (i) The purpose of specific vaccines;



- (ii) Schedules of administration; and
- (iii) Possible adverse reactions to specific vaccines.

**.03 Administration of ImmuNet.**

- A. The Department shall support and administer ImmuNet.
- B. The Department may enter or edit information contained in ImmuNet.
- C. ImmuNet is subject to the security and reliability standards set forth in Regulation .09 of this chapter.
- D. The Department shall make available to authorized users and to the general public all forms relevant to ImmuNet, such as the:
  - (1) User agreement;
  - (2) Refusal to Permit Disclosure of Information form; and
  - (3) Statement of Reactivation of Participation in ImmuNet form.

**.04 Information Reported to ImmuNet.**

- A. The Department shall enter the following information from each birth certificate registered in Maryland:
  - (1) Child's:
    - (a) First, middle, and last name;
    - (b) Date of birth;
    - (c) Sex; and
    - (d) Current or last known address; and
  - (2) Child's mother's:
    - (a) First and middle names;
    - (b) Maiden Name if applicable; and
    - (c) Current last name.
- B. Following the administration of a vaccine to an individual residing in Maryland, the health care provider who administered the vaccine may enter the following information to ImmuNet:
  - (1) Patient's:
    - (a) First, middle, and last name;
    - (b) Date of birth;
    - (c) Sex;
    - (d) Birth state and country;
    - (e) Current or last known address;
    - (f) If the patient is a minor, the name of the parent or guardian;
    - (g) Last four digits of Social Security number, if available; and
    - (h) Medicaid number, if available and applicable;
  - (2) Patient's mother's:
    - (a) First and middle names;
    - (b) Maiden name, if applicable; and
    - (c) Current last name;
  - (3) For each vaccine administered:
    - (a) Antigen type;
    - (b) Manufacturer;
    - (c) Expiration date;
    - (d) Lot number;
    - (e) Date VIS provided to patient;
    - (f) VIS date; and
    - (g) Date of administration;
  - (4) Contraindication, adverse event, and exemption information for the patient, including:
    - (a) A medical contraindication or adverse event to the administration of one or more vaccines;
    - (b) Whether the contraindication is permanent or temporary and, if temporary, the date after which the contraindication will no longer exist or needs to be reassessed; and
    - (c) An objection to immunization based on a bona fide religious belief and practice;
  - (5) Other medical information pertaining to vaccine-preventable diseases, including serologic test results;

(6) Other information designated by the U.S. Centers for Disease Control and Prevention as Immunization Information System Required Core Data Elements; and

(7) Other information designated by the Secretary.

C. Correction of Inaccurate Information. A patient or a parent or a guardian of a minor patient whose immunization information is entered into ImmuNet may contact the Department to:

- (1) View the information; and
- (2) Provide information to correct any inaccuracies.

**.05 User Agreement.**

A. An authorized user who wishes to obtain information from ImmuNet shall enter into a user agreement with the Department for the purpose of protecting the confidentiality and security of ImmuNet information.

B. The user agreement shall include but not be limited to the:

(1) Functions that may be performed by an authorized user of ImmuNet;

(2) Authorized uses of ImmuNet information as set forth in Health-General Article, §18-109(c), Annotated Code of Maryland;

(3) Prohibitive uses of ImmuNet information as set forth in Health-General Article, §18-109(f), Annotated Code of Maryland; and

(4) Basic practices for safeguarding confidential information.

C. Authorized users shall request the renewal of the user agreement on an annual basis.

D. Authorized User Functions.

(1) An authorized user who has signed a user agreement may obtain the following information about an individual from ImmuNet:

- (a) First, middle, and last name;
- (b) Date of birth;
- (c) Address;
- (d) Telephone number;
- (e) In the case of a minor child, the name of the parent or guardian;
- (f) Immunizations given;
- (g) Immunization dates;
- (h) Contraindication, adverse event, and exemption information; and

(i) Other medical information pertaining to vaccine-preventable diseases, including serologic test results.

(2) An authorized user that is a health care provider, local health department, long-term care facility, or school-based health center that administers immunizations may:

(a) Enter information into ImmuNet directly from medical records that are in the authorized user's possession; and

(b) Edit information the authorized user has entered into ImmuNet.

(3) An authorized user who is a patient or a parent or guardian of a minor may view the patient's or the minor patient's ImmuNet information without signing a user agreement by requesting the information from the patient's or minor's immunization provider or the Department.

(4) With approval from the Department, the following authorized users may enter information into ImmuNet:

- (a) A child care facility;
- (b) A health insurer;
- (c) A health maintenance organization;
- (d) An institution of higher learning;
- (e) A managed care organization;
- (f) A nonprofit health service plan; and
- (g) A school.

**.06 Refusal and Reactivation.**

A. An individual or a parent or guardian of a minor child who has received an immunization may at any time prohibit information in

*ImmuNet from being disclosed to authorized users by providing to the Department a signed and dated Refusal to Permit Disclosure of Information form.*

*B. An individual or a parent or guardian of a minor who has submitted a Refusal to Permit Disclosure of Information form may allow information in ImmuNet to be disclosed by submitting to the Department a signed and dated written Statement of Reactivation of Participation in ImmuNet form.*

**.07 Permissible Use of ImmuNet Information.**

*Information in ImmuNet may be used by authorized users for the following purposes:*

*A. To provide coordinated immunization services, including sending reminder notices to individuals who need immunizations;*

*B. To obtain an individual immunization history;*

*C. To identify geographic areas or population groups who are underimmunized;*

*D. To compile aggregate information and distribute statistical reports on the status of immunizations in geographic areas and population groups;*

*E. To assist in the management of State and local immunization programs;*

*F. To monitor the safety of vaccines;*

*G. To assess compliance with immunization requirements by monitoring admissions to:*

*(1) Schools;*

*(2) Institutions of higher learning; and*

*(3) Child care facilities; and*

*H. For any other purpose that the Secretary deems necessary to prevent the spread of communicable diseases or assess the safety or effectiveness of vaccines in accordance with Health-General Article, §18-109(c), Annotated Code of Maryland.*

**.08 Regional and Other State Immunization Registries.**

*A. A regional registry shall submit to ImmuNet all immunization information on Maryland residents within 14 calendar days of receipt of the information.*

*B. If the confidentiality of records of Maryland citizens is protected, the Department may enter into a collaborative agreement with other states for the purpose of sharing immunization information.*

**.09 Security and Reliability Standards.**

*A. The Department shall maintain ImmuNet in accordance with system security requirements for federal information processing systems, including National Institute of Standards and Technology (NIST) 800-53 Special Publication, and prevailing agency information technology security policy standards and requirements.*

*B. ImmuNet Security.*

*(1) The Department shall:*

*(a) Maintain ImmuNet information on a server protected by a firewall; and*

*(b) Encrypt information traveling to and from authorized users.*

*(2) The Department shall maintain encryption keys in a secure location.*

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

**Subtitle 09 MEDICAL CARE PROGRAMS**

**10.09.26 [Community Based Services for Developmentally Disabled Individuals Pursuant to a 1915(c) Waiver] Community Pathways Waiver Program for Individuals with Developmental Disabilities**

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

**Notice of Proposed Action**

[15-041-P]

The Secretary of Health and Mental Hygiene proposes to repeal existing Regulations .01—.17 and adopt new Regulations .01—.53 under **COMAR 10.09.26 Community Pathways Waiver Program for Individuals with Developmental Disabilities.**

**Statement of Purpose**

The purpose of this action is to bring the State into compliance with its federally approved home and community-based services waiver for individuals with developmental disabilities. Services currently provided are bundled within other service types and are not easily identifiable. The changes in this proposal will unbundle and clarify services and lay the groundwork for improved tracking and funding of each service type.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, 201 W. Preston Street, or call Baltimore, MD 21201, or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through February 23, 2015. A public hearing has not been scheduled.

**.01 Incorporation by Reference.**

*In this chapter, the following document is incorporated by reference: The Developmental Disabilities Administration, Policy on Reportable Incidents and Investigations, (Effective Date: January 15, 2013), which has been incorporated by reference in COMAR 10.22.02.01.*

**.02 Definitions.**

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

*B. Terms Defined.*

*(1) "Activities of daily living" means the actions one performs to care for one's self in the ordinary course of a day, including:*

*(a) Eating, nutritional planning, and preparation of meals, including special diets when prescribed;*

*(b) Mobility, including transferring to a bed or chair or moving about indoors or outdoors;*

*(c) Dressing one's self or changing one's clothes;*

(d) Taking medications ordered by a physician or over-the-counter remedies that ordinarily are self-administered;

(e) Bathing and otherwise cleaning one's body; and

(f) Toileting, including bladder or bowel requirements, or both, including:

(i) Bed pan routines;

(ii) Diaper care;

(iii) Routines to achieve or maintain continence;

(iv) Using the toilet; and

(v) Movement to and from the toilet.

(2) "Aged, blind or disabled" means Medical Assistance eligibility groups for individuals aged 65 years or older, blind or with disabilities.

(3) "Alternative living unit" means a residence owned, leased, or operated by a licensed provider that:

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

(b) Admits not more than three individuals;

(c) Provides 6 or more hours of services per day or when the participant spends the night in the residential home; and

(d) Is not owned or rented out by any of its residents or by any of the residents' agents other than the residential provider.

(4) "Applicant" means a person who is applying for the Community Pathways Waiver Program.

(5) "Assistive technology and adaptive equipment" means an item, piece of equipment, or product system that is not experimental or surgically implanted, and, whether acquired commercially, modified, or customized, is used to increase, maintain, or improve functional capabilities of participants in order to increase community integration.

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

(7) "Case Resolution Conference (CRC)" means a meeting held before an administrative hearing at which a DDA representative attempts to resolve one or more of the issues raised by a denial of DDA eligibility or request for DDA services.

(8) "Child" means an individual who is younger than 21 years old.

(9) "Chronic hospital" means an institution that:

(a) Falls within the jurisdiction of Health-General Article, §19-307(a)(1)(ii), Annotated Code of Maryland; and

(b) Is licensed pursuant to COMAR 10.07.01.

(10) "Community Pathways Waiver Program" means the federally approved Home and Community-Based Services Waiver for Individuals with Developmental Disabilities under §1915(c) of the Social Security Act that:

(a) Supports individuals with developmental disabilities who meet ICF/IID level of care to remain at home and in the community as an alternative to institutionalization; and

(b) Is implemented under this chapter in accordance with this waiver and any amendments to it submitted by the Department and approved by the Secretary of Health and Human Services.

(11) "Competitive employment" means work at an individual job in a business, earning the prevailing wage for that position or industry.

(12) "Coordination of community services" means targeted case management services as defined in COMAR 10.09.48.

(13) "Coordinator of community services" means an individual employed by the coordination of community services agency to assist participants and their families in selecting and obtaining the most responsive and appropriate services and supports.

(14) "DDA provider agreement" means the contract between the DDA and the provider that specifies the services to be provided,

methods of operation, and applicable financial and legal requirements.

(15) "Department" means the Department of Health and Mental Hygiene, which is the single State agency designated to administer the Medicaid program pursuant to Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq.

(16) "Developmental Disabilities Administration (DDA)" means the agency of the Department that, under the Maryland Code Annotated, Health-General Article, Title 7, is charged with the responsibility for providing services to individuals with developmental disabilities.

(17) "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 attains the age of 22;

(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.

(18) "Division of Rehabilitation Services (DORS)" means the office established in the Maryland State Department of Education by Article 21, §304, Annotated Code of Maryland.

(19) "External support" means:

(a) Periodic monitoring of the circumstances of an individual with respect to:

(i) Personal management;

(ii) Household management; and

(iii) The use of community resources; and

(b) Rendering appropriate advice or assistance that may be needed.

(20) "Family member" means an adult relative of the waiver applicant or participant who is responsible under Maryland law for ensuring that the individual is cared for, including:

(a) The waiver applicant or participant's spouse;

(b) A parent of a dependent child; or

(c) An individual who has full and unrestricted powers of guardianship over the waiver applicant or participant.

(21) "Fiscal management services" means the services provided by the Department or its designee to assist a participant to direct the participant's own services.

(22) "Group home" means a residence that is owned and operated, or leased and operated, by a licensee, and 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 6 or more hours of support per week.

(23) "Habilitation services" mean services designed to develop, maintain, or maximize the participant's independent functioning in self-care, physical and emotional growth, socialization, communication, and vocational skills.

(24) "Home" unless otherwise defined in this chapter, means a house, apartment, condominium, or other residence:

(a) In which the participant lives with others as a single housekeeping unit, sharing preparation and consumption of meals;

(b) That does not include more than three unrelated individuals, unless otherwise approved by DDA;

(c) That the ownership of which may be held in trust for the participant; and

(d) That is not a house or apartment that is owned or rented by a provider, although a provider may be a guarantor of rental or mortgage payments.

(25) "Home and community-based services" mean long-term services and supports provided in home and community settings.

(26) "ICF/IID Level of Care" means the type and degree of services, including active treatment, that are provided in an intermediate care facility for intellectually disabled individuals and individuals with related conditions (ICF/IID), as defined in this regulation.

(27) "Individual plan" means the single plan for a participant that:

(a) Details services and supports to be provided to the participant;

(b) Is goal-oriented and developed with the individual planning team;

(c) Is person-centered and person-directed; and

(d) Specifies all the participant's assessments, services, supports, and training needs.

(28) "Individual planning team" means the group of individuals chosen by the participant to be involved in the development of the individual plan, which:

(a) Includes the waiver participant and the coordinator of community services; and

(b) May include family members, the participant's proponents, and providers.

(29) "Integrated work setting" means a work place in the community:

(a) Where the majority of individuals do not have disabilities; and

(b) Which provides the participant with the opportunity to interact with non-disabled individuals.

(30) "Intellectual disability" means a developmental disability that is evidenced by significantly sub-average intellectual functioning and impairment in the adaptive behavior of an individual, in accordance with Health-General Article, §7-101(k), Annotated Code of Maryland.

(31) "Intermediate care facility for individuals with intellectual disabilities (ICF/IID)" means an institution of four or more beds that provides active treatment for people with intellectual disabilities or other related conditions, and is the same as the facility defined in §1905(d) of the Social Security Act, 42 U.S.C. §1396(d).

(32) "Intermittent skilled, non-delegated nursing tasks" means nursing tasks provided by RNs that:

(a) Cannot be delegated by an RN; and

(b) Are provided for no more than 4 hours a day, and no more than 6 consecutive months.

(33) "Legally responsible individual" means an adult who has a legal obligation under Maryland law to ensure that another, specified individual is cared for.

(34) "Live independently" means:

(a) For adults:

(i) Managing personal care, such as clothing and medication;

(ii) Managing a household, such as menu planning, food preparation and shopping, essential care of the premises, and budgeting; and

(iii) Using community resources, such as commercial establishments, transportation, and services of public agencies; or

(b) For minors, functioning in normal settings without the need for supervision or assistance other than supervision or assistance that is age appropriate.

(35) "Medicaid provider agreement" means the agreement signed by the provider and the Medicaid program specifying the

terms and conditions by which the provider agrees to participate in the Medicaid program.

(36) "Medicaid State Plan" means the comprehensive, written State commitment by the Department, submitted to the U. S. Department of Health and Human Services, under §1902(a) of the Social Security Act, to administer or supervise the administration of the Maryland State Medical Assistance Program in accordance with federal requirements.

(37) "Medically necessary" means that the 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 currently accepted standards of good medical practice;

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

(d) Not primarily for the convenience of the:

(i) Individual with a disability;

(ii) Family; or

(iii) Provider.

(38) "Most cost effective service" means that a service:

(a) Is the least costly to the State of available options; and

(b) Reasonably meets the identified need.

(39) "National Mobility Equipment Dealers Association (NMEDA)" means the non-profit trade association of mobility equipment dealers, manufacturers, driver rehabilitation specialists and other professionals dedicated to expanding opportunities for people with disabilities to drive or be transported in vehicles modified with mobility equipment.

(40) "Necessary and reasonable cost" means a cost that:

(a) Does not exceed the amount a prudent person would pay for the service; and

(b) Is likely to improve outcomes or remediate a need identified in the individual plan.

(41) "Nursing facility" means a facility or a distinct part of a facility that meets the requirements for a nursing facility provider under COMAR 10.09.10.

(42) Nursing Services.

(a) "Nursing services" means services provided by an RN or LPN with RN supervision, or RN supervision for delegation of nursing services and skills that can be delegated in accordance with COMAR 10.27.11 for the duration of the individual need and meeting criteria for delegation of nursing services; and

(b) "Nursing services" does not mean nursing services covered under Medical Assistance programs.

(43) "Organized health care delivery system" means a public or private organization for delivering health services as defined in 42 CFR §447.10(b), and in accordance with COMAR 10.22.20, which provides at least one Medicaid service directly to participants.

(44) "Participant" means a person who is enrolled in the Community Pathways Waiver Program.

(45) "Person-centered planning process" means the process and all requirements set forth at 42 CFR 441.301(c)(1), which specifies that the process for planning the individual's supports and services are to be led by the individual where possible, with the individual's representative having a participatory role as needed and as defined by the individual, unless State law confers decision-making authority to the legal representative.

(46) "Physician" means an individual licensed by the State to practice medicine.

(47) "Program" means the Maryland Medical Assistance Program.

(48) "Proponent" means a person who has a legitimate interest in, and acts to advance, the welfare of an individual applying for or receiving services under the waiver.

(49) "Provider" means an individual who or organization that is licensed or certified to furnish covered services under these regulations, through agreements with the Medicaid program and the DDA.

(50) "Quality Assurance Program (QAP)" means the nationally recognized accreditation program for the Adaptive Mobility Equipment Industry.

(51) "Rehabilitation services" mean services designed to restore an individual's physical, sensory, and mental capabilities that were lost due to injury, illness, or disease.

(52) "Related condition" means a severe, chronic disability that is attributable to cerebral palsy or epilepsy, or another condition, other than mental illness, that is closely related to intellectual disability because it results in impairment of general intellectual functioning or adaptive behavior similar to that of an individual with intellectual disability and requires treatment or services similar to those required for intellectual disability.

(53) "Resident" means an individual who meets the residency requirements for the Program as defined in COMAR 10.09.24.05-3.

(54) "Retainer fee" means a payment made to a provider for days on which the individual is unable to be present for the service because of illness, hospitalization, behavioral respite services, family visitation, or similar circumstances as approved by the DDA.

(55) "Room and board" means rent or mortgage payments, utilities, and food.

(56) Self-directed Services.

(a) "Self-directed services" mean those waiver services that can be provided under the self-direction model.

(b) "Self-directed services" includes:

- (i) Assistive technology and adaptive equipment;
- (ii) Community learning services;
- (iii) Employment discovery and customization services;
- (iv) Environmental accessibility adaptations;
- (v) Environmental Assessments;
- (vi) Family and individual support services;
- (vii) Live-in caregiver rent;
- (viii) Personal supports;
- (ix) Respite services;
- (x) Support brokerage;
- (xi) Supported employment;
- (xii) Transition services; and
- (xiii) Transportation.

(57) "Self-direction" means a service model that offers a participant and the participant's family the opportunity, support, and authority to:

- (a) Choose the services the participant needs; and
- (b) Employ and direct the individuals who provide the services.

(58) "Shared living" means an arrangement in a private, single family residence in which up to three individuals with developmental disabilities live who are unrelated to the care provider.

(59) "Substantiated need" means that sufficient evidence, including assessments by licensed professionals and other documentation, has been presented for a reasonable person to conclude that the need exists.

(60) "Successfully pass a criminal background investigation" means that the individual:

- (a) Has not been convicted of, received probation before judgment for, or pleaded nolo contendere to:
  - (i) A felony;

(ii) Unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(iii) Any crime involving moral turpitude or theft; or

(b) Has no other criminal history that demonstrates behavior that is potentially harmful to a participant as determined by the DDA.

(61) "Travel training" means short-term, comprehensive, intensive instruction designed to teach an individual with disabilities how to travel safely and independently to regularly visited destinations and back, including the use of public transportation.

(62) "Waiver" means the Community Pathways Waiver Program.

**.03 General Provisions for Provider Licensing and Certification.**

A. A provider of the services covered under this chapter shall be licensed or certified as mandated in this chapter before providing services under the Community Pathways Waiver Program.

B. A provider of any service covered under this chapter may be issued a deemed status license by the Director of the DDA in accordance with the deemed status provisions in Health-General Article, §7-903(b), Annotated Code of Maryland.

C. The following health professionals providing services under this chapter shall be licensed to practice by the State:

- (1) Audiologists;
- (2) Dietitians;
- (3) Licensed practical nurses;
- (4) Nutritionists;
- (5) Occupational therapists;
- (6) Physical therapists;
- (7) Registered nurses; and
- (8) Speech pathologists.

**.04 Specific Provider Licensing or Certification Requirements.**

A. Assistive Technology and Adaptive Equipment Provider.

(1) An assistive technology and adaptive equipment provider shall be:

(a) Licensed pursuant to COMAR 10.22.02 as a provider of community residential services, community supported living arrangement services, and day, vocational, or family and individual support services; and

(b) Designated as an organized health care delivery system pursuant to COMAR 10.22.20.

(2) In order to provide any of the following devices or services a person shall be certified by the Maryland Division of Rehabilitation Services:

- (a) Alternate and augmentative communication;
- (b) Adaptive computers interfacing for motor impairment;
- (c) Adaptive computers interfacing for cognitive impairment;
- (d) Sensory aids for low vision and blindness;
- (e) Sensory aids for deafness and hard of hearing; and
- (f) Electronic environmental controls and telephone access.

B. Behavior Support Service Provider. A behavior support service provider shall:

(1) Be licensed pursuant to COMAR 10.22.02 as a provider of behavior support services; and

(2) Comply with COMAR 10.22.10.

C. Community Learning Services, Employment Discovery and Customization, and Supported Employment Provider.

(1) A provider of Community Learning Services, Employment Discovery and Customization, and Supported Employment shall:

(a) Be licensed pursuant to COMAR 10.22.02 as a provider of community learning services, employment discovery and customization, or supported employment; and

(b) Comply with COMAR 10.22.07.

(2) A provider designated as an organized health care delivery system pursuant to COMAR 10.22.20 that meets the requirement of §C(1) of this regulation may provide community learning services, employment discovery and customization, or supported employment.

(3) A provider of community learning services, employment discovery and customization, or supported employment to participants self-directing their services is not subject to the requirements of this section.

*D. Community Residential Habilitation Provider.*

(1) A community residential habilitation provider shall:

(a) Be licensed pursuant to COMAR 10.22.02 as a provider of alternative living units or group homes; and

(b) Comply with COMAR 10.22.08.

(2) A provider designated as an organized health care delivery system pursuant to COMAR 10.22.20 that meets the requirement of §D(1) of this regulation may provide community residential habilitation services.

*E. Day Habilitation Services Provider.*

(1) A day habilitation provider shall:

(a) Be licensed pursuant to COMAR 10.22.02 as a provider of vocational or day habilitation; and

(b) Comply with COMAR 10.22.07.

(2) A provider designated as an organized health care delivery system pursuant to COMAR 10.22.20 that meets the requirement of §E(1) of this regulation may provide day habilitation services.

*F. Environmental Accessibility Adaptations Provider.*

(1) An environmental accessibility adaptation provider shall be:

(a) Licensed pursuant to COMAR 10.22.02 as a provider of family and individual support services, residential services, community supported living arrangement, day, or vocational services; and

(b) Designated as an organized health care delivery system pursuant to COMAR 10.22.20.

(2) An individual and organizations making environmental accessibility adaptations shall be licensed by the Maryland Home Improvement Commission in the Department of Labor, Licensing and Regulation as required by State law.

*G. Environmental Assessment Provider.*

(1) An environmental assessment provider shall be:

(a) Licensed pursuant to COMAR 10.22.02 as a provider of family and individual support services, residential services, community supported living arrangement services, and day, vocational, or behavioral support services; and

(b) Designated as an organized health care delivery system pursuant to COMAR 10.22.20.

(2) An individual provider includes a vendor who is:

(a) Approved by the Maryland Division of Rehabilitation Services; and

(b) A licensed occupational therapist in the State.

*H. Family and Individual Support Services Provider.*

(1) A family and individual support services provider shall:

(a) Be licensed pursuant to COMAR 10.22.02 as a provider of family and individual support services; and

(b) Comply with COMAR 10.22.06.

(2) A provider designated as an organized health care delivery system pursuant to COMAR 10.22.20 that meets the requirement of §H(1) of this regulation may provide family and individual support services.

(3) An individual providing family and individual support services shall have a current first aid and CPR certification.

*I. Live-in Caregiver Rent Provider.* A live-in caregiver rent provider shall be:

(1) Licensed pursuant to COMAR 10.22.02; and

(2) Designated as an organized health care delivery system pursuant to COMAR 10.22.20.

*J. Medical Day Care Provider.* A medical day care provider shall be licensed by the Department pursuant to COMAR 10.12.04.

*K. Community Supported Living Arrangement and Personal Support Service Provider.*

(1) A community supported living arrangement and personal support service provider shall:

(a) Be licensed pursuant to COMAR 10.22.02 to provide community supported living arrangement, personal support services, family and individual support services, or residential services; and

(b) Comply with COMAR 10.22.08.

(2) A provider certified as an organized health care delivery system pursuant to COMAR 10.22.20 that meets the requirement of §K(1) of this regulation may provide community supported living arrangement and personal support services.

(3) An individual providing community supported living arrangement and personal support services shall have a current first aid and CPR certification.

*L. Respite Services Provider.*

(1) A respite services provider shall:

(a) Be licensed pursuant to COMAR 10.22.02 to provide family and individual support services, residential services, community supported living arrangement services, or personal support services;

(b) Comply with COMAR 10.22.06, 12.22.08, 10.22.18, and 10.16.06, as applicable; and

(c) Be designated as an organized health care delivery system pursuant to COMAR 10.22.20.

(2) An individual providing respite services shall have a current first aid and CPR certification. *M. Support Brokers.* Support brokers shall be certified by the DDA.

*N. Shared Living Services Provider.*

(1) A provider of shared living services shall:

(a) Be licensed in accordance with COMAR 10.22.02 as a provider of individual family care services; and

(b) Comply with COMAR 10.22.08.

(2) A provider designated as an organized health care delivery system pursuant to COMAR 10.22.20 that meets the requirement of §N(1) of this regulation may provide shared living services.

*O. Transition Services Provider.* A transition services provider shall be:

(1) Licensed in accordance with COMAR 10.22.02 as a provider of community supported living arrangement services, and family and individual support service, or residential services; and

(2) Designated as an organized health care delivery system pursuant to COMAR 10.22.20.

*P. Transportation Services Provider.*

(1) A provider of transportation services shall be:

(a) Licensed in accordance with COMAR 10.22.02 as a provider of as family and individual support services; and

(b) Designated as an organized health care delivery system pursuant to COMAR 10.22.20.

(2) An individual provider shall possess a:

(a) Valid Class C driver license; and

(b) A current first aid and CPR certification.

*Q. Vehicle Modifications Provider.* A vehicle modifications provider shall be:

(1) Licensed in accordance with COMAR 10.22.02 as a provider of as family and individual support service; and

(2) Designated as an organized health care delivery system pursuant to COMAR 10.22.20.

(3) Unless otherwise approved by the DDA, an individual provider shall possess a:

- (a) Current membership with the National Mobility Equipment Dealers Association; or
- (b) Certification by the Association for Driver Rehabilitation Specialists.

**.05 General Conditions for Provider Participation.**

A. A waiver provider shall:

- (1) Meet all conditions for participation specified in COMAR 10.09.36;
- (2) Meet the licensure, certification or designation requirements as provided in:
  - (a) Regulation .03 of this chapter; and
  - (b) COMAR 10.22.02;
- (3) Comply with all COMAR requirements for the provider's area of specialty;
- (4) Have in effect both a DDA provider agreement and a Medicaid provider agreement, as required by the Department;
- (5) Maintain written verification of the licenses of all service agencies and entities with which they subcontract, and make the licenses available for inspection;
- (6) Maintain written verification of the licenses and credentials of all individuals and professionals whom the provider employs or contracts with and make them available for inspection; and
- (7) Maintain a record for each participant as specified in COMAR 10.22.02.13;
- (8) Report incidents in accordance with the requirements and timelines outlined in the Developmental Disabilities Administration, Policy on Reportable Incidents and Investigations;
- (9) Cooperate with audits and investigations conducted by the Department or a designee of the Department; and
- (10) Ensure that all individuals and professionals whom the provider employs or contracts with has not:
  - (a) Been convicted of, received probation before judgment for, or a pleaded nolo contendere to any crime listed in Regulation .02B(60) of this chapter;
  - (b) Surrendered his or her professional license, or had his or her license suspended, revoked, or limited in any way.

B. An individual provider for self-directed services shall:

- (1) Be chosen by the participant;
- (2) Unless otherwise authorized by the DDA or its designee, meet the requirements and standards as required by the specific waiver services;
- (3) Provide services at a necessary and reasonable cost within established limits.
- (4) Not have been convicted of, received probation before judgment for, or a pleaded nolo contendere to any crime listed in Regulation .02B(60) of this chapter; and
- (5) Not have surrendered his or her professional license, or had his or her license suspended, revoked, or limited in any way.

C. Conditions Under Which Participants Self-Directing Services May Hire a Family Member to Provide Services.

- (1) A family member or guardian other than the spouse of the participant may be the paid employee of an adult participant if the individual plan establishes that:
  - (a) The choice of provider truly reflects the participant's wishes and desires;
  - (b) The provision of services by the family member or guardian is:
    - (i) In the best interests of the participant; and
    - (ii) The provision of services by the family member or guardian is appropriate and based on the participant's individual support needs;

(c) The services provided by the family member or guardian are to be designed to increase the participant's independence and community integration; and

(d) There are documented steps that will be taken to expand the participant's circle of support so that the participant may maintain and improve the participant's health, safety, independence, and level of community integration on an ongoing basis, should the family member providing services be no longer available.

(2) Limitations on use of family members as providers and support brokers:

- (a) A family member:
  - (i) May not be a paid service provider if the participant's support broker is a family member;
  - (ii) May not be a paid support broker if any of the participant's paid service providers is a family member; and
  - (iii) May act as a volunteer support broker or service provider, even if a family member is also a support broker or service provider for the participant.

(b) The limitations stated in Regulation .05C(2)(a) of this chapter do not apply to guardians who are not also family members.

(c) A family member of an adult participant who self-directs may not be paid for more than 40 hours of services per week.

(3) Family members employed as service providers shall sign a service agreement requiring the family member to implement the individual plan approved by the DDA, in accordance with all federal and State laws and regulations governing the Medicaid program.

(4) A family member who provides self-directed services shall maintain employment and financial records, including timesheets and documentation of service delivery.

(5) Subject to the limitations stated in this regulation, self-directed services provided by a family member may include:

- (a) Community learning services;
- (b) Employment discovery and customization services;
- (c) Family and individual support services;
- (d) Personal supports;
- (e) Support brokerage;
- (f) Supported employment; and
- (g) Transportation.

D. The DDA may suspend or revoke a provider's license to participate as a provider in the Waiver program, as set forth in Regulation .51 of this chapter.

**.06 Conditions of Participation—Providers of Assistive Technology and Adaptive Equipment.**

A. An assistive technology and adaptive equipment provider shall employ or subcontract with individuals who:

- (1) Meet the certification qualifications set out in Regulation .03A(1) of this chapter; and
- (2) Do not directly receive compensation from or represent a single manufacturer or distributor.

B. An assistive technology and adaptive equipment provider shall maintain written verification of:

- (1) The licenses and credentials of all subcontracting agencies; and
- (2) The licenses and credentials of all professionals whom the provider employs or with whom the provider has a contract.

**.07 Conditions for Participation—Individual Providers of Self-Directed Community Learning Services, Employment Discovery and Customization Services, and Supported Employment.**

A. An individual provider employed by a participant self-directing community learning services, employment discovery and customization services, and supported employment shall:

- (1) Be chosen and trained by the participant or the participant's authorized representative;

- (2) Possess current first aid and CPR certification;
  - (3) Successfully pass a criminal background investigation; and
  - (4) Sign an agreement with the DDA verifying applicable qualifications and articulating expectations.
- B. A participant who self-directs services is considered the employer of record for providers of self-directed services.

**.08 Conditions for Participation—Providers of Day Habilitation Services.**

A day habilitation service provider shall ensure that benefits counselors have a Maryland Department of Disabilities (MDOD) Maryland State Benefits Counseling Certification.

**.09 Conditions for Participation—Providers of Environmental Accessibility Adaptations.**

Providers of environmental accessibility adaptations shall:

- A. Have the necessary license from the State Department of Assessment and Taxation as a contractor or builder in good standing in the jurisdiction where the work is to be performed;
- B. Be bonded as required by law;
- C. Obtain all required State and local permits;
- D. Ensure that the work is inspected and performed in accordance with State and local building codes the permits;
- E. Ensure that all subcontractors meet required qualifications, maintain written verification of the licenses and credentials of all individuals whom the provider employs or contracts with, and make a copy of these available for inspection; and
- F. Provide services according to a written schedule that includes estimated start date and completion date.

**.10 Conditions for Participation—Providers of Environmental Assessment Services.**

A provider of environmental assessment services shall be a licensed occupational therapist.

**.11 Conditions for Participation—Providers of Family and Individual Support Services.**

A provider of family and individual support services providers shall ensure that employees:

- A. Are trained by the participant or the authorized representative of the participant on person-specific information, including:
  - (1) Preferences;
  - (2) Positive behavior supports; and
  - (3) Disability-specific information;
- B. Possess current first aid and CPR training and certification; and
- C. Successfully pass a criminal background investigation.

**.12 Conditions for Participation—Providers of Community Supported Living Arrangement and Personal Support Services.**

A. A provider of community supported living arrangement and personal support services shall ensure that employees:

- (1) Are trained by the participant or the participant's authorized representative on person-specific information, including:
    - (a) Preferences;
    - (b) Positive behavior supports; and
    - (c) Disability-specific information;
  - (2) Possess current first aid and CPR training and certification; and
  - (3) Successfully pass a criminal background investigation.
- B. For self-directed services, the Department may waive the disqualification of a personal supports service individual provider as a result of the criminal background investigation if the individual demonstrates that:
- (1) The conviction, probation before judgment, or plea of *nolo contendere* for a crime listed in Regulation .02B(60) of this chapter

was entered more than 10 years before the date of the provider application; and

(2) The criminal history does not reflect behavior that is potentially harmful to participants.

C. In accordance with DDA policy and the current Medicaid waiver application, direct service workers providing personal support services:

- (1) May not work more than 40 hours per week unless authorized by the DDA before provided;
- (2) May not work more than 8 consecutive hours unless authorized by the DDA before provided;
- (3) Shall be off duty for 8 hours or more before starting another shift; and
- (4) May not be paid for time spent sleeping.

**.13 Conditions for Participation—Providers of Respite Services.**

A provider of respite services shall ensure that employees:

- A. Are trained by the participant or the participant's authorized representative on person-specific information, including:
  - (1) Preferences;
  - (2) Positive behavior supports; and
  - (3) Disability-specific information;
- B. Possess current first aid and CPR training and certification;
- C. Pass a criminal background investigation; and
- D. Are appropriately licensed and certified as required by law.

**.14 Conditions for Participation—Providers of Support Brokerage Services.**

A provider of support brokerage services shall:

- A. Demonstrate to the Department that the broker possesses core competency related to self-determination and consumer-directed services;
- B. Participate in all training required by the DDA, including incident reporting training;
- C. Successfully pass a criminal background investigation;
- D. Be trained by the participant or the participant's authorized representative on person-specific information, including preferences, positive behavior supports, and disability-specific information;
- E. Be certified as a support broker by the DDA; and
- F. Maintain current DDA support broker certification.

**.15 Conditions for Participation—Providers of Shared Living Services.**

A. A licensed community residential habilitation agency providing shared living services shall hire or subcontract with at least one individual, couple, or family to live with the clients who are participants in the Community Pathways Waiver Program.

- B. The individual, couple, or family shall:
  - (1) Be chosen by the participant;
  - (2) Be willing to open their homes for compensation to an individual with disabilities;
  - (3) Be trained by the participant or the participant's authorized representative on person-specific information, including:
    - (a) Preferences;
    - (b) Positive behavior supports; and
    - (c) Disability-specific information;
  - (4) Possess current first aid and CPR certification;
  - (5) Successfully pass a criminal background investigation; and
  - (6) Be approved by the DDA or its agent.

**.16 Conditions for Participation—Providers of Transition Services.**

For self-directed services, a service provider includes individuals or vendors for one of the following:

- A. Apartment or house leases;
- B. Household items;
- C. Utility services;



- D. Pest eradication or cleaning services;
- E. Moving services; and
- F. Transition needs assessment, coordination, and procurement of items.

**.17 Conditions for Participation—Providers of Transportation Services.**

A. A provider of transportation services shall ensure that individuals transporting a participant:

- (1) Are trained by the participant or the participant’s authorized representative on person-specific information, including:
  - (a) Preferences;
  - (b) Positive behavior supports; and
  - (c) Disability-specific information;
- (2) Possess current first aid and CPR training;
- (3) Successfully pass a criminal background investigation;
- (4) Have a valid Class C driver’s license; and

B. All provider qualifications are subject to approval by the DDA or its agent.

**.18 Conditions for Participation—Providers of Vehicle Modification Services.**

A. A vehicle modification services provider shall:

(1) Be a member of the National Mobility Equipment Dealers Association (NMEDA), the Quality Assurance Program (QAP) for the Adaptive Mobility Equipment Industry, or another organization that has vehicle conversion standards.

- (2) Ensure that the work:
  - (a) Meets vehicle modification standards; and
  - (b) Passes all required inspections;
- (3) Be bonded as required by law; and
- (4) Perform all work in accordance with State and local codes.

B. A provider of vehicle modification services shall obtain a written agreement, which shall include modifications to be completed as well as an estimated start date and completion date.

**.19 Participant Eligibility—General Requirements.**

To be eligible for services under the Community Pathways Waiver Program, an individual:

- A. Shall be a resident of Maryland;
- B. Shall have received a comprehensive evaluation as defined in Health-General Article, §7-404, Annotated Code of Maryland;
- C. Shall have been determined by the DDA or its designee to have a developmental disability;
- D. Shall have been determined by the DDA or its designee to be able to have his or her health and safety needs met in the community;
- E. Shall be certified by the DDA or its designee for ICF/IID level of care, using the developmental disability criteria set out in DDA statutes and regulations, as explained in policies and the Medicaid waiver application;
- F. Shall have chosen home- and community-based services over institutional services;
- G. Shall have a provisional or final individual plan approved by the DDA or its designee; and
- H. May not be enrolled in another Medical Assistance home and community-based services waiver program.

**.20 Participant Eligibility—Establishing the Criteria for a Developmental Disability.**

A. To be eligible for DDA services, including services under the Community Pathways Waiver Program services but not including supports-only services, an individual shall have a developmental disability as that term is defined in this regulation and in Maryland statute.

- B. For purposes of DDA services, “Developmental disability”:
  - (1) Is equivalent to a severe, chronic disability; and

(2) Means a disability that satisfies all five of the following criteria:

- (a) Criterion 1—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) Criterion 2—Is manifested before the individual attains the age of 22
- (c) Criterion 3—Is likely to continue indefinitely;
- (d) Criterion 4—Results in an inability to live independently without external supports or continuing and regular assistance; and
- (e) Criterion 5—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.

C. In accordance with the Community Pathways Medicaid Waiver Program application, the definition of Developmental Disability shall be construed in accordance with applicable federal Medicaid waiver regulations.

**D. Criterion 1—Determination.**

(1) In order to satisfy Criterion 1, an individual shall have an intellectual disability or a related condition, or both, along with a mental illness, so long as the mental illness is not the sole mental disorder.

(2) For purposes of determining Criterion 1:

- (a) “Physical or mental impairment” means intellectual disability, a related condition, or a combination of these;
- (b) “Intellectual disability” means a developmental disability that is evidenced by significantly sub-average intellectual functioning and impairment in the adaptive behavior of an individual, in accordance with Health-General Article, §7-101(k), Annotated Code of Maryland.
- (c) “Developmental disability” in §C(2)(b) of this regulation refers to a generic set of disabilities rather than to the DDA “Developmental Disability” as defined in Health-General Article, §7-101(e), Annotated Code of Maryland and explained in this regulation;
- (d) “Related condition” means, in accordance with 42 CFR §435.1010, a disability that satisfies all of the following conditions:
  - (i) It is attributable to cerebral palsy, epilepsy, or another condition other than mental illness found to be closely related to intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with intellectual disability and requires treatment or services similar to those required for intellectual disability;
  - (ii) It is manifested before the individual becomes 22 years old;
  - (iii) It is likely to continue indefinitely; and
  - (iv) It results in substantial functional limitations.

E. Criterion 2—Determination. In order to satisfy Criterion 2, the intellectual disability or related condition identified for Criterion 1 shall have existed before the individual reached the age of 22.

F. Criterion 3—Determination. In order to satisfy Criterion 3, the intellectual disability or related condition identified for Criterion 1 shall be not likely to significantly improve with health, habilitative, or rehabilitative treatment.

**G. Criterion 4—Determination.**

(1) In order to satisfy Criterion 4:

- (a) The individual shall require, and satisfy the criteria for, the level of care provided in an ICF/IID, in accordance with 42 CFR §441.301(b); and
- (b) The need for the ICF/IID level of care shall be due to the intellectual disability or a related condition identified for Criterion 1.

(2) For purposes of determining Criterion 4:

(a) "External support" means rendering of appropriate advice or assistance as needed and periodic monitoring of the circumstances of an individual with respect to personal management, household management, and the use of community resources; and

(b) "Periodic monitoring" means direct observation and assessment of the circumstances described in §G(2)(a) of this regulation at least once a day.

H. Criterion 5 – Determination.

(1) To satisfy Criterion 5:

(a) The individual shall require, and be likely to benefit from, active treatment, in accordance with 42 CFR §§440.150(a) and 483.440; and

(b) The need for active treatment shall be due to the intellectual disability or a related condition identified for Criterion 1.

(2) For purposes of determining Criterion 5:

(a) "Active treatment" means, in accordance with 42 CFR §483.440, aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services that is directed toward:

(i) The acquisition of the behaviors necessary for the individual to function with as much self-determination and independence as possible; and

(ii) The prevention or deceleration of regression or loss of current optimal functional status; and

(b) In accordance with 42 CFR §483.440, the active treatment that is required for Criterion 5 does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program.

**.21 Participant Eligibility—Financial Requirements.**

A. *Categorically Needy.* An individual is eligible for waiver services as categorically needy if the individual is receiving Medical Assistance as a:

(1) Recipient of Supplemental Security Income (SSI);

(2) Member of a low income family with children, as described in §1931 of the Social Security Act; or

(3) Qualified pregnant woman or child as described in §1905(n) of the Social Security Act.

B. *Medically Needy.* An individual is eligible for waiver services as medically needy if the individual is receiving Medical Assistance as a medically needy person in accordance with COMAR 10.09.24.03E.

C. *Home and Community-based Waiver Group.*

(1) An individual is eligible for waiver services in accordance with 42 CFR §435.217, if:

(a) The individual's countable income does not exceed 300 percent of the applicable payment rate for SSI; and

(b) The individual's resources do not exceed the SSI resource standard for one individual.

(2) In determining whether an individual is optionally categorically needy:

(a) The individual is treated as an assistance unit of one individual;

(b) Except as provided in §E of this regulation, income is determined based on the income rules set forth in COMAR 10.09.24 that apply to a child or an aged, blind, or disabled individual who is institutionalized;

(c) Except as provided in §E of this regulation, resources are determined based on the resource rules set forth in COMAR 10.09.24 that apply to a child or an aged, blind, or disabled individual who is institutionalized; and

(d) Except as specified in this chapter, the spousal impoverishment rules at COMAR 10.09.24.10-1 apply.

(3) An individual is not eligible to receive waiver services if a disposal of assets or creation of a trust or annuity results in a penalty under COMAR 10.09.24, until the penalty period expires.

(4) Financial eligibility for Medical Assistance shall be re-determined at least every 12 months.

D. A working individual with disabilities who buys into Medicaid as provided in §1902(a)(10)(A)(ii)(XV) of the Social Security Act is eligible for waiver services.

E. All provisions of COMAR 10.09.24 that are applicable to a child or an aged, blind, or disabled individual who is institutionalized apply to waiver applicants and participants who are considered as optionally categorically needy except:

(1) COMAR 10.09.24.04I(1), (2), and (3);

(2) COMAR 10.09.24.04-1F;

(3) COMAR 10.09.24.06B(2)(a)(ii);

(4) COMAR 10.09.24.08B(8)

(5) COMAR 10.09.24.08F(1);

(6) COMAR 10.09.24.08G;

(7) COMAR 10.09.24.09;

(8) COMAR 10.09.24.10;

(9) COMAR 10.09.24.10-1A, .10-1C(1)-(2), .10-1C(4), .10D-.10E, .10F(1)(c)-(e), .10-1F(4); and

(10) COMAR 10.09.24.15A-2(2).

F. *Home Exclusion.* The home is not considered a countable resource under this regulation if it is occupied by the waiver applicant or participant, the applicant's or participant's spouse, or any one of the following relatives who are medically or financially dependent on the applicant or participant:

(1) Child;

(2) Parent; or

(3) Sibling.

G. *Post-Eligibility Determination of Available Income for Optionally Categorically Needy.*

(1) For an individual eligible under COMAR 10.09.24.10B(2), the State uses the post-eligibility rules at 42 CFR 435.726 for individuals who do not have a spouse or have a spouse who is not a community spouse as specified in §1924 of the Act. Payment for home and community-based waiver services is reduced by the amount remaining after deducting the following allowances and expenses from the waiver participant's total income (including amounts disregarded in determining eligibility):

(a) An individual maintenance allowance, which may be adjusted based on a schedule issued by the Department in accordance with Social Security Income rates. For waiver participants in residential programs, the monthly maintenance needs allowance is 100 percent of the current Social Security Federal Benefit Rate plus an \$85 earned income deduction plus 50 percent of the remaining earned income. For waiver participants in non-residential programs, the monthly maintenance needs allowance is 300 percent of the current Social Security Federal Benefit Rate;

(b) A family maintenance allowance in accordance with the current medically needy income standard established under 42 CFR §435.811 for a family of the same size; and

(c) Incurred medical or remedial care expenses that are not subject to payment by a third party as specified in 42 CFR 435.726. For medical and remedial services the State deducts the fee Medicaid pays for the same item or service. For items or services for which Medicaid has not established a fee schedule, the actual charge is deducted.

(2) The Department shall determine the amount of available income to be paid by a participant towards the cost of care for residential habilitation services based on the participant's countable income remaining using the methodology described in §G(1) of this regulation.

(3) The residential habilitation provider shall collect the participant's available income, in an amount that may not exceed the cost of residential habilitation services for the participant as determined by the Department and that may be adjusted in accordance with Social Security Income rates.

(4) The sum of the participant's cost of care contribution and the Department's payment may not exceed the total cost of residential rehabilitation services for the participant as determined by the Department.

H. The Department may limit the number of individuals who may be served under the Community Pathways Waiver Program.

**.22 Waiver Application Process and Selection of Participants.**

**A. Application.**

(1) An application for waiver services under this chapter may be completed and submitted by:

- (a) The individual, if an adult;
- (b) A guardian or other authorized representative, in accordance with COMAR 10.01.04.12; or
- (c) The individual, with the assistance of the DDA or its designee.

(2) The individual submitting the application for waiver services shall provide, at a minimum, sufficient information for the DDA to make a determination of:

- (a) The nature of the disability;
- (b) The individual's eligibility for DDA-funded services based on COMAR 10.09.26.16; and
- (c) The individual's priority for services in accordance with this regulation.

**B. Determination of Service Priority Category.**

(1) The DDA or its designee shall assign the applicant who is determined to be eligible for DDA services to one of the following priority categories, based upon criteria set out in §C of this regulation:

- (a) Category I—Crisis Resolution;
- (b) Category II—Crisis Prevention; or
- (c) Category III—Current Request.

(2) An applicant shall be served according to the priority ranking as follows:

- (a) Category I are to be served before those in Category II; and
- (b) Category II are to be served before those in Category III.

(3) The following are additional categories, each of which is limited to specific applicants:

- (a) Category IV—Transitioning Youth as described in §C(4) of this regulation;
- (b) Category V—Knott Class Members as described in §C(5) of this regulation;
- (c) Category VI—Inappropriate Institutionalization as described in §C(6) of this regulation; and
- (d) Category VII—Innovation or Demonstration Projects as described in §C(7) of this regulation.

(4) Service delivery for each category is dependent upon the level of funding allocated for each fiscal year.

(5) An applicant may be in one of the categories listed under §B(1) of this regulation and in one of the categories listed under §B(3) of this regulation.

**C. Description of Categories.**

**(1) Category I—Crisis Resolution.**

(a) To qualify for this category, the applicant shall provide evidence that the applicant is:

- (i) Homeless or living in temporary housing with time-limited ability to continue to live in this setting, and 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; or

(iv) Living with a caregiver who is unable to provide adequate care due to the caregiver's impaired health, with no alternative private caregiver available, which may place the applicant at risk of serious physical harm.

(b) Evidence of the following is required to qualify for Category I under §C(1)(a)(ii) of this regulation. 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 so that the applicant is at serious risk of sustaining injuries that are life-threatening or that substantially impair functioning;

(iv) Engages in self-injurious behavior that places the applicant at serious risk of sustaining injuries that are life-threatening or that substantially impair functioning; or

(v) Is at serious risk of sustaining injuries that are life-threatening or that substantially impair functioning due to the physical surroundings.

(c) If the applicant is his or her own caregiver, §C(1)(a)(iv) of this regulation shall apply to the applicant.

(d) An applicant becomes eligible to receive services as the need occurs.

**(2) Category II—Crisis Prevention.**

(a) To qualify for this priority category, the applicant shall meet one or more of the following criteria. The applicant shall be:

(i) Determined by the DDA to have an urgent need for services; or

(ii) At substantial risk for meeting one or more of the criteria in §C(1)(a) of this regulation within 1 year, or have a caregiver who is 65 years old or older.

(b) For an applicant who qualifies in accordance with §C(2)(a)(ii) of this regulation, priority shall be given to applicants with older caregivers.

**(3) Category III—Current Request.**

(a) To qualify for this priority category, the applicant shall indicate a current, non-urgent need for services.

(b) Prioritization of services within Priority Category III is based on consideration of the following:

(i) Applicants on the waiting list longer are given higher priority; and

(ii) The fiscal year of application, and the month and day of birth.

(c) Regarding §C(3)(b)(ii) of this regulation, an applicant born at the beginning of the fiscal year has priority over an applicant born later in the year.

**(4) Category IV—Transitioning Youth.**

(a) To qualify for funding for services in this priority category, the applicant shall be eligible for DDA-funded services as of the applicant's 21st birthday, and continuing until the applicant's 22nd birthday. If the date of high school or special school graduation is after the applicant's 21st birthday, the applicant shall continue to be eligible for 1 year after the date of graduation.

(b) An applicant in this priority category shall also meet the criteria for one of the priority categories in §B(1) of this regulation.

(c) An applicant in this priority category becomes eligible to receive services from the date of approval of priority status.

**(5) Category V—Knott Class.**

(a) An applicant who qualifies for this priority category:

- (i) Has an intellectual disability;
- (ii) Resides in a Mental Hygiene Administration facility;

and

(iii) Does not meet the statutory criteria for retention in a Mental Hygiene Administration facility.

(b) An applicant in this priority category becomes eligible to receive services based on the best clinical judgment of the professionals involved and the availability of 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 retention in that facility or, if the applicant meets that criteria, has either indicated a preference for or has not objected to community integration;

(ii) Resident in a chronic hospital and not meet the criteria for retention in that facility or, if the applicant meets the criteria, has either indicated a preference for or has not objected to community integration; or

(iii) Resident in an institution of the Mental Hygiene Administration who has a developmental disability, but not an intellectual disability, who does not meet the criteria for retention in a State psychiatric hospital, and whose primary need is not for a mental health service, or, if the resident meets the criteria, has indicated a preference for or has not objected to community integration.

(b) An individual in this priority category shall also be in one of the priority categories in §B(1) of this regulation.

(c) An individual becomes eligible to receive services based on the best clinical judgment of the professionals involved and the availability of allocated resources.

(7) Category VII—Innovation or Demonstration Projects.

(a) Innovation or demonstration projects include federal grants and projects developed in conjunction with various stakeholders.

(b) An individual in this priority category:

(i) Shall meet the level of care required for the DDA waiver; and

(ii) May also be in another priority category.

D. Determinations of priority category status may be subject to modification if the applicant's or caregiver's circumstances change.

E. Letter of Determination.

(1) Within 60 days after receipt of an application and all required support documentation, the DDA shall send a final letter of eligibility determination to the applicant, caregiver, or other designated proponent.

(2) If the DDA makes an adverse determination, the letter of determination shall provide a right to appeal the determination in accordance with COMAR 10.01.04 and applicable federal regulations.

**.23 Process to Request a Service Change.**

A. A participant has the right to request different or additional services based on a substantiated need.

B. In order to obtain a change in services, the participant with assistance from the coordinator of community services shall submit the request to the DDA regional office.

C. To be approved, a request for a specific service shall satisfy the criteria for that service as set out in this chapter, and the participant shall meet the eligibility criteria set out in Regulations .19—.21 of this chapter.

**.24 Voluntary Termination of Participant Self-Direction.**

A. Participants may voluntarily elect to discontinue self-direction of services by providing written notice to the coordinator of community services.

B. Upon receipt of the notification of the participant's election, the coordinator of community services shall coordinate the participant's prompt transition from self-directed services to other services and

supports, including provider-managed services and other Medicaid services and waiver programs.

C. The participant and the participant's coordinator of community services shall develop a transition plan that outlines the steps for concluding self-directed services and beginning alternative services.

D. A participant who voluntarily disenrolls from self-directed services may re-enroll in self-directed services:

(1) Upon meeting all eligibility criteria; and

(2) Provided that 6 months has elapsed from the effective date of disenrollment.

**.25 Involuntary Termination of Participant Self-Direction.**

A. Self-directed services shall be restricted or terminated when the DDA determines that:

(1) The participant no longer meets eligibility criteria for the waiver;

(2) The health and safety of the participant or another individual may be threatened;

(3) The individual plan and budget are not being implemented as approved;

(4) The rights of the participant are being compromised;

(5) The participant's expenditures or authorization to expend funds are inconsistent with the approved individual plan and budget;

(6) The participant's funds are being mismanaged;

(7) The participant's funds are being used fraudulently or for illegal purposes; or

(8) The participant has been without support brokerage services for more than 30 days unless otherwise determined by the DDA.

B. If the DDA decides that the self-directed participant no longer meets the requirements for self-directed services, the DDA shall inform the participant, the participant's support broker, the participant's coordinator of community services, and the participant's fiscal management service in writing of the deficiencies and any steps that can be taken or resources available to allow the participant to retain the authority to self-direct services. These may include, but are not limited to:

(1) Changes in the individual plan and budget;

(2) Changes in the participant's support brokerage or staff, and

(3) Additional training requirements.

C. If the participant with assistance from the participant's support broker, the participant's coordinator of community services, or the participant's fiscal management service, fails to take steps identified in §B of this regulation, the participant shall be disenrolled from self-directed services.

D. Upon disenrollment, the DDA shall assist an eligible participant in promptly transitioning from self-directed services to other services and supports. The participant and the participant's coordinator of community services shall develop a transition plan that outlines the steps necessary to conclude self-directed services and begin alternative services.

**.26 Covered Services—General Criteria.**

A. In order for a requested service to be funded, the participant shall provide evidence showing that the service:

(1) Has been recommended in the participant's individual plan, which has been approved by the DDA or its designee;

(2) Is necessary to satisfy a need that has been identified in an assessment of the participant by a professional;

(3) Is necessary to prevent institutionalization in an ICF/IID; and

(4) Is the least costly service that will address the assessed substantiated need without sacrificing effectiveness, participant safety, or access to care.

B. Waiver services shall be designed to increase individual independence, with the goal of ultimately reducing the level of service needed.

C. Costs for covered services shall be necessary and reasonable, as defined in Regulation .02B(36) of this chapter.

**.27 Limitations—General.**

A. The following services are not covered:

(1) Services that are of the same type, duration, and frequency as other services to which the participant is entitled under the participant's private health insurance, the Medicaid State Plan, the Division of Rehabilitation Services or through other resources, including programs funded under the:

(a) Rehabilitation Act of 1973, §110; or

(b) Individuals with Disabilities Education Act, 20 U.S.C. §1401(16 and 17);

(2) Services that are not part of a participant's DDA-approved individual plan; and

(3) Services that are experimental or are treatments prohibited by the Health Occupations Licensing Boards and the Federal Drug Administration.

B. For each date that a participant receives respite services or residential habilitation, payment may not be made for medical assistance personal assistance services as described in COMAR 10.09.20 or 10.09.84.

C. Payment may not be made for any time period during which services are provided for:

(1) Day habilitation and supported employment;

(2) Employment discovery and customization; or

(3) Community learning services.

D. Unless the participant meets all waiver eligibility criteria at the time of service delivery, a provider is not entitled to reimbursement under the Community Pathways Waiver Program.

E. If the Medicaid program denies payment or requests repayment on the basis that an otherwise covered service was not necessary, the provider may not seek payment for that service from the participant.

**.28 Covered Services—Assistive Technology and Adaptive Equipment.**

A. An assistive technology and adaptive equipment provider may provide the following categories of services at a participant's home, a vendor's office, or an off-site location:

(1) Evaluations and recommendations;

(2) Equipment set-up and configuration; or

(3) Software or hardware training.

B. Assistive technology and adaptive equipment include, but are not limited to:

(1) Communication devices;

(2) Visual or auditory support technologies;

(3) Any piece of technology or equipment that enhances an individual's ability to live independently;

(4) Assessments, specialized training, and upkeep and repair needed to use devices and equipment;

(5) Assistance in the selection, acquisition, or use of assistive technology and adaptive equipment devices; and

(6) Remote monitoring.

C. Assistive technology services include:

(1) The evaluation of the assistive technology needs of a participant, including a functional evaluation of the impact of the provision of appropriate assistive technology and appropriate services in the participant's customary environment;

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for participants;

(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, updating, repairing, or replacing assistive technology devices;

(4) Coordination and use of necessary therapies, interventions, or services associated with assistive technology devices authorized by the individual plan;

(5) Training or technical assistance for the participant, or, where appropriate, the family members, guardians, advocates, or authorized representatives of the participant; or

(6) Training or technical assistance for professionals or other individuals who provide services to participants.

D. Adaptive equipment includes:

(1) Devices, controls, or equipment designed to increase a participant's ability to perform activities of daily living or to perform employment activities;

(2) Devices, controls, or equipment that enable the participant to perceive, control, or communicate with the environment in which he or she lives or works; and,

(3) Other durable and non-durable medical equipment not available under the State Plan that is necessary to address the participant's functional limitation.

E. Limitations—Assistive Technology and Adaptive Equipment.

(1) These services shall be reimbursed only if:

(a) Authorized by the DDA before the services are rendered, in accordance with the Community Pathways waiver application; and

(b) Approved in the individual plan.

(2) Assistive technology and adaptive equipment evaluations and recommendations are limited to non-medical rehabilitation technology not regulated by other COMAR provisions.

(3) Specifically excluded under this service are:

(a) Wheelchairs and power mobility devices;

(b) Architectural modifications;

(c) Adaptive driving;

(d) Vehicle modifications; and

(e) Devices requiring a prescription from a physician or other medical provider.

(4) Services, equipment, items, or devices that are experimental, or treatments prohibited by the State or federal authorities, including the Health Occupations Licensing Boards and the Federal Drug Administration, are not covered under this regulation.

(5) Unless the individual is returning to the community from a Medicaid-funded institutional setting, the provider is not entitled to reimbursement from the Medicaid program unless the participant meets all waiver eligibility criteria at the time of service delivery.

(6) When services are furnished to individuals returning to the community from an institutional setting through entrance to the waiver, the costs of these services are considered to be incurred and billable when the individual leaves the institutional setting and enters the waiver. At the time of the request, the individual shall be expected to be eligible for and to enroll in the waiver. If the individual does not enroll in the waiver, services may be billed to Medicaid as an administrative cost.

(7) Unless otherwise authorized by the DDA before the services are provided, the provider's administrative fee for providing the services described in this regulation may not exceed 15 percent of the total cost of the service provided.

(8) The amount of reimbursement shall be:

(a) Necessary and reasonable;

(b) Determined in accordance with the participant's needs; and

(c) Approved by the DDA or its designee.

**.29 Covered Services—Behavioral Supports.**

A. Behavioral supports are intended to assist participants who are experiencing or are likely to experience difficulty in community living as a result of behavioral, social, or emotional issues.

B. A behavior support services provider shall provide services only in the individual's home or other non-institutional setting.

C. A behavioral support services provider shall provide services in accordance with the individual plan as defined in COMAR 10.22.05. The services may include, but are not limited to, the following:

- (1) Behavior consultation;
- (2) Behavior plan development and monitoring;
- (3) In-home behavioral support, such as training for families and service providers on implementation of the behavior plan;
- (4) Behavioral respite services as defined in this regulation;
- (5) Temporary augmentation of staff;
- (6) Intensive behavior management program in a short-term alternative living arrangement to address significant challenging behaviors; and
- (7) Other treatment, therapy, or supports that are geared to helping the individual successfully manage challenging behaviors.

D. The Community Pathways Waiver Program shall reimburse for behavior support services, including assessments, behavior plans, timesheets, and other services, as demonstrated by documents signed and dated by the individual providing services.

E. Reimbursement for behavioral support services, behavioral respite services, temporary staff, augmentation services, behavioral consultation services, and intensive behavioral management programs in alternative living arrangements shall be necessary and reasonable, determined by the participant's needs, and approved by the DDA or its designee, in accordance with the DDA's policies and Medicaid waiver application.

**.30 Covered Services—Community Learning Services.**

A. Community learning services provide training and supports designed to increase individual independence of individuals with developmental disabilities.

B. Community learning services are:

- (1) Developed through a person-centered planning process, as defined in Regulation .02B(41), and provided in accordance with the participant's individual plan, which shall include annual assessment the participant's progress toward employment goals;
- (2) Provided in community settings with non-disabled individuals except in the case of self-advocacy groups;
- (3) Provided in groups of no more than four individuals with developmental disabilities, all of whom have similar interests and goals as outlined in their person-centered individual plans except in the case of self-advocacy groups;
- (4) Specific, individualized, and goal-oriented;
- (5) Designed to promote positive growth or assist participants in developing the skills and social support necessary to gain, retain, or advance in employment;
- (6) Established to provide activities, special assistance, support, and education to help participants whose age, disability, or circumstances currently limit the participant's ability to be employed or to participate in activities in the participant's communities; and
- (7) Assessed at least annually, or more frequently at the request of the participant, the participant's family, or guardian.

D. Community learning services that lead to or are designed to increase integrated, competitive employment may include:

- (1) Training in self-determination or self-advocacy;
- (2) Workshops and classes;
- (3) Peer mentoring;
- (4) Volunteer activities; or
- (5) Activities that promote health and socialization.

E. Community learning services can be related to retirement activities, as recommended by the individual's team.

F. Transportation to and from community learning services shall be provided or arranged by the licensed community learning services

provider and funded through the rate system. The licensee shall use the mode of transportation that achieves the least costly, and most appropriate, means of transportation for the participant, with priority given to the use of public transportation when appropriate.

G. A participant's individual plan may include a combination of day habilitation, community learning services, employment discovery customization, or supported employment services on different days as authorized by the DDA before to being provided.

H. Limitations—Community Learning Services.

(1) Community learning services:

- (a) Are intended for an individual who:
  - (i) Is not employed;
  - (ii) Wants alternatives to facility-based supports; or
  - (iii) Is currently limited in the individual's employment due to disability, age, or circumstances;
- (b) Shall be located in integrated community settings that improve communication, social skills or health, and increase the participant's integrated, competitive employment, or employability;
- (c) Shall be delivered in accordance with the participant's individual plan and as authorized by the DDA before to being provided;
  - (d) A day is comprised of one unit of service; and
  - (e) Payment shall be made for one billable service unit per day.
- (2) A participant shall be engaged in community learning service activities a minimum of 4 hours per day.
- (3) To be approved, add-on and supplemental services shall be determined the most cost effective service available, as defined at Regulation .02B(34) of this chapter.

**.31 Covered Services—Community Residential Habilitation Services.**

A. Community residential habilitation services are intended to assist a participant in acquiring the skills necessary to maximize the participant's independence in activities of daily living and to fully participate in community life.

B. A community residential habilitation provider shall provide services in the following DDA licensed community settings:

- (1) Group homes; or
- (2) Alternative living units.

C. Community residential habilitation services shall include the following:

- (1) A program of habilitation which shall:
  - (a) Be specified in the individual plan; and
  - (b) Provide training to develop self-help, daily living, self-advocacy, and self-sufficiency;
- (2) Travel training to maximize use of public transportation;
- (3) Training and assistance in developing patterns of living, activities, and routines which are appropriate to the participant's age, interests, capabilities and the practices of the surrounding community;
- (4) Training and assistance in developing basic safety skills;
- (5) Training and assistance in developing competency in housekeeping skills, including, but not limited to:
  - (a) Meal preparation;
  - (b) Laundry; and
  - (c) Shopping;
- (6) Training and assistance in developing competency in personal care skills such as:
  - (a) Bathing;
  - (b) Toileting;
  - (c) Dressing; and
  - (d) Grooming;
- (7) Training and assistance in developing self-health care skills, including but not limited to:
  - (a) Maintaining proper dental hygiene;

(b) Carrying out the recommendations of a dentist or physician:

- (c) Appropriate use of medications and basic first aid;
- (d) Arranging medical and dental appointments; and
- (e) Summoning emergency assistance;

(8) Training and assistance in developing money management skills;

(9) Supervision or guidance;

(10) Coordination of, monitoring of, follow-up to, and transportation to and from appointments for medical services;

(11) Occupational therapy services, when included in the individual plan, and provided by or under the direction of a licensed occupational therapist for rehabilitation and habilitation for adults, according to a plan that shall include:

(a) Specifications of the treatment to be rendered, the frequency and duration of that treatment, and the expected results;

(b) Evaluation and reevaluation of the participant's level of functioning through the use of standardized or professionally accepted diagnostic methods;

(c) Development and delivery of appropriate treatment programs to significantly improve a participant's level of functioning;

(d) Selection and teaching of task-oriented therapeutic activities designed to restore physical functioning; and

(e) Improvement of mobility skills;

(12) Physical therapy services, when included in the individual plan, and provided by or under the direction of a licensed physical therapist for the purpose of habilitation for adults, according to a plan that shall specify:

(a) Parts of the body to be treated;

(b) Treatments to be rendered;

(c) Expected results of physical therapy treatments; and

(d) Frequency and duration of treatment;

(13) Social services not otherwise provided under the Medicaid program when included in the individual plan, which shall include:

(a) Identification of the participant's social needs; and

(b) Supports to assist the participant's adaptation to the participant's environment;

(14) Speech pathology and audiology services, when included in the individual plan, and provided by or under the direction of a licensed speech language therapist or licensed audiologist for rehabilitation and habilitation for adults, according to a plan that shall include:

(a) Maximization of communication skills;

(b) Screening, evaluation, counseling, treatment, habilitation, or rehabilitation of participants with hearing, language, or speech disability;

(c) Coordination of interdisciplinary goals related to hearing and speech needs; and

(d) Consultation with staff regarding the participant's other programs; and

(15) Medically necessary nursing services provided by a licensed registered nurse or licensed practical nurse, when included in the individual plan and authorized by the DDA before being provided by the DDA, including:

(a) Short-term, skilled, non-delegated nursing tasks, unavailable under the State Plan home health benefit, as performed by a nurse as needed to allow an individual to return to or remain in the community following a serious illness or hospitalization;

(b) Intermittent skilled, non-delegated nursing tasks, unavailable under the State Plan home health benefit, as performed by a nurse for an individual who need 8 weeks or less of a nursing intervention; and

(c) Nursing supervision consistent with the Maryland Nurse Practice Act and COMAR 10.27.11, which may include:

(i) Meeting with the provider's staff to discuss how the medical services identified in the individual plan will be implemented; and

(ii) Education, supervision, and training of participants in self-health-related matters.

D. Community residential habilitation services include a community exploration option, which allows an individual short-term overnight stays with a community residential habilitation provider, during which the provider can learn about and form a relationship with the individual before a transition.

E. Transportation assistance to and from activities shall be provided by the community residential habilitation provider, in a manner that achieves the least costly, most integrated, and most appropriate means of transportation for the individual, with priority given to the use of public transportation or transportation by family, friends, neighbors or volunteers, as appropriate to the individual's needs and abilities.

F. Limitations—Community Residential Habilitation.

(1) In order to bill for a day of service, a community residential habilitation provider shall provide residential habilitation services for at least 6 hours in a day, or overnight.

(2) Community residential habilitation services are not available under the self-direction model.

(3) Community exploration for people transitioning from an institutional or non-residential site shall be authorized by the DDA before being provided, and is limited to a maximum of 7 days within the 180-day period before a transition to the community.

(4) Community residential habilitation may not bill separately for transportation because its cost is included in the rate paid to providers for these services.

(5) Medical and health care services such as physician services that are not routinely provided to meet the daily needs of residents may not bill as an add-on service to the community residential habilitation service.

(6) The Medicaid payment for community residential habilitation may not include either of the following items:

(a) Room and board; or

(b) Any contribution by the individual for the cost of care established under Regulation .21G of this chapter.

(7) Providers may not bill for more than 33 residential retainer fees per year per participant.

(8) Payment for community residential habilitation services may not include the cost of building maintenance, upkeep, and improvement of the residence.

(9) Reimbursement for community residential habilitation services is determined pursuant to COMAR 10.22.17.

**.32 Covered Services—Community Supported Living Arrangements.**

A. Community supported living arrangements are intended to provide regularly specified weekly personal assistance, supervision, and training, in order to assist the individual to participate fully in home and community life.

B. Community supported living arrangements providers shall provide services for participants living in the participant's own home or in the family home.

C. Community supported living arrangements providers shall provide services in accordance with the participant's individual plan.

D. Community supported living arrangements include assistance, supervision and training in the following:

- (1) Housekeeping;

(2) Menu planning, food shopping, meal preparation, and eating;

(3) Personal care and assistance with hygiene and grooming;

(4) Any task to ensure health and safety, including nursing services and medication administration;

(5) Maintenance and cleaning of adaptive equipment;

(6) Twenty-four hour emergency assistance, to provide the participant with access to backup services in the event of an emergency, using a method or equipment adapted to the skills and needs of the individual, including through the use of an emergency telephone number, a pager, or other appropriate technology as specified in the individual plan;

(7) Activities to improve social skills; and

(8) Services necessary to effectively link individuals with the community, which may include the following:

(a) Assisting the individual to establish relationships in the community with individuals, organizations, or associations;

(b) Assisting the individual to enhance skills related to expressing preferences and choices;

(c) Assisting the individual with or providing training related to finances, including money management, banking and tax preparation;

(d) Facilitating opportunities for the individual to acquire skills identified in the individual plan, including self-advocacy training;

(e) Assistance with securing and maintaining government and community resources;

(f) Assistance with securing and maintaining housing; and

(g) Assistance with locating roommates of the individual's choosing.

**E. Personal Support Services.**

(1) Personal support services provide necessary assistance for participants living in the participant's own home or family home to meet the participant's daily living needs and to ensure adequate functioning in the community. Personal support services includes the following services:

(a) Guidance to optimize the participant's capability of living in the community at home;

(b) Facilitating community participation by assisting with linkages to community activities, organizations, or associations;

(c) Assisting with budgeting, banking, tax preparation, and financial management;

(d) Assisting with accessing and managing government and community resources; and

(e) Assisting the participant with securing and maintaining housing.

(2) A participant receiving personal support services under this chapter may not receive personal care services under COMAR 10.09.20.

*F. Reimbursement is as set forth in COMAR 10.22.18.*

**G. Community supported living arrangements for participants who are self-directing their services also include:**

(1) Retainer fees paid to direct support workers for days on which the individual is hospitalized, provided that:

(a) Retainer fees are not paid for more than 21 days per individual per year;

(b) Payment is subject to the approval of the DDA; and

(c) Retainer fees assist a participant in retaining qualified employees whom the participant has trained and who are familiar with the individual's needs, during periods when the employee cannot work because of the individual's hospitalization.

**H. Limitation—Community Supported Living Arrangements.**

(1) Community supported living arrangement services shall be authorized by the DDA before being provided, in accordance with DDA policy and the waiver application.

(2) Community supported living arrangement services may not be covered unless DDA determines that they are the most cost effective service available, as defined at Regulation .02B(34) of this chapter.

**.33 Covered Services—Day Habilitation.**

**A. Day habilitation programs seek to increase individual independence, reduce service needs, increase community engagement, and move participants toward competitive, integrated employment.**

**B. Day habilitation services are provided in accordance with the participant's individual plan and person-centered planning process, and shall include an annual assessment of the individual's employment goals and barriers to integrated, competitive employment and community integration.**

**C. Day habilitation programs provide structured activities in settings other than the participant's private residence.**

**D. Day habilitation services include services to help participants develop and maintain:**

(1) Motor skills;

(2) Communication skills;

(3) Personal hygiene skills; and

(4) Skills that will lead to greater opportunities for competitive, integrated employment at or above minimum wage, or to other means of community integration, including supported retirement.

**E. A participant's individual plan may include a combination of day habilitation, community learning services, employment discovery customization, or supported employment services on different days as authorized by the DDA before being provided.**

**F. For participants with service providers who are being compensated, the individual plan shall describe:**

(1) Employment goals designed to lead to competitive, integrated employment at or above minimum wage;

(2) How progress towards those goals will be measured on an annual basis; and

(3) How the services furnished to participants are not vocational in nature, in accordance with 42 CFR 440.180(c)(2)(i).

**G. In order to receive day habilitation services, each participant's ability to receive services in an integrated setting shall be assessed annually by the individual planning team, or when requested by the participant or the participant's representative, whichever is sooner. Progress towards the participant's community integration and employment goals shall be reviewed at least quarterly by the coordinator of community services and day habilitation provider.**

**H. In addition to the services described in §§C and D of this regulation, a participant in day habilitation may request any of the following services, if they are specified in the individual plan and are approved and funded by the DDA:**

(1) Occupational therapy services provided by or under the direction of a licensed occupational therapist for rehabilitation and habilitation for adults, the plan for which shall include:

(a) Specifications of the treatment to be rendered, the frequency and duration of that treatment, and the expected results;

(b) Initial and annual evaluation of the participant's level of functioning through the use of standardized or professionally accepted diagnostic methods;

(c) Development and delivery of appropriate treatment programs designed to significantly improve a participant's level of functioning;

(d) Selection and teaching of task-oriented therapeutic activities designed to restore physical functioning; and



- (e) Improvement of mobility skills;
- (2) Physical therapy services provided by or under the direction of a licensed physical therapist for the purpose of habilitation, the plan for which shall specify:
  - (a) Parts of the body to be treated;
  - (b) Type of modalities or treatments to be rendered;
  - (c) Expected results of physical therapy treatments; and
  - (d) Frequency and duration of treatment, which shall adhere to accepted standards of practice;
- (3) Social services not provided under the Community Pathways Waiver Program including:
  - (a) Identification of the participant's social needs; and
  - (b) Supports to assist the participant's adaptation and adjustment to the environment;
- (4) Speech pathology and audiology services provided by or under the direction of a licensed speech language therapist or licensed audiologist for rehabilitation and habilitation for adults, the plan for which shall include:
  - (a) Maximization of communication skills;
  - (b) Screening, evaluation, counseling, treatment, habilitation, or rehabilitation of participants with hearing, language, or speech disability;
  - (c) Coordination of interdisciplinary goals related to hearing and speech needs; and
  - (d) Consultation with staff regarding the participant's programs;
- (5) Medically necessary nursing services provided by a licensed registered nurse or licensed practical nurse, when ordered by a licensed professional including:
  - (a) Short-term, skilled, non-delegated nursing tasks, unavailable under the State Plan home health benefit, as performed by the nurse to allow individuals to return to the community or stay in the community following a serious illness or hospitalization;
  - (b) Intermittent skilled, non-delegated nursing tasks, unavailable under the State Plan home health benefit, as performed by the nurse for individuals who need brief nursing intervention; and
  - (c) Nursing supervision consistent with the Maryland Nurse Practice Act and COMAR 10.27.11 which may include:
    - (i) Meeting with the provider's staff to discuss how the medical services that are identified in the individual plan will be implemented; and
    - (ii) Education, supervision, and training of participants in self-health-related matters; and
- (6) Treatment protocols such as specialized diets, exercise, and preventive activities developed by licensed professionals including use of soft foods to prevent choking and special diets to avoid food allergies.
  - I. Professionals providing services under this regulation shall meet all statutory and regulatory provider qualifications.
  - J. The services listed in this regulation shall be:
    - (1) Authorized before being provided and funded by the DDA; and
    - (2) Unavailable from any other source, including State Plan services provided pursuant to:
      - (a) COMAR 10.22.17.08.F; and
      - (b) COMAR 10.22.17.11.
  - K. Transportation.
    - (1) Transportation to and from day activities shall be arranged by the licensed day habilitation provider and funded through the rate system.
    - (2) The individual shall have both a primary transportation plan and an alternate plan, which shall be reflected in the individual plan.
    - (3) The day habilitation provider shall keep accurate records which include the type of transportation used by each participant.

- (4) The day habilitation provider shall use the mode of transportation that is the least costly and most appropriate means for the individual, with priority given to the use of public transportation, including:
  - (a) Encouraging an individual who lives within walking distance of the day habilitation services center and who is sufficiently mobile to walk;
  - (b) Accessing transportation supplied by family, friends, neighbors, or volunteers; and
  - (c) Using free community transportation services.
- L. Limitations—Day Habilitation.
  - (1) The service unit for day habilitation services is comprised of one day, subject to the following limitations:
    - (a) A provider of day habilitation services may receive payment for only one service unit per day; and
    - (b) Participants shall be engaged in day habilitation activities a minimum of 4 hours per day in order for providers to receive payment for one unit of service.
  - (2) To be approved, add-on and supplemental services shall be determined the most cost effective service available, as defined at Regulation .02B(34) of this chapter.
  - (3) Waiver funds may not be used for vocational services that:
    - (a) Teach job-specific skills required by a participant for the primary purpose of completing those tasks for a facility-based job; and
    - (b) Are not delivered in an integrated work setting through supported employment.

**.34 Covered Services—Employment Discovery and Customization.**

- A. Employment discovery and customization services provide opportunity, training, and supports to participants with developmental disabilities designed to increase individual independence.
- B. Employment discovery and customization services assists a participant in exploring integrated, competitive employment possibilities, and the impact of income on the participant's eligibility for benefits.
- C. Employment customization assists a participant in developing career goals through career exploration and job development.
- D. Employment discovery and customization services shall be provided in accordance with the participant's individual plan.
- E. Employment discovery and customization services include time-limited assessment of employment goals, strength, and needs, discovery, customization, and training activities to assist an individual in gaining integrated, competitive employment in a setting where most of the employees do not have disabilities.
- F. Employment discovery and customization services include but are not limited to the following:
  - (1) Community-based formal or informal situational assessments;
  - (2) Job development and customization, or self-employment;
  - (3) Job and task analysis activities;
  - (4) Job and travel training;
  - (5) Work skill training or mentoring;
  - (6) Modification of work materials, procedures, and protocols;
  - (7) Training in social skills, acceptable work behaviors and other skills, such as money management, basic safety skills, and work-related hygiene;
  - (8) Broad career exploration and self-discovery resulting in targeted employment opportunities, including activities such as job shadowing, information interviews, and other integrated worksite-based opportunities; and
  - (9) Certified pre-employment benefits counseling.
- G. Transportation to and from activities shall be provided or arranged by the licensed employment discovery and customization

provider, and funded through the rate system. The provider shall use the mode of transportation that is the least costly and most appropriate, with priority given to the use of public transportation.

H. A participant's individual plan may include a combination of day habilitation, community learning services, employment discovery customization, or supported employment services on different days as authorized by the DDA before being provided.

I. **Limitations—Employment Discovery and Customization.**

(1) Employment discovery and customization services may be provided for up to a 6-month period, with additional increments that may be authorized by the DDA before provided.

(2) The service unit for employment discovery and customization services is comprised of one day, subject to the following limitations:

(a) A provider of employment discovery and customization services may receive payment for only one service unit per day; and

(b) Participants shall be engaged in employment discovery and customization activities a minimum of 4 hours per day in order for providers to receive payment for one unit of service.

(3) To be approved, add-on and supplemental services shall be determined the most cost effective available, as defined in Regulation .02B(34) of this chapter.

**.35 Covered Services—Environmental Assessment Services.**

A. An environmental assessment is an on-site evaluation of the participant's primary residence to determine the need for:

- (1) Environmental adaptations or modifications; or
- (2) Assistive devices or equipment.

B. The following shall be included in the environmental assessment, as necessary:

- (1) An evaluation of the presence and likely progression of a participant's disability or chronic illness or condition;
- (2) Environmental factors in the home;
- (3) The participant's ability to perform activities of daily living;
- (4) The participant's strength, range of motion, and endurance;
- (5) The participant's need for assistive devices and equipment; and
- (6) The participant's, the family's, or service provider's knowledge of the participant's health and safety risks.

C. The environmental assessment shall be recommended by the participant's team in the individual plan when an environment assessment is considered necessary to:

- (1) Ensure the health, safety, and access to the home of a participant with special environmental needs; and
- (2) Obtain professional advice from an occupational therapist about the environment and physical structure of a participant's home or residence and the functional or mental limitations or disabilities of a participant.

D. An on-site environmental assessment of the participant's home or residence shall be followed by a written report that shall:

- (1) Detail the environmental assessment process and findings;
- (2) Specify recommendations for the home modifications, durable medical equipment, assistive devices, and technology that are needed by the participant; and
- (3) Be completed within 14 days of the completed assessment and forwarded to the participant's coordinator of community services.

E. **Limitations—Environmental Assessment Services.**

(1) Unless otherwise approved by the DDA, an environment assessment is limited to one assessment annually.

- (2) The service shall be:
  - (a) Necessary and reasonable;
  - (b) Based on the participant's needs; and

(c) Authorized by the DDA before being provided

(3) The service shall be rendered by a licensed occupational therapist.

(4) If Medicare covers the environmental assessment for the participant, Medicaid shall pay the Medicare co-payments or deductible.

(5) Unless otherwise authorized by the DDA for an individual who is transitioning from an institution, an environmental assessment may not be provided before the effective date of the participant's eligibility for waiver services.

(6) Payment for services is contingent upon a completed environmental assessment service report.

(7) If an organized health care delivery system obtains this service for a participant, unless otherwise authorized by the DDA, the administrative fee for providing the service may not exceed 15 percent of the total cost of the service.

**.36 Covered Services—Environmental Accessibility Adaptations.**

A. Environmental accessibility adaptations are physical modifications or devices connected to or installed in the home.

B. Environmental accessibility adaptations shall be approved if the adaptations are:

- (1) Required because of the physical structure of the residence and the participant's special functional needs;
- (2) Necessary and reasonable to prevent the participant's institutionalization or hospitalization; and
- (3) Provided to ensure the following:
  - (a) The participant's health, welfare, and safety; or
  - (b) The participant's ability to function with greater independence in the residence.

C. The accessibility adaptations include modifications or devices to make the home physically accessible or safe for waiver participants, and may include:

- (1) Installation of grab bars;
- (2) Construction of access ramps and railings for a participant who uses a wheelchair or who has limited ambulatory ability;
- (3) Installation of detectable warnings on walking surfaces, as needed for safety;
- (4) Installation of visible fire alarm for an individual who has a hearing impairment;
- (5) Adaptations to the electrical, telephone, and lighting systems;
- (6) Generator to support medical equipment that requires electricity;
- (7) Widening of doorways and halls for wheelchair use;
- (8) Door openers;
- (9) Installation of chair glides;
- (10) Alarms or locks on windows, doors, and fences;
- (11) Protective padding on walls or floors;
- (12) Safety glass or protective coating on glass windows, outside gates and fences;
- (13) Brackets for securing appliances;
- (14) Raised or lowered electrical switches and sockets; and
- (15) Safety screen doors.

D. Any restrictive adaptive measures such as locked windows, appliances, doors, and fences shall be included in the participant's approved behavior plan in accordance with the DDA's policy on positive behaviors supports.

E. All construction shall:

- (1) Be provided in accordance with applicable State or local building codes; and
  - (2) Pass all required building code inspections.
- F. The service is available to an individual who self-directs services.

*G. Limitations—Environmental Accessibility Adaptations.*

(1) Unless otherwise authorized by the DDA before the service is provided, payment rates for services shall be necessary and reasonable, and may not exceed a lifetime total of \$17,500, in combination with the cost of vehicle modifications undertaken pursuant to Regulation .48 of this chapter,

(2) An adaptation over \$1,000 shall be authorized by the DDA before being provided and approved in the participant’s individual plan.

(3) All adaptations for participants leasing a property:

(a) Shall be approved by the property owner; and

(b) May be undertaken only if the property owner has agreed to permit the participant to remain in the residence at least 1 year after modifications are made.

(4) If an adaptation is estimated to cost over \$1,000 in a 12-month period, the coordinator of community services or organized health care delivery system shall obtain at least two bids for the service.

(5) The waiver does not cover adaptations or improvements to the home, such as carpeting, roof repair, decks, and central air conditioning, that:

(a) Are of utility for individuals regardless of disability;

(b) Are of no direct medical or remedial benefit to the participant; or

(c) Add to the home’s total square footage, unless the construction is necessary, reasonable, and directly related to accessibility needs.

(6) Life safety and other modifications may be furnished to participants who receive residential habilitation services so long as they are necessary to meet the needs of residents, and are not basic housing costs. Payment is not available for the cost of room and board, which includes the cost of building maintenance, upkeep, and improvement.

(7) When services are furnished to an individual entering the waiver and returning to the community from a Medicaid-paid institutional setting, the cost of these services are considered to be incurred and billable when the individual enters the waiver. The individual shall be reasonably expected to be eligible for the waiver. If the individual does not enroll in the waiver, services may be billed to Medicaid as an administrative cost.

(8) Unless otherwise authorized by the DDA, the provider’s administrative fee for providing the service may not exceed 15 percent of the total cost of the service provided.

(9) Environmental accessibility services provided by a family member or relative are not covered.

**.37 Covered Services—Family and Individual Support Services.**

A. Family and individual support services make use of resources available in the community while, at the same time, build on the individual’s existing support network.

B. Family and individual support services may include, but are not limited to:

(1) Supports necessary to effectively link an individual with the community, which may include assistance with:

(a) Locating and establishing medical day care;

(b) Establishing relationships in the community;

(c) Locating and accessing education;

(d) Engaging in activities to improve social skills;

(e) Locating and accessing recreational and social activities;

(f) Developing skills related to expressing preferences and choices;

(g) Locating roommates of the individual’s choosing;

(h) Money management, banking, and tax preparation;

(i) Locating and establishing individual and family counseling;

(j) Grocery shopping; and

(k) Travel training, including supporting the individual in learning how to access and use informal, generic, and public transportation for independence and community integration.

(2) Training the participant to acquire skills including:

(a) Self-advocacy;

(b) Independent living; and

(c) Applying for or maintaining government and community resources and housing.

(3) Family support groups and instruction about treatment regimens and use of equipment specified in the service plan and designed to safely maintain the participant at home.

*C. Individual-directed Goods and Services.*

(1) Family and individual support services for a participant who self-directs services include, in addition to service identified in §B of this regulation, individual-directed goods and services not otherwise provided through this waiver or through the Medicaid State Plan which address a need identified in the individual plan.

(2) Individual-directed goods and services shall:

(a) Increase the individual’s functioning related to the disability;

(b) Promote the individual’s health, wellness, and safety;

(c) Enhance the individual’s community inclusion and family involvement; and

(d) Decrease the individual’s dependence on other Medicaid funded services.

(3) Individual-directed goods and services may also be provided if:

(a) The adult participant or the family of a minor participant lacks the funds to purchase the item or service; or

(b) The item or service is not available through another source.

(4) Individual-directed goods and services may also include goods and services that provide cost-effective alternatives to standard waiver or State Plan services, including:

(a) Fitness memberships;

(b) Fitness items that can be purchased at most retail stores;

(c) Toothbrushes or electric toothbrushes;

(d) Weight loss program services other than food;

(e) Dental services recommended by a licensed dentist and not covered by health insurance;

(f) Nutritional supplements recommended by a professional licensed in the relevant field; and

(g) Fees for activities that promote community integration.

(5) To be approved, individual-directed goods and services shall:

(a) Be related to a need or goal identified in the approved person-centered service plan;

(b) Be for the purpose of increasing independence or substituting for human assistance, to the extent the expenditures would otherwise be made for that human assistance;

(c) Promote opportunities for community living and inclusion;

(d) Be able to be accommodated within the participant’s budget without compromising the participant’s health or safety; and

(e) Be provided to, or directed exclusively toward, the benefit of the participant.

(6) Individual-directed goods and services are purchased from the participant-directed budget and shall be recommended in the individual plan.

*E. Limitations—Family and Individual Support Services.*

(1) *The scope, duration, and fee for family and individual support services shall be approved by the DDA before implementation.*

(2) *Family and individual support services do not include the payment for:*

- (a) *Day care;*
- (b) *Groceries;*
- (c) *Education; and*
- (d) *Recreational or social activities.*

(3) *Reimbursement shall be:*

- (a) *Necessary and reasonable;*
- (b) *Determined by the participant's needs; and*
- (c) *Approved by the DDA or its designee.*

(4) *Unless otherwise authorized by the DDA, a provider's administrative fee for providing the service may not exceed 15 percent of the total cost of the service provided.*

(5) *Family and individual support services:*

(a) *May not be reimbursed during the same time periods that the same type of services are being reimbursed under another DDA program; and*

(b) *Are not available to individuals also receiving community residential habilitation services.*

(6) *Individual-directed goods and services:*

(a) *Are limited to participants who are self-directing the participant's budget;*

(b) *Are limited to \$2,000 per year from the participant's total self-directed budget;*

(c) *May not circumvent other restrictions on the claiming of federal financial participation in Medicaid funding for waiver services, including the prohibition against claiming for the costs of room and board; and*

(d) *Shall be recommended in the individual plan and clearly linked to a participant's substantiated needs as established in the individual plan.*

(7) *Individual-directed goods and services do not include:*

- (a) *Monthly rental or mortgage expenses;*
- (b) *Food;*
- (c) *Regular utility charges;*
- (d) *Monthly telephone or internet fees; or*
- (e) *Cost of fees for household appliances or items that are intended purely for entertainment, such as televisions, video recorders, game stations, DVD players, and monthly cable.*

(8) *Individual-directed goods and services do not include additional units or costs beyond the maximum for any waiver service or Medicaid State plan service with the exception of:*

- (a) *A second wheelchair;*
- (b) *Co-payment for medical services;*
- (c) *Over-the-counter medications;*
- (d) *Homeopathic services; or*
- (e) *Experimental or other treatments that are prohibited by law.*

(9) *Individual-directed goods and services do not include:*

- (a) *Fees associated with telecommunications;*
- (b) *Tobacco products, alcohol, or illegal drugs;*
- (c) *Vacation expenses;*
- (d) *Insurance;*
- (e) *Vehicle maintenances or any other transportation-related expenses;*
- (f) *Tickets and related expenses to attend recreational events;*
- (g) *Personal trainers;*
- (h) *Spa treatments;*
- (i) *Goods and services with costs that significantly exceed community norms for the same or similar service;*

(j) *Tuition; or*

(k) *Educational services otherwise available through a program funded under the Individuals with Disabilities Education Act, 20 U.S.C. §1401(16 and 17), including private tuition.*

(10) *Individual-directed goods and services do not include:*

(a) *Applied behavioral analysis in schools,*

(b) *School supplies, tutors, or home schooling activities and supplies;*

(c) *Incentive payments and subsidies;*

(d) *Subscriptions;*

(e) *Training provided to paid caregivers;*

(f) *Services in hospitals;*

(g) *Costs of travel, meals, and overnight lodging for families and natural support network members to attend training events or conferences; or*

(h) *Service animals and associated costs.*

(11) *Individual-directed goods and services may not be purchased from a participant's family member or relative.*

(12) *Spouses or legally responsible individuals may not be paid for the same type of services for which the recipient of services is reimbursed.*

(13) *Experimental or prohibited treatments are excluded.*

**.38 Covered Services—Fiscal Management Services.**

*A. Fiscal Management Services are administrative services procured by the DDA to assist participants or the participant's legally authorized representatives to:*

(1) *Manage the disbursement of funds contained in the participant-directed budget;*

(2) *Facilitate the employment of staff by the participant or the participant's legally authorized representative, by:*

(a) *Maintaining written verification of provider qualifications;*

(b) *Processing payroll;*

(c) *Withholding federal, State, and local taxes; and*

(d) *Making tax payments to appropriate tax authorities; and*

(3) *Performing fiscal accounting and report expenditures to the participant or family and State authorities.*

*B. Fiscal management services include:*

(1) *Employer authority tasks, such as:*

(a) *Assisting the participant in obtaining written verification of workers' citizenship or legal alien status by completing and maintaining a copy of the federal Bureau of Citizenship and Immigration Services Form I-90, in order to verify eligibility for employment for each support service worker the participant employs;*

(b) *Assisting the participant in obtaining written verification of:*

(i) *Provider certifications;*

(ii) *Training; and*

(iii) *Required licensing;*

(c) *Conducting criminal background investigations;*

(d) *Collecting and processing timesheets of support workers; and*

(e) *Operating a payroll service, including:*

(i) *Processing payroll;*

(ii) *Withholding taxes from workers' pay;*

(iii) *Filing and paying federal, State, and, when applicable, local employment taxes and insurance premiums; and*

(iv) *Distributing payroll checks.*

(2) *Budget authority tasks such as:*

(a) *Acting as a neutral bank, receiving and disbursing public funds, and tracking and reporting on the participant's budget funds;*

(b) *Maintaining a separate account for each participant's budget;*

- (c) Tracking and reporting participant funds;
- (d) Processing and paying invoices for goods and services approved in the service plan; and
- (e) Preparing and distributing reports to participants, the DDA, and other entities as requested.

(3) Additional activities, such as:

- (a) Receiving and disbursing funds for the payment of services under an agreement with the Medicaid agency or the DDA as specified in the authorized plan;
- (b) Providing periodic reports of expenditures and budget as requested;
- (c) Ensuring compliance with federal and state tax laws and employee wage and hour laws by appropriately managing withholdings, tax payments, and payment for workers' compensation; or
- (d) Filing annual federal and state reports.

C. Limitations—Fiscal Management Services.

- (1) Fiscal management services are available only for individuals who are self-directing the services.
- (2) Fiscal management service providers may not provide other waiver services for a participant.

**.39 Covered Services—Live-in Caregiver Rent.**

A. Live-in caregiver rent is the portion of rent paid for or by the participant that is attributable to the housing of an unrelated personal caregiver residing in the same household with a participant who, but for the assistance of this caregiver, would require admission to an intermediate care facility.

B. A caregiver is defined as an individual unrelated by blood or marriage who is providing personal support services to a participant in the participant's home.

C. Live-in caregiver rent shall comply with 42 CFR §441.303(f)(8) and be approved by the DDA before any rent is incurred to be the rental cost attributed to the caregiver for a single family or multiple-family dwelling unit. Rental rates shall be based on Fair Market Rent for the jurisdiction as determined by the U. S. Department of Housing and Urban Development.

D. Agreements.

- (1) The participant, or participant's legal representative, and the caregiver shall sign an explicit agreement which includes:
  - (a) Detailed service expectations;
  - (b) Procedures by which the live-in caregiver arrangement can be terminated;
  - (c) Recourse for unfulfilled obligations; and
  - (d) Monetary requirements.
- (2) The coordinator of community services shall:
  - (a) Forward the agreement to the DDA as part of the request for authorization; and
  - (b) Maintain a copy of the agreement.

E. Limitations—Live-In Caregiver Rent.

- (1) Rent for live-in caregivers is not available in situations where participants live in the participant's family's home, the caregiver's home, or a residence owned or leased by a DDA-licensed provider.
- (2) Payment shall only be made for those months that the arrangement is in effect.
- (3) The participant is responsible for the participant's portion of the rent.
- (4) The Medicaid program shall incur no liability for unfulfilled rental obligations unrelated to the live-in caregiver's rent.
- (5) Live-in caregiver rent does not include:
  - (a) Food;
  - (b) Utilities; or

(c) Room and board other than the rent specified in §C of this regulation.

**.40 Covered Services—Medical Day Care.**

A. Medical day care is a program of medically supervised, health-related services provided to adults with significant health conditions in an ambulatory setting where a participant receive health maintenance and restorative services to support the participant's ability to live in the community.

B. Medical day care includes the following services:

- (1) Health care services supervised by the director, medical director, or health director of the medical day care program that emphasize:
  - (a) Primary prevention;
  - (b) Early diagnosis and treatment;
  - (c) Physical rehabilitation; and
  - (d) Continuity of care.
- (2) Nursing services performed by a registered nurse or by a licensed practical nurse under the supervision of a registered nurse;
- (3) Physical therapy services, performed by or under supervision of a licensed physical therapist;
- (4) Occupational therapy services, performed by a licensed occupational therapist;
- (5) Assistance with activities of daily living;
- (6) Nutrition services;
- (7) Social work services performed by a licensed, certified social worker or licensed social work associate;
- (8) Activity programs; and
- (9) Transportation services to and from medical day care and health care appointments, when staff accompanies the individual.

C. Limitations—Medical Day Care.

- (1) A participant shall attend the medical day care program a minimum of 4 hours per day, as documented in a participant register or other attendance log, in order for the service to be reimbursed for that day.
- (2) The frequency of attendance is determined by physician orders, and is part of the individual plan developed by the team.
- (3) The Medicaid program shall reimburse for a day of care when this care is:
  - (a) Ordered by a participant's physician at least annually;
  - (b) Medically necessary;
  - (c) Adequately described in progress notes in the participant's medical record, and signed and dated by the individual providing care; and
  - (d) Provided to a participant certified by the Department as requiring a nursing facility level of services care under the Medicaid program, as specified in COMAR 10.09.10.
- (4) Medical day care services cannot be billed during the same period of time during which an individual is receiving other waiver services.
- (5) The reimbursement rate for medical day care is specified in COMAR 10.09.07.

**.41 Covered Services—Personal Support Services.**

A. Personal support services are intended to enable participants to accomplish tasks that the participant would normally do for themselves if the participant did not have a disability and may be provided on an episodic or on a continuous basis.

B. Personal support services are intended to provide support, supervision, and training to assist the individual to participate fully in the individual's home and community life, and may be provided:

- (1) In the participant's own home;
- (2) In the family home;
- (3) In the community; or
- (4) At the participant's competitive, integrated work site.

*C. Personal support services include, but are not limited to:*

*(1) Hands-on assistance, prompting, or cueing that enables the participant to use assistive technology or to accomplish tasks the participant is unable to perform independently, including:*

- (a) Activities of daily living;*
- (b) Light housework including participant's laundry for those unable to complete tasks for them self; and*
- (c) Preventive maintenance and cleaning of adaptive devices;*

*(2) Support, supervision, and training that may be provided in activities such as:*

- (a) Housekeeping and light housework, including the participant's laundry;*
- (b) Food shopping; and*
- (c) Preventive maintenance and cleaning of adaptive devices;*

*(3) Supports to implement behavior plan strategies and at-home therapies as prescribed by a licensed professional; and*

*(4) Nursing delegation, including supervision and training consistent with the Maryland Nurse Practice Act and COMAR 10.27.11, as authorized by the DDA before being provided.*

*D. Personal support services for participants who are self-directing their services also include:*

*(1) Retainer fees paid to direct support workers for days on which the individual is hospitalized, provided that:*

- (a) Retainer fees are not paid for more than 21 days per individual per year;*
- (b) Payment is subject to the approval of the DDA; and*
- (c) Retainer fees assist a participant in retaining qualified employees whom the participant has trained and who are familiar with the individual's needs, during periods when the employee cannot work because of the individual's hospitalization.*

*(2) Unless otherwise authorized by the DDA, payment for advertising for employees and staff training costs incurred no more than 180 days in advance of the participant's waiver enrollment.*

*E. A participant who is self-directing services shall be:*

- (1) Considered the employer of record; and*
- (2) Responsible for supervising, training, and determining the frequency of supervision of the participant's direct service workers.*

*F. Limitations—Personal Support Services.*

*(1) Payment may not be made for services furnished during the same period of time that other personal assistance services are provided under another program, including but not limited to:*

- (a) Personal assistance services covered under COMAR 10.09.20 or 10.09.84; and*
- (b) The In-Home Aide Services Program (IHAS) under COMAR 07.02.14.*

*(2) Personal support services are not available for individuals receiving community residential habilitation.*

*(3) Personal support services shall be authorized by the DDA before provided in accordance with DDA policy and the waiver application.*

*(4) Personal support services may not be covered unless the DDA determines that they are the most cost effective service available, as defined at Regulation .02B(34) of this chapter.*

*(5) Transportation costs associated with the provision of personal supports outside the participant's home may be covered under transportation services and are not covered under personal support services.*

*(6) Spouses or legally responsible individuals are not eligible to receive payments for personal supports or similar services.*

*(7) Reimbursement shall be:*

- (a) Necessary and reasonable;*
- (b) In accordance with the participant's needs; and*

*(c) Approved by the DDA or its designee.*

*(8) Direct service workers providing personal support services:*

- (a) May not work more than 40 hours per week unless authorized by the DDA before services rendered;*
- (b) May not work more than 8 consecutive hours unless authorized by the DDA before services rendered;*
- (c) Shall be off duty for 8 hours or more before starting another shift; and*
- (d) May not be paid for time spent sleeping.*

**.42 Covered Services—Respite Services.**

*A. Respite services provide relief for the participant's family or unpaid primary care provider for participants unable to care for themselves.*

*B. Respite services are provided on a short-term basis to give relief to individuals who normally provide care for the participant.*

*C. Respite services are provided in a non-institutional setting to meet planned or emergency absences of caregivers away from the individual.*

*D. Respite services can be provided in:*

- (1) The participant's home;*
- (2) The participant's family home;*
- (3) A Department-certified overnight camp covered under COMAR 10.16.06; or*
- (4) Another non-institutional setting approved by the DDA.*

*E. A participant who self-directs services is considered the employer of record for providers of respite services.*

*F. Limitations—Respite Services.*

*(1) Payment may not be made for services furnished at the same time that care and supervision are provided under another program, including:*

- (a) Personal assistance services covered under COMAR 10.09.20 or 10.09.84; and*
- (b) The In-Home Aide Services Program (IHAS) under COMAR 07.02.14.*

*(2) Respite services are not available for a participant receiving community residential habilitation.*

*(3) Respite services may not:*

- (a) Exceed 45 days each year following the date on which DDA approves the participant's individual plan; and*
- (b) Be provided for more than 28 consecutive days unless authorized by the DDA before being provided.*

*(4) Respite services do not include services provided by spouses or individuals who are otherwise legally responsible for furnishing personal supports or similar services.*

*(5) An individual residing in the same residence or property may not be reimbursed for providing respite services.*

*(6) Respite services may be provided for shared living providers:*

- (a) To the extent permitted by the care provider contract; and*
- (b) Only for services that are not also provided under another program for the same time period.*

*(7) The reimbursement rate for respite services shall be:*

- (a) Necessary and reasonable;*
- (b) Determined in accordance with the participant's needs;*

*and*

*(c) Authorized by the DDA before being provided.*

**.43 Covered Services—Shared Living.**

*A. Shared living is an arrangement in which an individual, couple, or a family in the community share life experiences and a home with an individual with a disability.*

*B. The participant shall have the opportunity to decide with whom the participant will live, and the nature of the relationship, including whether it is a roommate, a couple, or a family setting.*

*C. Shared living models include:*

- (1) *Companionship model where the participant shares the participant's home with the paid caregiver; and*
- (2) *Host family model where the paid caregiver shares the caregiver's home with the participant.*

*D. A shared living arrangement may be in:*

- (1) *The shared living provider's home or apartment;*
- (2) *The participant's home or apartment; or*
- (3) *A shared home with a roommate.*

*E. Shared living may include:*

- (1) *Companionship support;*
- (2) *Mentoring;*
- (3) *A host family arrangement;*
- (4) *A paid roommate; and*
- (5) *Support for the participant in day-to-day activities.*

*F. Shared living services are intended to maximize the participant's independence in activities of daily living and encourage full participation in community life and may include:*

- (1) *Training in self-help, daily living, self-advocacy, and self-sufficiency;*
- (2) *Mobility training to maximize use of public transportation;*
- (3) *Training in social behaviors that are normative in the surrounding community;*
- (4) *Training in patterns of living, activities, and routines appropriate to the participant's age and the practices of the surrounding community;*
- (5) *Training in basic safety skills;*
- (6) *Training in competency in housekeeping skills, including but not limited to laundry and shopping;*
- (7) *Training in activities of daily living such as:*
  - (a) *Meal preparation;*
  - (b) *Bathing;*
  - (c) *Toileting;*
  - (d) *Dressing; and*
  - (e) *Grooming;*
- (8) *Training in health care skills, including but not limited to:*
  - (a) *Maintaining proper dental hygiene;*
  - (b) *Carrying out the recommendations of a dentist or physician;*
    - (c) *Appropriate use of medications and first aid;*
    - (d) *Arranging medical and dental appointments; and*
    - (e) *Summoning emergency assistance;*
- (9) *Training in money management skills;*
- (10) *Supervision of participants;*
- (11) *Services unavailable from any other resource, including the Medicaid State Plan, when approved and funded by the DDA;*
- (12) *Coordination of, monitoring of, follow-up to, and transportation to and from appointments for medical services;*
- (13) *Occupational therapy services if:*
  - (a) *The services are provided by or under the direction of a licensed occupational therapist; and*
  - (b) *The individual plan specifies:*
    - (i) *The treatment to be rendered, the frequency and duration of that treatment, and the expected results;*
    - (ii) *Initial and annual evaluation of the participant's level of functioning through the use of standardized or professionally accepted diagnostic methods;*
    - (iii) *Delivery of appropriate treatment programs which are designed to significantly improve a participant's level of functioning;*
    - (iv) *Teaching of task-oriented therapeutic activities designed to restore physical functioning, and*
    - (v) *Improvement of mobility skills;*

*(14) Physical therapy services if:*

- (a) *The services are provided by or under the direction of a licensed physical therapist; and*
  - (b) *The individual plan specifies:*
    - (i) *The parts of the body to be treated;*
    - (ii) *The type of modalities or treatments to be rendered;*
    - (iii) *The expected results of physical therapy treatments;*
- and
- (iv) *The frequency and duration of treatment;*

*(15) Social services if:*

- (a) *The services are not otherwise provided under the Medicaid program; and*
- (b) *The individual plan specifies the participant's social needs; and*

*(c) The supports needed to assist the participant's adjustment to the participant's environment;*

*(16) Speech pathology and audiology services if:*

- (a) *The services are provided by or under the direction of a licensed speech language therapist or licensed audiologist; and*
- (b) *The individual plan specifies the need for:*
  - (i) *Services to maximize communication skills;*
  - (ii) *Screening, evaluation, counseling, treatment, habilitation, or rehabilitation services if the participant has hearing, language, or speech handicaps; and*
  - (iii) *Coordination of interdisciplinary goals related to hearing and speech needs.*

*(17) Nursing services if:*

- (a) *The nursing services are medically necessary;*
- (b) *The nursing services are provided by a licensed registered nurse or licensed practical nurse;*
- (c) *The nursing services are authorized by the DDA before being provided;*
- (d) *The nursing services are not available for the participant under the State Plan home health benefit; and*
- (e) *The individual plan specifies one of the following:*

- (i) *Short-term, skilled, non-delegated nursing tasks designed and expected to allow participants to return to the community or to remain in the community following a serious illness or hospitalization;*
- (ii) *Intermittent skilled, non-delegated nursing tasks for participants who need brief nursing intervention; or*
- (iii) *Nursing supervision consistent with the Maryland Nurse Practice Act and COMAR 10.27.11, which may include meeting with provider's staff to discuss how the medical services that are identified in the individual plan will be implemented; and education, supervision, and training of participants in self-health-related matters.*

*(18) Community exploration, which provides an opportunity for:*

- (a) *The participant to experience short-term overnight stays with a community provider; and*
- (b) *The provider to learn about and form a relationship with the participant before the transition; and*

*(19) Transportation assistance to and from activities provided by the shared living provider, with a priority given to use public transportation and transportation supplied by family, friends, neighbors, or volunteers, as appropriate to the participant's needs and abilities.*

*G. Limitations—Shared Living.*

- (1) *In order to bill for a day of services, shared living shall be provided for at least 6 hours or overnight.*
- (2) *Unless otherwise approved by the DDA, shared living may only be provided for up to three participants in a home.*

(3) Transportation between the participant's place of residence and other service sites and places in the community is provided as a component of services and the cost of this transportation may be included in the rate paid to providers.

(4) Any other services provided by a licensed health care professional may be covered under the waiver if:

(a) The service is not included in the Medicaid State Plan; or

(b) The Medicaid program has denied a covered service that was authorized by the DDA before its provision.

(5) Shared living may include the provision of medical and health care services that are integral to meeting the daily needs of residents. Provision of and payment for these routine health services are not considered to violate the requirement that a waiver not cover services that are available through the State Plan. Medical and health care services such as physician services that are not routinely provided to meet the daily needs of residents may not be included or reimbursed under this service.

(6) The Medicaid payment for shared living may not include:

(a) Room and board; or

(b) Any contribution by the participant for the cost of care, established according to Regulation .21G of this chapter.

(7) Residential retainer fees are available for 33 days per year per participant when the participant is unable to be in shared living due to:

(a) Hospitalization;

(b) Behavioral respite services; or

(c) Family visits.

(8) Payment is not made for the cost of building maintenance, upkeep, and improvement.

(9) Reimbursement shall be:

(a) Necessary and reasonable;

(b) In accordance with the participant's needs; and

(c) Approved by the DDA or its designee.

**.44 Covered Services—Support Brokerage.**

A. A support broker provides information and assistance regarding self-direction.

B. A support broker assists a participant and the participant's family to make informed decisions about whether self-direction or provider management:

(1) Will work best for the participant and the participant's family; and

(2) Is consistent with the participant's needs and reflects the participant's and the participant's family's individual circumstances.

C. The support broker assists the participant and the participant's family to make informed decisions about what:

(1) Will work best for the participant; and

(2) Staff, services, and supports the participant needs.

D. The support broker may assist, as directed by the participant, with day-to-day management of employees for a participant, and assist the participant and the participant's family with self-direction.

E. Scope of Available Support Brokerage Services.

(1) Support brokerage services may include skills training related to employer functions, including:

(a) Roles and responsibilities as the employer of record;

(b) Person-centered planning;

(c) The range and scope of individual choices and options;

(d) Managing and directing services;

(e) The process for requesting a change to the individual plan and individual budget;

(f) Any available grievance process;

(g) Risks and responsibilities of self-direction;

(h) The DDA's Policy on Reportable Incidents and Investigations;

(i) Free choice of staff or employees;

(j) Individual rights; and

(k) Monitoring staff schedules.

(2) Support brokerage services may include assistance related to acting as the employer of record, including:

(a) Initial planning and start-up activities;

(b) Practical employer skills training related to management staff;

(c) Development of risk management agreements;

(d) Development of an emergency back-up plan;

(e) Reporting critical events;

(f) Assistance in filing grievances and complaints;

(g) Recruiting, interviewing, and hiring staff;

(h) Staff supervision and evaluation;

(i) Firing staff;

(j) Participant direction, including risk assessment, planning, and remediation activities;

(k) Managing the budget and budget modifications, including reviewing employee time sheets and monthly Fiscal Management Services reports;

(l) Managing employees, supports, and services;

(m) Facilitating meetings and trainings with employees;

(n) Employer development activities;

(o) Employment quality assurance activities;

(p) Developing and reviewing data, employee timesheets, and communication logs;

(q) Development and maintenance of effective back-up and emergency plans;

(r) Training the participant's employees on DDA's Policy on Reportable Incidents and Investigations;

(s) Reporting all critical incidents to the Office of Health Care Quality and the DDA;

(t) Complying with applicable regulations and policies, as well as standards for self-direction and staffing requirements as required by the DDA; and

(u) Other areas related to managing services and supports.

F. Limitation—Support Brokerage.

(1) Family members of the individual may be support brokers, except for:

(a) Spouses unless the spouse is not compensated; and

(b) Legally responsible individuals unless that individual is not compensated.

(2) No compensated legal representative shall be a support broker.

(3) If a family member, including a spouse or a legally responsible individual, is a support broker subject to limitations in §F(1) or (2) in this regulation, that family member may also provide support brokerage services to other non-family participants, as long as the total amount of services provided by that family member does not exceed 40 hours per week.

(4) In addition to limitations under §F(1)—(3) of this regulation, an individual may be the support broker of a participant only if the individual plan establishes that:

(a) The choice of provider truly reflects the participant's preference;

(b) The provision of services by the family member is in the best interests of the participant;

(c) The provision of services is appropriate and based on the participant's individual support needs; and

(d) The services will increase the participant's independence and community integration.

(5) If an individual employed as a support broker is a participant's family member:

(a) No other family member may be a direct provider of services to the participant; and



(b) If the family member serving as the support broker is no longer be available, the individual plan shall recommend steps to expand the participant's circle of support so that the participant is able to improve the participant's health, safety, independence, and community integration.

(6) Support brokers, including family members, shall implement the individual plan as approved by the DDA in accordance with all federal and State laws and regulations governing Medicaid, including maintaining all:

- (a) Employment and financial records;
- (b) Timesheets; and
- (c) Service delivery documentation.

(7) An individual or an organization providing support brokerage services may not provide other services to that participant.

(8) An individual or an organization providing support broker services may not provide other services to participants that would be viewed by the Department as a conflict of interest.

(9) Support broker services may not duplicate, replace, or supplant coordination of community services.

(10) The scope and duration of support brokerage services may vary depending on the participant's choice and need for support.

(11) Support broker start-up services are limited to 10 hours per month, except that the DDA may authorize more than 10 hours per month if:

(a) The coordination of community services agency requests that DDA authorize a specific number of additional hours per month;

(b) The request substantiates that, because the case presents one or more of the following, additional hours are needed because of:

- (i) A need for unusually complex and extensive services;
- (ii) Unusually difficult dynamics of the individuals involved;
- (iii) Special transition needs, or
- (iv) Other unique circumstances; and

(c) DDA authorizes a specific number of additional hours in writing before the additional hours are provided.

(12) Service hours shall be documented and evaluated by the team during any meeting on the participant's individual plan.

(13) The Department may revoke the certification of a support broker if, at any point after the initial certification to provide support broker services, the provider has:

(a) Been convicted of any crime listed in Regulation .02B(60) of this chapter;

(b) Surrendered any professional license or had one suspended, revoked, or otherwise limited;

(c) Failed to safely and adequately provide the authorized services;

(d) Been found to have permitted, aided, or abetted any act that has had significant adverse impact on any individual's health, safety, or welfare;

(e) Failed to comply with the DDA's Policy on Reportable Incidents and Investigations;

(f) Failed to cooperate with any Department audit or investigation, or to grant access to or furnish records or documentation upon request;

(g) Billed excessive or fraudulent charges for any services or been convicted of fraud;

(h) Made a false statement concerning his or her conviction of a crime or about a substantiated report of abuse or neglect;

(i) Falsified information given to the Department regarding services to individuals, or individual's funds; or

(j) Has ever been placed on the Centers for Medicare and Medicaid Services list of excluded providers.

**.45 Covered Services—Supported Employment.**

A. Supported employment services provide supports necessary for participants to gain access to and maintain employment in the community, in order to:

- (1) Advance in the participant's chosen field; and
- (2) Explore new employment options.

B. Supported employment shall take place in an integrated work setting.

C. Supported employment services are provided in accordance with the participant's individual plan and shall include annual assessments of the individual's employment goals.

D. Supported employment services are provided to:

(1) A participant who, with provider-funded supports, is working in an individualized, integrated job in a community business for pay at or above minimum wage, commensurate with other employees performing the same job with comparable experience or who have their own businesses;

(2) Small groups of between 2 and 8 individuals; and

(3) Large groups of 9 or more individuals, working in integrated settings in the community.

E. A participant who is self-employed and receiving supported employment services shall be:

(a) An equal or majority owner in the business;

(b) Involved in the management or operation of the business; and

(c) Involved with a business that is independent from the participant's day habilitation program and that generates revenue with a goal of earning the federal minimum wage.

F. Supported employment services are individualized and may include:

(1) Co-worker models of support provided by the employer within the work setting including job training and ongoing supports to the participant that are beyond what is typically provided as part of supervision or training to employees and may include:

(a) Assistance in the development of positive work-related habit, attitudes, skills, and work etiquette;

(b) Assistance in becoming a part of the informal culture of the workplace; and

(c) Orientation to health and safety aspects of the job;

(2) Individualized employment counseling;

(3) Long-term job coaching services, to include on-the-job work skills training;

(4) Worksite visits as needed by the participant or employer;

(5) Ongoing evaluation of the participant's job performance except for supervisory activities;

(6) Training and supervision that promotes co-workers supporting, and networking with each other;

(7) Assessment of the need for assistive technology and facilitating acquisition of assistive technology from DORS;

(8) Benefits counseling; and

(9) Support to an individual to manage and operate a business.

G. Supported employment services include the following services as necessary to assure job retention:

(1) Training related to acclimating to the workplace environment;

(2) Training in skills to communicate accommodation needs;

(3) Training in accessing community resources needed to achieve integration and employment; and

(4) Travel training.

H. Transportation to and from the supported employment activities shall be provided or arranged by the licensed provider of supported employment and funded through the DDA at the administrative rate for this service. The provider shall use the mode of transportation that is the most cost effective, as defined in Regulation .02B(34) of this chapter.

I. Personal assistance services may be a component of supported employment services but may not comprise all of the service.

J. A participant's individual plan may include a combination of day habilitation, community learning services, employment discovery customization, or supported employment services on different days as authorized by the DDA before being provided.

K. Limitations—Supported Employment.

(1) A day comprises one unit of service.

(2) Payment may be made for one billable service unit per day.

(3) An individual shall be engaged in supported employment activities a minimum of 4 hours per day, with a minimum of 1 hour of paid employment required in order to bill for one unit of supported employment.

(4) Supported employment does not include volunteer work.

(5) Supported employment does not include payment for supervision, training, supports and adaptations typically available to other workers without disabilities filling similar positions.

(6) Medicaid funds may not be used to pay for starting up or operating a business.

(7) Services may not be provided to a participant if the service is available under the:

(a) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C §701, et seq., as amended; or

(b) Individuals with Disabilities Education Act, 20 U.S.C. §1400, et. seq., as amended.

**.46 Covered Services—Transition Services.**

A. Transition services are provided to individuals who are transitioning from an institutional or another provider-operated living arrangement to:

(1) A private residence where the individual is directly responsible for the individual's own living expenses; or

(2) Another provider-operated arrangement as approved by the DDA.

B. Transition services include allowable expenses, other than room and board, as necessary to enable a participant to establish a basic household and may include:

(1) Security deposits that are required to obtain a lease on an apartment or home;

(2) Cost of essential household furnishings, including:

(a) Furniture;

(b) Window coverings;

(c) Food preparation items; and

(d) Bed or bath linens;

(3) Deposits for utility or service access;

(4) Services necessary for the individual's health and safety, such as pest eradication and one-time cleaning before occupancy;

(5) Moving expenses; and

(6) Activities relating to assessment of the need to arrange for and to procure transition services.

C. Transition services are furnished only to the extent that the services are:

(1) Necessary and reasonable;

(2) Identified in the service plan; and

(3) Cannot be paid for by the participant.

D. Limitations—Transition Services.

(1) Reimbursement for transition services shall be:

(a) Necessary and reasonable;

(b) Determined in accordance with the participant's needs;

and

(c) Approved by the DDA before any service may be rendered based on an itemized list of transition expenses.

(2) Unless otherwise authorized by the DDA, the maximum payment for this service may not exceed \$5,000 per lifetime.

(3) Unless otherwise approved and, except as may be permitted under §B(4) of this regulation, transition services are payable only once an individual has entered the waiver.

(4) Transition service items shall:

(a) Transfer with the participant to the participant's new residence, with tangible items becoming the property of the participant so long as the participant needs them; or

(b) Unless otherwise directed by the DDA, returned to the DDA if no longer wanted by the participant.

(5) Transition services do not include:

(a) Monthly rental or mortgage expense;

(b) Food;

(c) Utility charges;

(d) Monthly telephone fees; and

(e) Household appliances or items that are intended for entertainment such as:

(i) Televisions;

(ii) Video recorders;

(iii) Game stations;

(iv) DVD players; or

(v) Monthly cable fees.

(6) Transition services may not include payment for room and board.

(7) Payment may be approved for transition services incurred not more than 180 days in advance of waiver enrollment.

(8) Items may not be purchased from a participant's family member or relative.

(9) When transition services are furnished to individuals entering the waiver and returning to the community from an institutional setting, the costs of these services are considered to be incurred and billable when the individual leaves the institutional setting and enters the waiver.

(10) If the individual does not enroll in the waiver, transitional services may be billed to Medicaid as an administrative cost.

(11) Transition services may not include payment for living arrangements owned or leased by a waiver provider if the services are already included in the provider rate.

(12) Transition services may not authorize items or services otherwise available:

(a) Under the participant's private health insurance;

(b) Under the Medicaid State plan; or

(c) Through other resources.

**.47 Covered Services—Transportation Services.**

A. Transportation services are designed specifically to enhance a participant's ability to access community activities in response to needs identified in the participant's individual plan.

B. Services are available to the participant living in the participant's own home or in the participant's family home.

C. Transition services include travel training.

D. Transportation services may be provided by:

(1) Public transportation;

(2) Taxi services; and

(3) Non-traditional transportation providers.

E. Transportation services shall be:

(1) Provided by the most cost-efficient mode available; and

(2) Wheelchair-accessible when needed.

F. Limitations—Transportation.

(1) Transportation is limited to \$1,400 per year per person for individuals who are not self-directing their services.

(2) Transportation services may not be covered if other transportation services are available or covered under:

(a) The Medicaid State Plan;

(b) The Individuals with Disabilities Education Act, 20U.S.C. Section 1401(16 and 17), as amended;

(c) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C §701, et seq., as amended; or

(d) Other waiver services.

(3) Payment for transportation may not be made when transportation is part of another waiver service.

(4) Transportation services do not include transportation provided by a participant's spouse or individuals legally responsible for the participant.

(5) Payment rates for services shall be:

(a) Necessary and reasonable;

(b) Determined in accordance with the participant's needs;

and

(c) Approved by the DDA or its designee.

**.48 Covered Service—Vehicle Modifications.**

A. The Department shall reimburse for vehicle modification services designed to enable a participant to achieve employment goals and to live successfully in the community when other options are not otherwise available from family, friends, co-workers, and other community supports, or covered by the Medicaid program.

B. Services shall help support increased independence.

C. Services shall be necessary to achieving a goal established in an approved individual plan.

D. Vehicle modification services may include:

(1) Assessment services to:

(a) Determine specific needs as a driver or passenger;

(b) Review modification options; and

(c) Develop a prescription for required modifications of a vehicle; and

(2) Modifications to a vehicle owned by:

(a) The participant;

(b) The legally responsible parent of a minor; or

(c) Other person as approved by the DDA.

E. With the purchase of a vehicle with pre-installed modifications, the participant or legally responsible individual is responsible to determine that the modifications are in good working order before purchase.

F. All vehicle modifications services shall be approved in writing by the DDA before implementation in order to be eligible for reimbursement.

G. A prescription for vehicle modifications applies only to the year, make, and model of the vehicle specified. If there is a change in the year, make, and model of the vehicle to be modified, the prescription shall be amended.

H. The vehicle owner is responsible for the maintenance of the vehicle.

I. The vehicle owner shall purchase insurance on all vehicle modifications. The Medicaid program may not replace vehicle modifications that have been damaged or destroyed in an accident.

J. The driver of the modified vehicle shall have a valid driver's license.

K. Limitations—Vehicle Modifications.

(1) These services shall be reimbursed only if:

(a) Vehicle modifications assessment is conducted;

(b) Driving assessment, if applicable, is conducted;

(c) Authorized by the DDA before the services are implemented; and

(d) Recommended in the individual plan based on an assessment and professional recommendations and when not otherwise available under:

(i) The participant's private health insurance;

(ii) The Medicaid State Plan;

(iii) Maryland Division of Rehabilitation Services (DORS); or

(iv) Through other resources.

(2) Vehicle modifications not specified in a participant's individual plan are not covered.

(3) The provider is not entitled to reimbursement from the Medicaid program unless:

(a) The participant meets all waiver eligibility criteria at time of service delivery; and

(b) The provider meets DDA requirements for service reports and invoices.

(4) If the Medicaid program denies payment or requests repayment on the basis that an otherwise covered service was not necessary, the provider may not seek payment for that service from the participant.

(5) Unless an exception is approved by the DDA, vehicle modification services shall be provided to an individual not more frequently than once every 7 years.

(6) Once modified, vehicle modifications are only authorized for vehicles meeting all applicable safety standards.

(7) Vehicle modification services only include the vehicle modification assessment, cost of the modifications, and training in use of modification and do not include:

(a) The purchase of new or used vehicles;

(b) Maintenance or repair;

(c) State inspections;

(d) Insurance;

(e) Gasoline;

(f) Fines;

(g) Tickets; or

(h) Warranties.

(8) The Medicaid program may not provide assistance with modifications to:

(a) Vehicles not owned by the participant or the participant's family; or

(b) Leased vehicles.

(9) Unless otherwise authorized by the DDA, in accordance with DDA policy and Medicaid waiver application, environmental and vehicle modifications payment rates for services shall be necessary and reasonable not to exceed \$17,500 combined over an individual's lifespan.

**.49 General Conditions—Reimbursement for Services.**

A. The Community Pathways Waiver Program shall, in the aggregate, cost less on a per capita basis for services covered under this chapter when combined with other State Plan services that are incurred by participants than the Medicaid program's average per capita payments for ICF/IID services and State Plan services incurred by ICF/IID residents.

B. If the Community Pathways Waiver Program meets the condition in §A of this regulation, the Department shall reimburse for services under this chapter when the services are:

(1) Provided to a participant who meets the qualifications for eligibility specified in Regulation .21 of this chapter;

(2) Recommended in the participant's individual plan;

(3) Provided by an approved provider who meets the conditions for participation specified in this chapter;

(4) Rendered pursuant to:

(a) The definitions of covered services in this chapter;

(b) All other requirements specified in this chapter; and

(c) The waiver proposal and any amendments to it approved by the Secretary of Health and Human Services; and

(5) Supported by documentation, which shall be made available to the DDA upon request, such as the individual plan, assessment reports, case notes, behavior plan, timesheets, and other documents signed and dated by the individual providing the waiver service.

B. All requests for payment of services shall be submitted according to procedures established by the Department. Payment

requests that are not properly submitted may not be processed and shall be returned unpaid to the provider.

C. *Billing Time Limitations.* Billing time limitations for claims submitted pursuant to this chapter are set forth in COMAR 10.09.36.

D. *Payments.*

(1) *Payments shall be made only to a qualified provider.*

(2) *Payment may not be made to a participant for services specified in this chapter.*

**.50 Recovery and Reimbursement.**

Recovery and reimbursement are governed by COMAR 10.09.36.07.

**.51 Grounds for Suspension or Removal and Imposition of Sanctions.**

A. *The DDA or its designee may suspend or revoke the license of, or impose sanctions on, a Community Pathways Waiver Program service provider on any of the following grounds:*

(1) *Conviction of, probation before judgment for, or a plea of nolo contendere to any crime listed in Regulation .02B(60) of this chapter;*

(2) *Surrender of the provider's professional license, or suspension or revocation of, or limitation on, the license;*

(3) *Failure to safely and adequately provide the authorized services;*

(4) *A determination that the provider's actions have had a significant adverse impact on an individual's health, safety or welfare;*

(5) *Failure to report abuse or neglect;*

(6) *Failure to cooperate with any Department audit or investigation;*

(7) *Excessive or fraudulent charges;*

(8) *Making a false statement concerning the provider's conviction of crime or substantiation of abuse or neglect; or*

(9) *Falsification of information requested by the Department regarding an individual's services, funds, or resources.*

B. *Community Pathways providers are also subject to all of the provisions of regulation 10.09.36.08.*

**.52 Appeal Procedures.**

A. *Appeal procedures for providers are as specified in COMAR 10.09.36.*

B. *If the DDA determines that an applicant does not meet eligibility criteria for DDA Medicaid waiver services or makes an adverse determination as to priority category for such services, or both, the applicant may request a fair hearing in accordance with:*

(1) *COMAR 10.01.04; and*

(2) *Applicable federal regulations.*

C. *Participants who claim that they not informed of their choices of services or that they were denied the service of their choice may request a fair hearing under COMAR 10.01.04.*

D. *The DDA shall offer an applicant who has requested a fair hearing an opportunity to attempt resolve all issues in a Case Resolution Conference (CRC) held before the hearing.*

E. *If the request for a hearing is postmarked within 14 days after the date of the determination letter that either denied the request for services or set a time limit on the services requested, the services that are the subject of the request for a fair hearing shall be continued pending the outcome of that hearing.*

F. *The standard of proof at the fair hearing is a preponderance of the evidence.*

G. *If the Administrative Law Judge reverses the DDA's determination that an individual is not eligible for DDA services, the matter shall be returned to the appropriate DDA Regional Office for a determination of the individual's priority category for services.*

**.53 Interpretive Regulation.**

*This chapter shall be interpreted as set forth in COMAR 10.09.36.10.*

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

**Subtitle 09 MEDICAL CARE PROGRAMS**

**10.09.48 Targeted Case Management for People with Intellectual and Developmental Disabilities**

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

**Notice of Proposed Action**

[15-081-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01, .04—.08, and .10 under COMAR 10.09.48 Targeted Case Management for People with Intellectual and Developmental Disabilities.

**Statement of Purpose**

The purpose of this action is to define certain terms relating to targeted case management, replace the term resource coordination with coordination of community services, and accurately reflect processes and approved reimbursement rates for providers.

**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 regulations have an economic impact on providers of Targeted Case Management services for people with Intellectual and Developmental Disabilities because reimbursement rates are being changed.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E+)	FY 15 \$4,460,000
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(+)	FY 15 \$4,460,000
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	
<b>III. Assumptions.</b> (Identified by Impact Letter and Number from Section II.)		
A. A. The proposed rate increases represent a \$4,460,000 increase over the current published rate of \$14.62 per unit in FY15. The State will pay this increase to providers of Targeted Case Management.		
D. D. As a result of increasing the per unit rate for Targeted Case		

Management Services, providers will receive increased payments, totaling \$4,460,000 in FY15.

**Economic Impact on Small Businesses**

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

The proposed action has a meaningful economic impact on small businesses because the higher reimbursement rates infuse dollars into targeted case management entities that provide these services in the community.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Michele Phinney, Director, Office of Regulations and Policy Coordination, 201 W. Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499, or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through March 9, 2015. A public hearing has not been scheduled.

**.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1)—(4) (text unchanged)

(5) “Comprehensive assessment” means an assessment of the applicant’s needs and supports to determine eligibility.

[(5)] (6) Comprehensive Community Services.

(a) (text unchanged)

(b) “Comprehensive community services” does not mean funding for low intensity support services or [resource] coordination of community services.

[(6)] (7) “Contact” means a face-to-face meeting, phone conversation, or written correspondence related to the covered services in this [regulations] chapter.

(8) “Coordination of community services” means targeted case management services that assist participants in gaining access to the full range of medical assistance services, as well as access to any additional needed generic, medical, social, habilitative, vocational, recreational, housing, financial, counseling, legal, educational, and other support services.

(9) “Coordinator of community services” means an individual employed by the coordination of community services agency to assist participants in selecting, obtaining, and monitoring the most responsive and appropriate services and supports.

(10) “Coordination of community services supervisor” means an individual who is employed to oversee coordination of community services and performance of coordinators of community services.

(11) “Core services” means the following community services:

(a) Comprehensive assessment;

(b) Development of the individual plan;

(c) Referrals and related activities; and

(d) Monitoring and follow-up.

[(7)] (12) “Critical incident” means [an incident] a reportable event that presents an immediate and serious threat of injury, harm, impairment, or death of an individual.

[(8)] (13)—[(13)] (18) (text unchanged)

[(14)] (19) “Individual plan” means a comprehensive, outcome-directed service plan that is developed and revised by the [resource] coordinator of community services in collaboration with the individual and his or her identified representatives.

[(15)] “Maryland Community Services Reimbursement Rate Commission” means the independent commission within the Department responsible for assessing and determining rates paid to providers and direct care providers for individuals with

developmental disabilities as set forth in Health-General Article, §13-801 et. seq., Annotated Code of Maryland.]

[(16)] (20) “Medicaid waiver programs” means any program under §1915(c) of the Social Security Act[, Title XIX, §1915].

[(17)] (21)—[(19)] (23) (text unchanged)

[(20)] (24) “Participant” means an individual who meets the qualifications for participation in [resource] coordination of community services as specified in Regulation .03 of this chapter.

[(21)] (25) “Person-directed supports” means service and supports that empower the individual, and the legally authorized representative on the individual’s behalf, to direct the development and implementation of a plan of supports and services that meet the individual’s personal [outcomes] goals.

[(22)] (26)—[(23)] (27) (text unchanged)

[(24)] (28) “Provider” means an entity [which] that meets the conditions for participation specified in [Regulations] Regulation .04 of this chapter, and is authorized by DDA to provide [resource] coordination of community services for individuals with an intellectual and developmental disability.

[(25)] (29) (text unchanged)

[(26)] (30) “Reportable events” means specified incidents and complaints noted in the DDA Policy [for] on Reportable Incidents and Investigations (PORII) established to ensure the health, safety, and welfare of individuals receiving services from DDA-licensed and DDA-funded providers.

[(27)] (31) (text unchanged)

[(28)] “Resource coordination” means targeted case management services which will assist participants in gaining access to the full range of Medical Assistance services, as well as to any additional needed generic, medical, social, habilitative, vocational, recreational, housing, financial, counseling, legal, education, and other support services.

(29) “Resource coordination agency” means DDA-licensed agents responsible for providing resource coordination services to individuals with developmental disabilities who are authorized for services by the Developmental Disabilities Administration.

(30) “Resource supervisor” means an individual who is employed to provide oversight of resource coordination services rendered and performance of resource coordinators.

(31) “Resource coordinator” means an individual employed by the resource coordination agency to assist authorized individuals in selecting, obtaining, the most responsive and appropriate services and supports.]

(32)—(33) (text unchanged)

(34) Transition Coordination Services.

(a) “Transition coordination services” means [resource] coordination of community services provided to individuals transitioning to the community from an institution.

(b) (text unchanged)

(35)—(36) (text unchanged)

(37) Waiting List Coordination Services.

(a) “Waiting list coordination services” means [resource] coordination of community services provided to individuals on the DDA waiting list.

(b) (text unchanged)

**.04 Conditions for Participation — General.**

A. In this chapter, targeted case management services are referred to as [resource] coordination of community services.

B. (text unchanged)

C. Administrative and Professional Requirements. To participate in the Program as a provider of services covered under this chapter, the provider shall:

(1) Be incorporated in the State in good [standings] standing with the Maryland Department of Assessments and Taxation unless operating as a local health department;

- (2) (text unchanged)
- (3) Be selected by DDA as an approved provider of [resource] coordination of community services, as evidenced by an executed DDA-approved contract;
- (4)—(6) (text unchanged)
- (7) Serve all individuals in the DDA-defined [region] jurisdiction referred by the DDA [or, if a local health department, serve all individuals in their designated jurisdiction referred by the DDA];
- (8)—(11) (text unchanged)
- (12) Have a means for individuals, their families, community providers, and DDA staff to contact the [resource] coordination of community services designated staff directly in the event of an emergency and at times other than standard operating hours;
- (13) Annually advise participants of their right to choose among qualified providers of services [to include resources] including coordination of community services;
- (14)—(15) (text unchanged)
- (16) Notify the DDA immediately in writing of any critical incidents that affect the health, safety, and welfare of an individual, as well as administrative and quality of care complaints as required by [State and federal law] *the DDA Policy on Reportable Incidents and Investigations*; and
- (17) (text unchanged)

D. Operational Requirements. To participate in the Program as a provider of services covered under this chapter, the provider shall:

- (1) (text unchanged)
- (2) Complete and submit an initial and annual written quality assurance plan to the DDA which meets the requirements in COMAR 10.22.02.14 and [include] *includes* the following:
  - (a) (text unchanged)
  - (b) Self-assessment, remediating, monitoring, reporting, and system improvements strategies, or other quality and compliance actions related to [resource] coordination of community services;
  - (3) *Submit monthly service delivery statistical reports as defined by the Department by the 15th of each month unless otherwise directed by the Department*;
  - [(3)] (4) Submit quarterly updates, as defined by the Department, on progress on quality assurance plans by October 15, January 15, and April 15 of each year unless otherwise directed by the Department;
  - [(4)] (5) (text unchanged)
  - [(5) Submit monthly service delivery statistical reports as defined by the Department by the 15th of every month;]
  - (6) Maintain a thorough understanding and knowledge of:
    - (a) Eligibility requirements, application procedures, and scope of services of local, State, and federal resources and programs which are applicable to individuals eligible for DDA services; [and]
    - (b) Medicaid, Medicaid waiver programs, and DDA eligibility requirements, application procedures, and service delivery systems; and
    - (c) *Person-centered planning methodology and individualized plan development and monitoring*;
  - (7)—(8) (text unchanged)
  - (9) Obtain [preauthorization] authorization from the DDA [for resource] before providing any coordination of community services [which meet the following conditions:] to any individual;
  - (10) In providing coordination of community services, meet the following requirements:
    - (a) All individuals referred for [resource] coordination of community services by the DDA shall be contacted within 3 business days of receipt of referral unless otherwise authorized by the DDA;
    - (b) A face-to-face meeting[,] with the referred individual shall be arranged at a time and location convenient for the referred individual during the first contact;

- (c) (text unchanged)
- (d) [The] *If applicable, the* provider shall document in the case record reasons why face-to-face meetings did not occur within the required timeframe and [shared upon request of] *share the document as requested by* the DDA or its designee;
- (e) Authorization for specific [resource] coordination of community services shall be based on referrals from the DDA regional office; and
- (f) In the event of emergencies, the individual referred for [resource] coordination of community services by the DDA shall be contacted by the [resource] coordinator of community services as circumstances require or as requested by the DDA.
- E. [Client] Participant Record. The provider shall maintain a record on each participant which meets the Program's requirements and which includes:
  - (1) (text unchanged)
  - (2) The dates of the [resource] coordination of community services;
  - (3) The name of the provider agency and the name of agency employee providing the [resource] coordination of community service;
  - (4)—(6) (text unchanged)
  - (7) Documentation that the [resource] coordinator of community services provided the participant with a choice among qualified providers of services, including [resource] coordination of community services;
  - (8) Documentation that indicates whether the individual has declined services in the individual plan and the reason for [the decline] *declining*;
  - (9)—(11) (text unchanged)
  - (12) Documentation for each contact made by the [resource] coordinator of community services including:
    - (a)—(d) (text unchanged)
    - (e) Nature and extent of [resource] coordination of community services provided;
    - (f)—(h) (text unchanged)
- F. Technology Requirements. To participate in the Program as a provider of services covered under this chapter, the provider shall:
  - (1) [Manage] *Utilize* an electronic information system which, at a minimum:
    - (a) (text unchanged)
    - (b) Provides documentation of [resource] coordination of community services and number of units provided for individuals receiving services;
    - (c)—(d) (text unchanged)
  - (2) Adhere to the following information technology requirements:
    - (a) Use the DDA's designated data system [to include the provider client information system] unless [otherwise] *another data system is approved annually* by the DDA;
    - (b) (text unchanged)
    - (c) Report security violations and actual or attempted security breaches affecting the managed systems with participant information [within] *immediately but not later than 48 hours* [of] after the violation or breach;
    - (d)—(e) (text unchanged)
- G. Billing. To participate in the Program as a provider of services covered under this chapter, the provider shall:
  - (1)—(2) (text unchanged)
  - (3) Permit the DDA or [DHMH] *the Department* or its agent, or any State or federal entity operating within its statutory authority to conduct audits and provide immediate access to all records upon request; and
  - (4) (text unchanged)

H. Freedom of Choice. The provider shall place no restrictions on the qualified participant's freedom of choice among:

- (1) Providers of [resource] coordination of *community services*;
- (2)—(3) (text unchanged)

I. *Transfer of Personal Health Records*. For participants changing from one DDA-authorized coordination of *community services* provider to a different DDA-authorized coordination of *community services* provider, the outgoing provider shall:

- (1) Transfer the complete participant record to the new provider; and
- (2) Share with the new provider the participant's demographic information and the most recent individual plan within 5 business days of notification of transfer for the continued coordination of *services*.

[I.] J. (text unchanged)

**.05 Conditions for Participation — Staff Requirements.**

A. Staff Capability Requirements. The provider shall:

- (1)—(2) (text unchanged)
- (3) Have administrative and supervisory staff to ensure the quality of [resource] coordination of *community services*;
- (4) Have a management capability team, each member of which has at least 3 years of experience providing [resource] coordination of *community services* or management experience in human services[,]; and
- (5) (text unchanged)

B. Staff Training Requirements.

- (1) All DDA-licensed [resource] coordination of *community services* providers shall ensure through appropriate documentation that [resource] coordination of *community services* staff receive training in person-directed supports focusing on outcomes, as required by DDA.
- (2) All DDA-licensed [resource] coordination of *community services* supervisors shall receive training in the following:
  - (a)—(c) (text unchanged)
- (3) All [resource] coordination of *community services* staff shall receive [retraining] *training* on procedures, protocols, processes, and regulations as required by the DDA.

C. [Resource coordination] *Coordination of community services* staff shall:

- (1) Receive required training as specified in COMAR 10.22 [and §C of this regulation that], *which shall be* documented and [shall be] made available upon request;
- (2) (text unchanged)
- (3) Demonstrate [skills] *a high level of skill* and working knowledge in the following areas:
  - (a)—(i) (text unchanged)
  - (j) Regulations governing services for individuals with *intellectual and developmental disabilities*.

D. [Resource] *Coordination of Community Services* Supervisor. The [resource] coordination of *community services* supervisor shall:

- (1)—(3) (text unchanged)
- (4) Supervise the work of [resource] coordinators of *community services*; and
- (5) (text unchanged)

E. [Resource] *Coordinator of Community Services*. The [resource] coordinator of *community services* shall:

- (1) (text unchanged)
- (2) Use all communication methodologies, strategies, devices, and techniques necessary, including sign language, assistive technology, or language interpreter services, to facilitate the involvement of the participant in the assessment, development, and monitoring of services and supports; *and*

[(3) Ensure that each individual receives an individual plan that is designed to meet the individual's needs, preferences, goals, and

outcomes in the most integrated setting appropriate to meet the individual's needs and in the most cost effective manner and as directed by the participant for those individuals that select self-direction; and]

[(4)] (3) Annually advise participants of their right to choose among qualified providers of services [to include] resource] *including* coordination of *community services*.

F. Education and Experience Waiver.

(1) [Resource] *Coordination of Community Services* Supervisor. Education and experience requirements may be waived if an individual has been employed as a [resource] coordination of *community services* supervisor for at least 1 year as of January 1, 2014.

(2) [Resource] *Coordinator of Community Services*. Education and experience requirements may be waived if an individual has been employed as a [resource] coordinator of *community services* for at least 1 year as of January 1, 2014.

G. An individual is ineligible for employment by a [resource] coordination of *community services* provider, agency, or entity in Maryland if the individual:

- (1)—(7) (text unchanged)

**.06 Covered Services.**

A. *Only core services shall be authorized for payment by DDA as covered coordination of community services.*

B. *The coordinator of community services shall provide the core services listed in this regulation to every participant assigned to the coordinator.*

[A.] C. *Comprehensive Assessment*. [Resource coordination] *Coordination of community services* shall include a comprehensive assessment of the individual's needs and supports to determine eligibility, [as noted in] *in accordance with* COMAR 10.22.12. The assessment shall be completed within 45 days [of] *after* referral by the DDA and include:

- (1)—(5) (text unchanged)

[B.] D. *Individual Plan*.

(1) *The coordinator of community services shall ensure that each individual receives an individual plan that is designed to meet the individual's needs, preferences, goals, and outcomes in the most integrated setting and in the most cost effective manner.*

[(1) General requirements for the individual plan are that the individual plan shall:]

(2) *The individual plan shall:*

- (a)—(c) (text unchanged)

(d) Be completed within 30 days after [notification of selection as the resource coordination agency and subsequent] initial contact with the participant, and, if necessary, updated or modified within 30 days [of] *after* service initiation;

- (e)—(i) (text unchanged)

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

[C.] E. *Referral and Related Activities*.

(1) At the time of *the* initial meeting and any follow-up contacts, [resource] coordinators of *community services* shall provide information, make referrals, [or] *and* assist participants with applications [to] *for* services provided by:

- (a)—(c) (text unchanged)

(2) (text unchanged)

[D.] F. *Monitoring and Follow-Up*.

(1) [Monitoring] *The coordinator of community services shall provide monitoring and follow-up activities, which shall include:*

(a) Assessment of:

- (i)—(iv) (text unchanged)

(v) The individual's needs and supports to maintain eligibility for Medicaid, [waivers] *Medicaid waiver programs*, DDA services, and any other relevant benefits or services;

(b)—(c) (text unchanged)

(d) Requests for service change and modifications of the individual plan as necessary to meet health and safety needs, preferences, and goals;

(e)—(h) (text unchanged)

(2) Frequency of Monitoring and Follow-up Contact.

(a) (text unchanged)

(b) [Monitoring services shall be provided to individuals receiving waiting list coordination services at the frequencies set in] *Individuals on the DDA waiting list shall be monitored in accordance with* [§D(2)(a)] §F(2)(a) of this regulation unless:

(i)—(ii) (text unchanged)

(c) (text unchanged)

(d) *For individuals receiving transition coordination services, monitoring and follow-up activities shall be performed face-to-face at least once a month for the first 90 days, after which face-to-face contacts shall be made quarterly.*

(3) (text unchanged)

**.07 Limitations.**

A. [A restriction] *Restrictions* may not be placed on a qualified recipient's option to receive [resource] coordination of community services.

B. DDA [resource] coordination of community services does not restrict or otherwise affect eligibility for Title XIX benefits or other available benefits or programs.

C. DDA [resource] coordination of community services may not be:

(1)—(2) (text unchanged)

(3) Rendered in connection with the implementation of another service authorized under §1915(b) or §1915(c) of the Social Security Act[, Title XIX, §1915(b) or 1915(c)]; or

(4) (text unchanged)

D. Unless otherwise approved by the Department, reimbursement may not be made for [resource] coordination of community services if the participant is receiving comparable case management services under any other State program.

E. A participant's [resource] coordination of community services provider may not also [be a] provide DDA-funded direct services [provider] for the participant.

F. Service Exclusions.

(1) Unless an individual is transitioning into the community, [resource] coordination of community services may not be provided to:

(a)—(b) (text unchanged)

(2) (text unchanged)

G. (text unchanged)

**.08 Payment Procedures.**

A. (text unchanged)

B. Payment Rates.

(1) Providers shall be reimbursed within 45 days of approved invoice for services rendered based on the rates set forth in [§C(2) and (3)] §C(1) and (2) of this regulation.

(2) (text unchanged)

(3) For all other services, providers shall be reimbursed [\$14.62 per unit of service.]:

(a) \$17.54 per unit of service from July 1, 2013 through June 30, 2014;

(b) \$14.63 per unit of service from July 1, 2014 through July 2, 2014;

(c) \$16.59 per unit of service from July 3, 2014 through December 31, 2014; and

(d) \$16.88 per unit of service thereafter.

C. Changes in Rates.

[(1) The Program's rates as specified in §B of this regulation shall be effective July 1, 2013 through June 30, 2014.]

[(2)] (1) (text unchanged)

[(3)] (2) The rates may be [increased] changed on July 1 of each year beginning July 1, [2014] 2015, based on [recommendations of the Maryland Community Services Reimbursement Rate Commission] legislative action, and subject to limitations of the State budget.

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

D. Payment Limitations.

(1)—(4) (text unchanged)

(5) Ongoing [case management] coordination of community services shall be billed on a monthly basis.

E. Units of Services and Limitations.

(1) All coordination of community services other than the initial comprehensive assessment shall be billed to DDA in units of service.

(2) DDA shall provide payment for only those coordination of community services that were authorized by DDA before the provision of the service.

(3) Each fiscal year, DDA shall authorize a specific number of units of service of coordination of community services for each participant.

(4) Each fiscal year, the coordinator of community services shall complete the core services for each participant, using the units of service authorized for that fiscal year.

(5) Additional units of service may not be authorized beyond those authorized for the fiscal year for any participant, except as specifically provided in §E(6) of this regulation.

(6) Authorization of Payment for Additional Units of Service.

(a) A request by a coordinator of community services for authorization of payment for units of service in addition to those authorized for a participant in a single fiscal year may not be granted except in extraordinary circumstances.

(b) In deciding a request for authorization of payment for additional units of service, DDA shall consider:

(i) The services provided to date using the annual units of service authorized;

(ii) The extent to which the core services have been completed for the fiscal year;

(iii) Whether and, if so, the extent to which, the annual units of service were used to provide services other than core services;

(iv) The extent to which services were provided in an inefficient manner;

(v) Any unusual or unforeseeable needs of the participant that created a need for more than the allotted units of service; and

(vi) Any unusual or unforeseeable circumstances of the participant that caused the delivery of coordination of community services to be more difficult and time-consuming than was anticipated when the annual units of service were allotted.

(c) Requests for authorization of payment for additional units of service for a participant in a single fiscal year shall be accompanied by documentation demonstrating:

(i) All coordination of community services provided to date;

(ii) Any physical, emotional, or mental conditions of the participant that created extraordinary challenges to the provision of coordination of community services within the units of service authorized for the fiscal year; and

(iii) Any unusual or unforeseeable circumstances that required the expenditure of more time to provide the core services than was anticipated when the annual units of service were allotted.



(d) A request for authorization of payment for additional units of service for a participant in a single fiscal year may not be granted in order to provide services other than core services.

(e) A request for authorization of payment for additional units of service for a participant in a single fiscal year may not be considered unless all required data regarding the participant and the coordination of community services provided has been entered or uploaded into the DDA-designated data system.

(f) An authorization of payment for additional units of services shall specify the number of units of service authorized.

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

Cause for suspension or removal and imposition of sanctions shall be as set forth in COMAR 10.09.36.08 and [10.22.02] 10.22.03.

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

**Subtitle 11 MATERNAL AND CHILD HEALTH**

**10.11.03 Children’s Medical Services Program**

Authority: Health-General Article, §15-125, Annotated Code of Maryland

**Notice of Proposed Action**

[15-080-P]

The Secretary of Health and Mental Hygiene proposes to repeal existing Regulations .01, .02, .09, .10, .15, .17—19, .27, and .29—.31, recodify Regulations .01-1 and .32 to be Regulations .01 and .21, respectively, and amend and recodify Regulations .03—.08, .11—.14, .16, .20—.26, and .28 to be Regulations .02—.20, respectively, under COMAR 10.11.03 Children’s Medical Services Program.

**Statement of Purpose**

The purpose of this action is to modernize some provisions and repeal other outmoded provisions currently in the regulations in order to aid with the implementation of the CMS Program in a clearer and more efficient manner.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has an impact on individuals with disabilities as follows: This program provides coverage of specialty care for children with chronic illness, many of whom have developmental disabilities. The proposed revisions bring the regulations into alignment with current policies and procedures of the program. The only change in operation of the program is the ability to purchase individual market insurance coverage for certain children with chronic conditions, thus broadening their coverage and resulting in cost savings to the program.

**Opportunity for Public Comment**

Comments may be sent to Michele Phinney, Director, Office of Regulations and Policy Coordination, 201 W. Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499, or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will

be accepted through March 9, 2015. A public hearing has not been scheduled.

**[.03] .02 Definitions.**

A. (text unchanged)

B. Terms Defined.

[(1) “Adjusted family resources” means the amount remaining after allowable expenses have been deducted from total family resources.

(2) “Administration” means the Family Health Administration.]

[(3)] (1)—[(4)] (2) (text unchanged)

[(5) Repealed.

(6) Repealed.

(7) “Anticipated cost of treatment” means the medical costs remaining after all available insurance payments have been identified.]

[(8)] (3) “Appeal” means the process by which a child with special health care needs, as defined in [§B(19)] §B(9) of this regulation, or the family on the child’s behalf, obtains a review of a decision, action, or lack of action on the part of the CMS Program or one of its designees.

[(9)] (4) “Applicant” means a child with special health care needs, as defined in [§B(19)] §B(9) of this regulation, or the parent or guardian of a child, for whom a written application has been submitted to the CMS Program for services, but for whom eligibility has not yet been determined.

[(10) “Application date” means the date on which a completed signed application is first received by the Children’s Medical Services Program.]

[(11)] (5) “Authorized services” means that care which is approved by the CMS Program for an eligible child.

[(12) “Available insurance benefits” means insurance payments, settlements, and medical assistance payments which may be applied toward the cost of care.]

[(13)] (6) “Care coordination services” means services to promote the effective and efficient [organization and] utilization of resources to assure access to necessary comprehensive services.

[(14)] (7) “Care management plan (CMP)” means a written [medical plan developed by or under the supervision of an appropriately qualified or licensed CMS provider whenever any CMS-related diagnostic evaluation or treatment services are to be provided, including a purchase of care, local health department specialty clinics, and special projects.] *document that lists recommendations for care as specified by a licensed and boarded provider.*

[(15) “Case management” means care coordination services which are provided under the State Medicaid agency authority including targeted initiative and model waiver.

(16) “Childlife specialist” means an individual who has an undergraduate degree in child development, and who works in the hospital setting to foster adjustment to a child’s hospitalization through psychosocial and educational interventions.

(17) “Children’s medical services” means the:

(a) Early identification of disabled children;

(b) Provision of preventive, diagnostic, treatment, and facilitating services, and necessary appliances directed toward the habilitation and rehabilitation of eligible children to reasonable physical and mental health;

(c) Development and improvement of standards and techniques relating to the provision of the care and services in §B(17)(b) of this regulation;

(d) Training of personnel engaged in the provision, development, strengthening, or improvement of the care and services specified in §B(17)(b) of this regulation;

(e) Provision of necessary and appropriate administrative and health professional services related to §B(17)(a)—(b) of this regulation; and

(f) Services to promote the effective and efficient organization and utilization of resources to assure access to necessary comprehensive services.]

[(18)] (8) “Children’s Medical Services Program (CMS Program)” means that program which is administered by the [Family Health Administration, and is authorized in Health-General Article, §15-125, Annotated Code of Maryland, and Title V of the Maternal and Child Health Services Block Grant, 42 U.S.C. §701 et seq. (1982), and its 1989 amendments, P.L. 101-239. This program is charged with the responsibility for administering those services set forth in Regulation .04 of this chapter] *Department pursuant to Health-General Article, §15-125, Annotated Code of Maryland, to:*

(a) *Provide for specialized medical, surgical, pharmacologic, and related rehabilitative evaluation and treatment services for children with special health care needs younger than 22 years old who:*

(i) *Meet the residential, identification, financial, and medical eligibility requirements; and*

(ii) *Are uninsured or do not have coverage in their existing health insurance plans that cover certain types of medical care;*

(b) *Provide and promote family-centered, community-based, coordinated care for children with special health care needs, and promote development of community-based, culturally competent systems of services for those children and their families throughout the State; and*

(c) *Distribute funds to cover specialty diagnostic and treatment services for eligible children with special health care needs in Maryland.*

[(19)] (9) “Children with special health care needs [(CSHCN)]” means individuals, birth to 22 years old, [with disabilities and handicapping conditions, chronic illnesses and conditions, health-related educational problems, health-related behavioral problems, and those at risk for these conditions] *who have or who are at increased risk for a chronic physical, development, behavioral, or emotional condition and who also require health and related services of a type or amount beyond that required by children generally.*

[(20)] “Community based system” means a network that, to the extent possible, provides needed services to children with special health care needs in the families’ home community.

(21) “Comprehensive care” means health services including:

- (a) Primary level basic care;
- (b) Secondary level specialized care;
- (c) Tertiary level highly specialized care;
- (d) Early intervention services;
- (e) Educational services;
- (f) Vocational services;
- (g) Mental health services;
- (h) Social services;
- (i) Recreation and arts services; and
- (j) Family support services, including parent-to-parent support and respite care.

(22) “Cooperating agencies” means those organizations which are approved providers, who assist the CMS Program in delivering those services specified in §B(17) of this regulation through a fee-for-service, contractual, grant, or working agreement.]

[(23)] (10) “Department” means the Department of Health and Mental Hygiene, the single State agency designated to administer the [Children’s Medical Services] CMS Program.

[(24)] (11)—[(26)] (13) (text unchanged)

[(27)] Repealed.

(28) “Family-centered care” means services:

(a) Based on the recognition that the family is the constant in the child’s life while the service system and the personnel within the system fluctuate;

(b) That facilitate parent and professional collaboration at all levels;

(c) Based on the sharing of unbiased and complete information with parents about their child’s care on an ongoing basis in an appropriate and supportive manner;

(d) Based on the implementation of appropriate policies and programs that are comprehensive and that provide emotional and financial support to meet the needs of families;

(e) Based upon recognition of family concerns, priorities, and resources;

(f) Based upon recognition of the developmental needs of infants, children, and adolescents and their families and incorporation of these needs into the system;

(g) Involving the encouragement and facilitation of parent-to-parent support; and

(h) Designed to be flexible, accessible, and responsive to family needs.]

[(29)] (14) “Federal poverty [guidelines] level” means the poverty guidelines, as amended, which are updated periodically in the Federal Register by the U.S. Department of Health and Human Services.

[(30)] (15) “Financial eligibility guidelines” means the schedule based upon the federal poverty [guidelines] level which is used to determine financial eligibility for the CMS Program.

[(31)] “Full program financial assistance” means the category of financial eligibility determination which renders the applicant eligible for 100 percent coverage of authorized services for a period of 12 months after deduction of insurance benefits for allowable costs of authorized services.]

[(32)] (16) (text unchanged)

[(33)] “Health professional consultant” means a professional as defined in §B(48) of this regulation, who is contractually employed by the CMS Program to provide medical care, as defined in §B(40) of this regulation, to eligible children.]

[(34)] (17)—[(36)] (19) (text unchanged)

[(37)] “Initial dental examination” means an inspection, performed by a dentist, of the extraoral, intraoral, and soft tissues of the head and neck, and includes inspection of the teeth, periodontia, tongue, lips, cheeks, and pharyngeal area.

(38) “In-kind income” means support or benefits in the form of food, shelter, or both, received by a person.]

[(39)] (20) (text unchanged)

(21) “Medical assistance” has the meaning stated in COMAR 10.09.24.02.

[(40)] (22) “Medical care” means medical services and specialized care provided by physicians and allied health professionals in hospitals, convalescent facilities, clinics, private physicians’ offices, in home and other community-based settings. Medical care may include the services rendered by dentists, nurses, medical social workers, childlife specialists, nutritionists, dietitians, psychologists, physical therapists, occupational therapists, speech-language pathologists, audiologists, optometrists, ophthalmologists, technicians, and other pertinent personnel whose services may be needed by those children who are served by the [Children’s Medical Services] CMS Program.

[(41)] “Medical deduction eligibility guidelines” means the schedule from which certain medical expenses may be deducted to determine financial eligibility for the Program for those applicants whose income exceeds the financial eligibility guidelines under Regulation .30 of this chapter.]

[(42)] (23) (text unchanged)

[(43) “Orthodontic care” means dental services concerned with the diagnosis and treatment of irregularities of the teeth, malocclusions, and associated oral-facial abnormalities.

(44) “Periodic dental examination” means a periodic updating of a previous inspection of the extraoral and intraoral hard and soft tissues of the head and neck.]

[(45)] (24)—[(46)] (25) (text unchanged)

[(47) “Professional” means an individual with training, expertise, certification, or licensure, as applicable, in a specific health or allied health discipline.

(48) “Professional treatment services” means medical care as defined in §B(40) of this regulation.

(49) “Program” means the Children’s Medical Services Program.

(50) “Program Director” means the administrator who is responsible for the daily operations and management of CMS.]

[(51)] (26) “Provider” means an individual or entity duly licensed or certified to render a health care service or product pursuant to these regulations through an appropriate agreement with the Department, and identified as a CMS Program provider by the issuance of an individual vendor number.

[(52) “Qualified specialist” means a professional who is board eligible, board qualified or certified, and is approved by the CMS Program to provide services.]

[(53) “Resident”] (27) “Residency” means [a person who demonstrates that he or she is] living in the State voluntarily with the intention of making the State the individual’s permanent home for an indefinite period and not for a temporary purpose.

[(54) “Special hospital” means an institution which falls within the jurisdiction of Health-General Article, Title 19, Subtitle 3, Annotated Code of Maryland, and is licensed as a special hospital by the Department of Health and Mental Hygiene, Division of Licensing and Certification, in accordance with COMAR 10.07.01.

(55) “State” means the State of Maryland.

(56) “Vendor” means the supplier of authorized medically related or rehabilitative goods or services.]

**[.04] .03 Covered Services.**

A. The CMS Program shall authorize covered services when a CMP [, as defined in Regulation .03B(14) of this chapter,] has been approved.

B. The CMP shall:

(1) Include:

- (a) All diagnoses or suspected diagnoses[.];
- (b) Service requested or provided[.];
- (c) Specific reason for the service request[.];
- (d) Evaluation or treatment findings[.];
- (e) Follow-up plans related to the service provided by the CMS Program[.];

(f) (text unchanged)

(2) Be reviewed and approved by the CMS [central office staff as part of the preauthorization and invoice payment process, based on documentation that the child has an eligible medical condition] Program.

[B.] C. The CMS Program may request further information from the provider in order to:

(1) Support the information required in [§A(1)] §B(1) of this regulation;

(2) Assure that all services are coordinated with other services the child is receiving through the CMS Program or other programs; and

(3) (text unchanged)

[C.] D. CMS Program eligible services shall include [the following health care programs]:

(1) [Consultation] Specialty clinics; [, which are provided through local health departments and approved hospitals, and which]

(2) Private office care [shall include, but are] including, but not limited to, the following:

[(a) Amputee,]

(a) Allergy/Immunology;

(b) Audiology and hearing[.];

[(c) Birth defects,]

[(d)] (c) Cardiology[.];

[(e)] (d) Craniofacial[.];

[(f)] (e) Cystic fibrosis[.];

[(g)] (f) Developmental pediatrics[.];

[(h) Diagnostic and advisory (D&A),]

[(i)] (g) Endocrine[.];

(h) Gastroenterology;

[(j)] (i) Genetics[.];

[(k) Hemophilia,]

(j) Hematology;

[(l) Medical and surgical,]

(k) Infectious disease;

(l) Nephrology;

(m) Neurology [,.];

(n) Neurosurgery;

[(n)] (o) Oncology[.];

[(o)] (p) Ophthalmology, optometry, and vision[.];

[(p)] (q) Orthopedics[.];

[(q)] (r) Otolaryngology[.];

(s) Physical medicine;

[(r)] (t) Plastic surgery[.];

[(s) Pulmonary, and] (u) Pulmonology;

(v) Rheumatology;

[(t)] (w) (text unchanged)

(x) Surgery; and

(y) Urology.

[(2) Private office] (3) Primary physician care arranged at the discretion of the CMS Program to assure access for needed specialty diagnostic evaluation, treatment, and care coordination services;

[(3)] (4) Inpatient hospital care services, which are provided [through university affiliated medical facilities and select community hospitals] by Medical Assistance affiliated hospitals; and

[(4)] (5) Professional evaluation and treatment services, which may include, but are not limited to, the following:

(a) Audiology[.];

(b) Family training and counseling regarding medical and rehabilitation needs[.];

(c) Genetic counseling[.];

(d) Nursing[.];

(e) Nutrition[.];

(f) Occupational therapy[.];

(g) Physical therapy[.]; or

[(h) Psychology,

(i) Social work, or]

[(j)] (h) (text unchanged)

[D.] E. Specialized [care coordination services and] activities to facilitate a special treatment program [for a CMS applicant] may include, but are not limited to, the following:

(1) Equipment to provide:

(a) Life support[.];

(b) Mobility[.];

(c) Stimulation[.]; and

(d) (text unchanged)

(2)—(5) (text unchanged)

(6) Approved therapies involving specific treatment as authorized by appropriate CMS Program professional staff to cure functional deficiencies;

(7)—(9) (text unchanged)

**[.05] .04 Rights and Responsibilities.**

A. Applicant.

(1) The applicant shall furnish factual information regarding the applicant's eligibility, and shall keep the CMS Program informed of any change in *demographic, financial, medical, or insurance coverage* status.

(2) An eligible [individual] applicant shall use only *Medical Assistance approved providers* [who meet CMS standards and approval].

(3) An applicant shall complete a [Medicaid] *Medical Assistance* application when the applicant is considered potentially eligible.

B. CMS Program.

(1) An applicant who meets eligibility criteria as set forth in this chapter shall have access to approved services within the budgetary limitations of the CMS Program.

(2) *The CMS Program may purchase health insurance benefits for an eligible child when all of the following conditions are met:*

(a) *The cost of this expense is less than the cost of directly purchasing the child's medical care;*

(b) *The policyholder is unable to pay for the health insurance policy due to:*

(i) *An increase in insurance cost;*

(ii) *A change in employment;*

(iii) *Loss of income;*

(iv) *An increase in health-related expenses; or*

(v) *The policyholder's eligibility to purchase health insurance benefits in accordance with the Consolidated Omnibus Budget Reconciliations Act of 1985, P.L. 99-272;*

(c) *The health insurance policy is issued directly from:*

(i) *An authorized insurer;*

(ii) *A nonprofit health services plan;*

(iii) *A health maintenance organization;*

(iv) *A self-insured health benefit plan; or*

(v) *The employer of the family member whose health insurance provides coverage for the eligible child; and*

(d) *Payment is for premiums that can be costed out as related to the applicant only.*

(3) The CMS Program may pay copays, deductibles, and coinsurance costs when the CMS Program is purchasing the health insurance benefits.

[(2)] (4) *The CMS Program shall comply with the requirements of:*

(a)—(d) (text unchanged)

(5) *The CMS Program shall determine financial assistance based on the income and allowable deductions.*

(6) *The CMS Program shall provide full financial assistance for authorized services when the income is equal to or less than that which is allowable in accordance with the financial eligibility levels described in Regulation .06A(4) of this chapter.*

(7) *The CMS Program shall provide full CMS Program eligible service to the extent that medical assistance for this service is not covered under Title XIX.*

**[.06] .05 General Eligibility Criteria.**

[A. To be eligible for the Program's services, an individual shall:

(1) Be a resident of the State;

(2) Be younger than 22 years old;

(3) Have or be suspected of having an eligible medical condition as set forth in Regulation .07 of this chapter;

(4) Meet the financial eligibility requirements as set forth in Regulation .08 of this chapter; and

(5) Complete and sign the application form approved by the Program.]

A. *To be eligible for the CMS Program's services, an applicant shall:*

(1) *Submit a completed, signed, and dated CMS Program application;*

(2) *Provide documentation of:*

(a) *State residency, as this program is not meant to cover those whose sole purpose in coming to Maryland is to obtain medical care or coverage; and*

(b) *Being younger than 22 years old;*

(3) *Provide a form of identification for the applicant and the applicant's parents or guardians if the applicant is less than 18 years old;*

(4) *Have income that does not exceed:*

(a) *200 percent of the federal poverty level; or*

(b) *250 percent of the federal poverty level, if the applicant is eligible for a medical deduction under Regulation .07D of this chapter; and*

(5) *Have an eligible medical condition as set forth in Regulation .06 of this chapter.*

B. The age eligibility referred to in [§A(2)] §A(2)(b) of this regulation [ay] may be extended 3 years beyond the 22nd birthday if the CMP:

(1)—(2) (text unchanged)

**[.07] .06 Medical Eligibility.**

A. Children with special health care needs may be eligible for services covered by the CMS Program.

B.—C (text unchanged)

D. Neurodevelopmental conditions which may render an applicant medically eligible include, but are not limited to, the following:

(1)—(7) (text unchanged)

(8) Medical aspects of [mental retardation] *intellectual disability* and developmental delay;

(9)—(13) (text unchanged)

E.—H. (text unchanged)

I. *The following are excluded from CMS Program medically eligible services:*

(1) *Well child care;*

(2) *Mental health;*

(3) *Emergency care; and*

(4) *Urgent care.*

J. *Care excluded from CMS Program medically eligible conditions unless the services are medically necessary due to the underlying chronic condition includes:*

(1) *Dermatology;*

(2) *Gynecology; and*

(3) *Dental services.*

**[.08] .07 Financial Eligibility.**

A. (text unchanged)

B. Family Unit.

(1) A family unit consists of one or more of the following members residing in the same household:

(a) (text unchanged)

(b) The natural or adoptive parents, [or] stepparents, *or legal guardian* if the applicant is unmarried;

(c)—(e) (text unchanged)

[(2) A guardian is not considered as part of the family unit.]

C. Income.

(1) For the purpose of determining financial eligibility, the CMS Program shall treat the income of members of the family unit listed in §B of this regulation as the sole source for determining an applicant's eligibility.

[(2) When stepparents claim a child as a dependent for federal income tax purposes, the Program shall require the applicant to

submit a copy of the stepparents' most recent federal income tax returns.]

[(3)] (2) The *CMS* Program shall determine the family's income from the following sources:

(a)—(n) (text unchanged)

(o) Insurance benefits paid directly to an [individual] applicant;

(p)—(w) (text unchanged)

(x) Cash assistance received from [nongovernmental] *non-governmental* social service agencies greater than [\$300 per quarter] *the amount allowed by Medical Assistance*; [and]

(y) Sick pay which does not count as earnings for deduction purposes under Title II of the Social Security Act; *and*

(z) *Any subsidy covering basic needs for food or shelter.*

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

[(5)] (4) If additional *CMS* Program services are requested 6 months after resuming employment, the *CMS* Program [shall redetermine] *may re-determine* financial eligibility based on current income.

[(6)] The Program shall exclude the following income from those in the family unit for purposes of determining eligibility:

(a) \$90 monthly for each employed family member whether working full-time or part-time; and

(b) The first \$50 of monthly child support payments received or expected to be received by a member or members of a family irrespective of the number of family members receiving support payments.]

[D. Deductible Expenses. For the purposes of determining financial eligibility, the Program shall deduct the following expenses from the family income:

(1) The documented amount of child care expenses paid to an individual who is not a legally responsible relative, not to exceed:

(a) \$175 monthly per child (\$200 monthly per child for children younger than 2 years old) if the parent or parents are employed at least 100 hours per month, or

(b) \$100 monthly per child if the parent or parents are employed less than 100 hours per month; and

(2) The actual amount of child support and alimony paid by a family member to dependents not living with the applicant.]

[E.] *D. Medical Deductions.*

(1) [If, after determining countable income according to §C of this regulation and deductible expenses according to §D of this regulation, an applicant's income is higher than allowed by the financial eligibility guidelines in Regulation .30 of this chapter, but lower than or equal to the medical deduction eligibility guidelines in Regulation .31 of this chapter, the] *The* applicant may deduct the following from the applicant's income:

(a)—(c) (text unchanged)

[(2)] If, after deducting the medical expenses in §E(1) of this regulation, an applicant's income is less than or equal to the financial eligibility guidelines in Regulation .30 of this chapter, the applicant meets the financial eligibility requirements for the Program.]

[F.] *E. Effective Dates for Financial Eligibility.*

(1) The *CMS* Program shall establish financial eligibility for a 12-month period from the date a completed application is received [in] *by* the *CMS* [central office.] *Program.*

(2) Exceptions to the 12-month financial eligibility period are:

(a) If financial eligibility was determined by averaging the previous 6 months, financial eligibility shall be reconsidered after 6 months; [or]

(b) When an eligible [individual] *applicant enrolled in the CMS Program* informs *the CMS Program* of changes in family size, income, or expense, the *CMS Program* [shall] *may* reconsider eligibility as soon as possible if financial assistance is being given, or when the next request for services is made.

(3) Those receiving *CMS Program* financial assistance shall notify the *CMS Program* within 10 business days of any changes in circumstance which could affect continuing financial eligibility.

[(4)] The Program shall consider an individual eligible for retroactive eligibility for a period of not more than 6 months before application when all other pertinent requirements in this chapter are met.

(5) The Program may provide financial assistance within the Program's budgetary limitations.]

[G. Continuing Eligibility. If an applicant has been approved to receive covered services on or before January 1, 1999, the applicant may continue receiving covered services until the expiration of the approved eligibility period.]

**[.11] .08 Application Process.**

A. The *CMS* Program shall make applications available to, but which are not limited to, the following agencies:

(1)—(4) (text unchanged)

B. Completion of Application.

(1)—(3) (text unchanged)

(4) An applicant shall provide financial information for each employed member of the family unit as specified in Regulation [.08A] .07A of this chapter.

(5) [An applicant shall provide verifying documents which may include federal income tax returns or pay stubs] *An applicant shall provide documents verifying residency, identification, income, and medical conditions or suspected medical conditions.*

(6) The *CMS Program* shall make reasonable accommodations to assure that appropriate assistance is provided to those who are disabled or who are unable to speak or write English.

**[.12] .09 Disposition of Application.**

A. General.

(1) The *CMS Program* professional staff shall:

(a) (text unchanged)

(b) Determine *CMS Program* eligibility and services to be approved for payment [or coverage] by the *CMS Program* *within 30 calendar days of receipt of the complete application*;

(c) Verify the information provided by an applicant which may include an interview:

(i) With the applicant if the applicant is 18 years old or older, or with the applicant's parent or guardian[.]; and

(ii) (text unchanged)

(2) If additional information is needed to determine eligibility or service needed, the Program shall:

(a) *Return the application within 15 business days of receipt; and*

[(a)] (b) Advise an applicant in writing [within 15 days after the receipt of the application;] *of needed documentation.*

[(b)] Advise an applicant that the application becomes invalid if the requested information is not provided within 30 days after receiving the letter;

(c) Send a written decision within 14 days after receipt of requested information;

(d) Send a written decision regarding Program eligibility to the applicant, parent, or guardian within]

(3) *Within 30 calendar days of receipt of the completed application by the CMS Program [central office] the CMS Program shall send a written decision regarding Program eligibility to the applicant[.];*

[(e)] Send a written decision regarding approval for service coverage to the applicant, parent, or guardian within 30 days of receipt of all information needed;

(f) Notify an applicant in writing at least 30 days before the effective date of any other proposed action which affects the

applicant's eligibility or changes the amount of the family's required financial participation; and

(g) Send a written decision within 30 days of receipt of the completed initial application.]

(4) For renewal applications, the CMS Program shall notify an applicant in writing at least 30 calendar days before the date on which the applicant shall reapply.

B. Eligible Applicant.

(1) An eligible applicant shall receive a letter from the CMS Program which includes, at a minimum, the following information:

(a) The effective dates of CMS Program eligibility; [and]

(b) The name of the provider [, the service to be covered by the Program, and the amount for which the applicant is responsible.]; and

[(2) The Program shall send a notice of eligibility for each approved service to each pertinent provider.]

(c) The service to be covered by the CMS Program.

C. Ineligible Applicant.

(1) An applicant is ineligible when the applicant [or the applicant's parent or guardian] does not:

(a) (text unchanged)

[(b) Sign the application; or]

(b) Complete, sign, and date the application; or

(c) Complete an application for [the Maryland] Medical Assistance [Program] when the applicant is potentially eligible for services covered by [the] Medical Assistance [Program].

(2) An applicant determined ineligible shall receive a letter from the CMS Program informing the applicant of the reasons for the determination.

(3) An applicant determined to be ineligible shall be advised of the right to appeal the determination in accordance with the procedures set forth in [Regulation .29 of this chapter] §D of this regulation.

D. Appeal Rights.

(1) Providers filing appeals of administrative decisions made in connection with these regulations shall do so in accordance with Health-General Article, §2-207, and State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

(2) An applicant or eligible individual, or other authorized representative has a right to a meeting or informal conference with CMS staff responsible for a decision reflected in any notice of determination issued in this chapter.

**[.13] .10 Record Retention and Confidentiality.**

A. Records.

(1) (text unchanged)

(2) Records referred to in §A(1) of this regulation include:

(a)—(d) (text unchanged)

(e) [Appropriate and indicated medical] Medical and laboratory data, including X-rays; and

(f) (text unchanged)

B. (text unchanged)

**[.14] .11 General Conditions of Provider Participation.**

A. A provider of services which are covered by the CMS Program shall comply with the following general requirements:

[(1) Apply to the Program to become a CMS provider on a form specified by the Program;]

[(2) Be] (1) For fee for service reimbursement, be approved by Medical Assistance in writing [by the Program] as a Medical Assistance provider;

(2) For copay and deductible reimbursement, be a participating provider with the insurance plan purchased by the CMS Program for the family;

(3) Request preauthorization on the forms designated by the CMS Program;

(4) Adhere to administrative procedures that are established by the CMS Program for the specific treatment services; and

(5) (text unchanged)

B. The approval referenced in [§A(2)] §A(1) of this regulation shall specify, at a minimum, the following:

(1)—(2) (text unchanged)

**[.16] .12 Conditions of Hospital Participation.**

A hospital shall:

A. Comply with all relevant State and federal requirements related to the provision of health services and the receipt of funds [appropriated under Title V Maternal and Child Health Services Block Grant];

B. (text unchanged)

C. Be accredited by the Joint Commission for Accreditation of Hospitals; and

[D. Admit children receiving CMS supported services to pediatric units capable of separating children by age and sex;]

[E.] (D) Provide the following services:

(1)—(5) (text unchanged)

(6) Other specialized support services, which shall include, but not be limited to, the following as appropriate:

(a) [Audiological services,] Audiology;

(b) Nutrition [services,];

(c) Occupational therapy[.];

(d) Physical therapy[.];

(e) [Psychiatric services,] Psychiatry;

(f) [Psychological services,] Psychology;

(g) Social work services[.]; and

(h) (text unchanged)

(7)—(14) (text unchanged)

**[.20] .13 General Billing Procedures.**

A. A provider shall accept payment at the Medical Assistance rate as payment in full.

[A.] B. A provider shall submit:

(1) Requests for payment on the form designated by the CMS Program; and

(2) Completed reports and attachments as requested by the CMS Program.

[B.] C. A provider may not bill the CMS Program for:

(1)—(4) (text unchanged)

[C.] D. The CMS Program shall:

(1) (text unchanged)

(2) Pay any claim for services provided on different dates and submitted on a single form, and only if it is received by the CMS Program within [9] 12 months of the earliest date of service; and

(3) Pay a claim which is rejected for payment due to improper completion or incomplete information, only if it is properly completed, resubmitted, and received by the CMS Program within the original [9-month] 12-month period or within 60 calendar days of rejection, whichever is later.

[D.] E. The CMS Program reserves the right to return to the provider, before payment, all:

(1)—(2) (text unchanged)

[E.] F. If payment is denied by the CMS Program due to late billing, the provider may not seek payment from the child's family.

**[.21] .14 Billing Procedures for Physician Office Services.**

A. A physician shall:

(1) Comply with all procedures listed in Regulation [.20] .13 of this chapter;

(2) Charge the CMS Program the usual and customary charge to the general public for similar services; and

(3) Bill the CMS Program [on forms] as specified by the CMS Program.

B. The CMS Program shall:

- (1) (text unchanged)
- (2) Pay for covered services that are the lower of the:
  - (a) Physician's customary charge[.]; or
  - (b) (text unchanged)
- (3) Reimburse the provider for:

(a) Dispensed drugs at rates established by COMAR 10.09.03[.]; and

(b) (text unchanged)

C. The CMS Program reserves the right to negotiate and establish a different fee for the physician or the group of physicians under contract to a hospital to provide services when a portion of the cost of the contract is paid as the hospital's cost.

**[.22] .15 Billing Procedures for Medically Necessary Dental Services.**

A. A dentist shall comply with all procedures listed in Regulation [.20] .13 of this chapter.

B. The CMS Program shall:

- (1)—(2) (text unchanged)

**[.23] .16 Billing Procedures for Orthodontic Services.**

A. An orthodontist shall comply with all procedures listed in Regulation [.20] .13 of this chapter.

B. The CMS Program shall:

(1) Reimburse for correction of the full permanent dentition; and

(2) Give special consideration to services for children with malocclusions in the mixed dentition associated with cleft palates or other craniofacial deformities[; and]

[(3) Authorize reimbursement for services to children meeting the criteria of the orthodontic review process if the family is determined to be financially eligible and there are State funds available].

C. The [program] CMS Program may not reimburse for preliminary visits to the orthodontist.

[D. If the Program has determined the family to be financially eligible, and if State funds are available, the provider shall receive an authorization from CMS.

E. If a child is approved for orthodontic treatment, CMS shall authorize payment.

F. If a child is not seen during a specific period of time, the provider shall notify CMS as to when the child is expected to be seen for treatment.

G. If the applicant is not approved, the Program shall send notification to the applicant, local health department, and orthodontist.]

[H.] D. (text unchanged)

[I. CMS shall provide payment for treatment only to board-certified or board-eligible orthodontists.]

**[.24] .17 Billing Procedures for Durable Goods and Equipment.**

A. The durable goods and equipment providers shall comply with all procedures listed in Regulation [.20] .13 of this chapter.

B. A provider shall charge the [usual and customary cost of durable goods and equipment to the general public and the Program] CMS Program the usual and customary charge to the general public for similar durable goods and equipment.

C. The CMS Program shall:

[(1) Pay for repairs to purchased durable medical equipment according to the following:

(a) Wholesale cost plus 40 percent to the provider for all materials;

(b) Reasonable charges for labor, which may not exceed the usual and customary charges for similar services in the provider's geographic area; and

(c) The manufacturer's suggested retail price;]

[(2)] (1) Pay for covered services which are the least expensive, except for those described in §B of this regulation; [and]

[(3)] (2) Determine, based upon expected duration of medical needs, whether durable medical equipment will be purchased or rented; and

(3) Pay for repairs to purchased durable medical equipment and disposable medical supplies according to the Medical Assistance reimbursement rate for charges.

D. The ownership of equipment shall remain with the CMS Program and shall be recovered at the option of the CMS Program.

**[.25] .18 Billing Procedures for Pharmacy Services.**

A. A pharmacy provider shall comply with all procedures listed in Regulation [.20] .13 of this chapter.

B. A pharmacy provider shall:

(1) Upon request, produce records to verify any charge to the CMS Program; and

[(2) Bill all appropriate third-party payers before requesting payment from the Program; and]

[(3)] (2) Charge the CMS Program the usual and customary charge to the general public for similar prescriptions.

C. Determination of allowable cost for multiple source drugs designated by the [Health Care Financing Administration] Centers for Medicare and Medicaid Services of the Department of Health and Human Services or for each drug listed in the formulary allowable cost shall be the lowest of the maximum allowable cost [(MAC)].

D. Payment for covered services to a pharmacy shall be made as follows:

(1) Payment for [legend drugs] formulary drug preparation shall be the:

(a)—(b) (text unchanged)

(2) Payment for over-the-counter drugs is not covered except in extenuating circumstances at the discretion of the CMS Program[;]

(3) Payment for medical supplies and durable equipment shall be the:

(a) Most cost-efficient; or

(b) Maximum limit established by the Department based upon the lowest price at which the product is generally available throughout the State.

E. In order to determine whether the current professional fee is appropriate, the Department shall periodically conduct surveys to determine the actual costs involved in filling a prescription in the State].

**[.26] .19 Billing Procedures for [In-State] Hospitals.**

[The in-State] A. All hospitals shall comply with the following procedures:

[A.] (1) Hospitals located in Maryland that participate in the CMS Program shall charge and be reimbursed at the [Medicaid] Medical Assistance rates approved by the Health Services Cost Review Commission;

[B. A general or special hospital whose rate has not been approved by the Health Services Cost Review Commission shall be reimbursed according to Medicare standards and principles for retrospective cost reimbursement described in 42 CFR 401—405, 413, and 488, which is incorporated by reference, or on the basis of charges if less than reasonable cost;]

(2) The CMS Program shall pay room and board charges for the day of admission, and may not pay room and board charges for the day of discharge from the hospital;

[C.] (3) The CMS Program may not reimburse for the services of a hospital's salaried or contractual physicians as a separate line item;

[D.] (4) (text unchanged)

[E.] (5) When a patient is discharged from one general hospital and is admitted to another general hospital and 24 hours have not

elapsed between the discharge and admission, the CMS Program shall pay only for those medically necessary days, with the payment for the patient's hospitalization being apportioned between the two hospitals;

[F.] (6) The CMS Program shall be contacted regarding exceptions or extenuating circumstances relating to admissions and discharges[,] if the patient returns the same day before the hospital patient count[.];

(7) All nonemergency inpatient hospital admissions require preadmission approval by the CMS Program;

(8) Authorization is required by the CMS Program or its designee for more than one preoperative inpatient day; and

(9) The CMS Program may not reimburse for hospital admissions where a child has been discharged due to cancellation of planned surgery or treatment. The hospital may not bill the family for these charges.

B. In addition, all out-of-state providers shall:

(1) Participate in Title XVIII of the Social Security Act;

(2) Have in effect a utilization review plan applicable to all patients who receive Medical Assistance under Title XIX of the Social Security Act and which meets the requirements of the Social Security Act, §186(k), unless a waiver has been granted by the Secretary of Health and Human Services; and

(3) Meet additional conditions for participation and comply with the requirements specified in Regulation .11 of this chapter.

C. All hospital services shall be reimbursed at the Medical Assistance rate.

**[.28] .20 Cause for Suspension or Removal and Imposition of Sanctions.**

A. If the Department determines that a provider, vendor, agent or employee of the provider, vendor, or a person with an ownership interest in the provider or vendor has failed to comply with these regulations, or applicable federal or State laws or regulations, the Department may initiate one or more of the following actions against the responsible party:

(1) Suspension from the CMS Program;

(2) Withholding of payment from the CMS Program;

(3) Removal from the CMS Program; and

(4) Disqualification from future participation in the CMS Program, either as a provider or vendor providing services for which CMS Program payment may be claimed.

B. (text unchanged)

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

**Subtitle 26 BOARD OF  
ACUPUNCTURE**

**10.26.04 Rules of Procedure for Board Hearings**

Authority: Health Occupations Article, §§1A-205 and 1A-403, Annotated Code of Maryland

**Notice of Proposed Action**

[15-079-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .12 under **COMAR 10.26.04 Rules of Procedure for Board Hearings**. This action was considered at a public meeting on July 8, 2014, notice of which was given by publication on the Board's website at <http://dhmh.maryland.gov/bacc/SitePages/boardmeetings.aspx>, pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to:

(1) Authorize the Board of Acupuncture (the Board) to impose a civil fine of \$100 per day, not to exceed \$5,000, against a licensee who practices on an expired license;

(2) Prohibit the Board from imposing a \$100 per day civil fine against a licensee for practicing on an expired license if the licensee reinstates the license within 30 days of its expiration;

(3) Authorize the Board to impose a civil fine of not less than \$5,000 and no more than \$50,000 against an individual for practicing acupuncture without a license or for misrepresenting to the public that the individual is authorized to practice acupuncture; and

(4) Require the Board to consider certain factors when imposing the civil fine.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to [dhmh.regs@maryland.gov](mailto:dhmh.regs@maryland.gov), or fax to 410-767-6483. Comments will be accepted through March 9, 2015. A public hearing has not been scheduled.

**.12 Imposition of Penalties.**

A. The Board may impose a civil monetary penalty instead of or in addition to a disciplinary sanction authorized by Health Occupations Article, §1A-309, Annotated Code of Maryland.

B. *Practicing on an Expired License.*

(1) *The Board may impose a civil fine against an acupuncturist who practices acupuncture on an expired license in the amount of \$100 per day not to exceed \$5,000.*

(2) *The Board may not impose a fine under §B(1) of this regulation against an acupuncturist for practicing acupuncture on an expired license if the acupuncturist's license is reinstated within 30 calendar days of the expiration date of the license and the licensee complies with COMAR 10.26.02.05D.*

C. *Practicing Without a License or Misrepresentation.*

(1) *The Board may impose a civil fine of no less than \$5,000 and no more than \$50,000 against an individual who practices acupuncture without a license or represents to the public, by description of services, methods, or procedures, or otherwise, that the individual is authorized to practice acupuncture in this State.*

(2) *Factors determining the amount of the fine include, but are not limited to, the following:*

(a) *The extent to which the individual derived any financial benefit from the unauthorized practice;*

(b) *The willfulness of the unauthorized practice;*

(c) *Actual or potential harm caused by the unauthorized practice;*

(d) *The length of time in which the individual engaged in the unauthorized practice; and*



(e) *The cost of any Board investigation.*

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

**Subtitle 32 BOARD OF PHYSICIANS**

**10.32.01 General Licensure Regulations**

Authority: Health Occupations Article, §§14-205 and 14-207, Annotated Code of Maryland

**Notice of Proposed Action**

[15-065-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .12 under **COMAR 10.32.01 General Licensure Regulations**. This action was considered by the Board of Physicians at a public meeting held on June 26, 2013, notice of which was given by publication in 40:12 Md. R. 1058 (June 14, 2013) pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to increase the current fee being charged by the Board for the issuance of dispensing permits. This fee increase is necessary in order to cover the cost of inspections of permit holder’s offices by the Division of Drug Control. The inspections are required by the passage of S.B. 603 Health Care Practitioners — Licensed Dentists, Physicians, and Podiatrists — Personally Preparing and Dispensing Prescription Drugs and Devices (Ch. 267, Acts of 2012).

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The contribution to the General Fund will increase by \$1,000 per permit holder due to the increased cost of dispensing permits.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE	
B. On other State agencies:	(R+)	\$300,000
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	(-)	\$300,000
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.)

B. Revenue gain to the General Fund of approximately \$300,000 results from the increase in the cost of obtaining a dispensing permit from \$50 to \$1,050 with \$1,000 being transferred by the Board into the General Fund. Dispensing permits are valid for 5 years. The

Board estimates that approximately 300 permits are issued or renewed every year.

$300 \times \$1,000 = \$300,000$

D. Revenue loss to regulated industries of approximately \$300,000 is a result of the increase in the cost of obtaining a dispensing permit from \$50 to \$1,050.

$100 \times \$1,000 = \$300,000.$

**Economic Impact on Small Businesses**

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

To the extent that a small business would pay the fee for a dispensing permit for a licensee, there will be an economic impact to the small business. (See Estimate of Economic Impact for specific information.)

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through March 9, 2015. A public hearing has not been scheduled.

**.12 Fees.**

The fees are as follows:

A.—D. (text unchanged)

E. Other fees:

(1)—(3) (text unchanged);

(4) Permit to dispense prescription drugs — [\$50] \$1,050;

(5)—(8) (text unchanged)

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

**Subtitle 32 BOARD OF PHYSICIANS**

**Notice of Proposed Action**

[15-060-P]

The Secretary of Health and Mental Hygiene proposes to:

(1) Amend Regulations .01, .09, .10, .12, and .13 under **COMAR 10.32.06 Licensure of Polysomnographic Technologists;** and

(2) Adopt new Regulation .08 under **COMAR 10.32.11 Licensing of Respiratory Care Practitioners.**

This action was considered at a public meeting held on September 24, 2014, notice of which was given by publication on the Board’s website pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to:

(1) Allow a licensed respiratory care practitioner to practice respiratory care in a sleep laboratory;

(2) Authorize a licensed respiratory care practitioner who was licensed before December 31, 2012, to practice polysomnography without obtaining an additional license to practice polysomnography;

(3) Broaden the Board’s authority in the application of a civil fine;

(4) Repeal a fee for inactive status;

(5) Add a ground for sanctioning a licensee;

(6) Prohibit physicians and specified entities from employing an unlicensed individual to practice polysomnography; and

(7) Add fines to the sanctioning guidelines which will be used by the Board in sanctioning polysomnographic technologists.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through March 9, 2015. A public hearing has not been scheduled.

**10.32.06 Licensure of Polysomnographic Technologists**

Authority: Health Occupations Article, §§1-606, 14-205, 14-5C-02—14-5C-04, 14-5C-08, 14-5C-17, 14-5C-22.1, and 14-5C-23, Annotated Code of Maryland

**.01 Scope.**

A.—D. (text unchanged)

*E. This chapter does not prohibit a licensed respiratory care practitioner from practicing respiratory care within the scope of practice of the respiratory care practitioner's license, including practicing respiratory care in a sleep laboratory.*

*F. This chapter does not prohibit the practice of respiratory care by a practitioner who was licensed by the Board to practice respiratory care on or before December 31, 2012, and whose duties include practicing polysomnography.*

**.09 Fees.**

The following fees are applicable to polysomnographic technologists:

A.—C. (text unchanged)

[D. Inactive status fee — \$50;]

[E.] D.—[G.] F. (text unchanged)

**.10 Prohibited Conduct.**

A. Subject to the hearing provisions of Health Occupations Article, §14-405, Annotated Code of Maryland, the Board may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee:

(1)—(25) (text unchanged)

(26) Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the licensee is licensed and qualified to render because the individual is HIV positive; [or]

(27) Practices or attempts to practice a polysomnography procedure or uses or attempts to use polysomnography equipment if the applicant or licensee has not received education and training in the performance of the procedure or the use of the equipment[.]; *or*

(28) *Fails to cooperate with a lawful investigation conducted by the Board.*

B. (text unchanged)

**.12 Penalties.**

A. (text unchanged)

B. An individual who violates [Health Occupations Article, §14-5C-21, Annotated Code of Maryland, and represents that the individual is authorized to practice polysomnography,] *any provision of Health Occupations Article, Title 14, Subtitle 5C, Annotated Code of Maryland, or any regulation in this chapter*, is subject to a civil fine of not more than \$5,000 to be levied by the Board.

C. The Board shall pay any penalty collected under §A or B of this regulation into the Board of Physicians Fund.

D. *Employment of Unlicensed Polysomnography Practitioner.*

(1) *A person who violates Health Occupations Article, §14-5C-22.1, Annotated Code of Maryland, is subject to a civil fine of not more than \$5,000.*

(2) *The Board shall pay any fine collected under §D of this regulation into the State's General Fund.*

[D.] E. Failure to Make a Required Report.

(1) (text unchanged)

(2) The Board shall deposit any funds collected under [§D(1)] §E(1) of this regulation into the State's General Fund.

[E.] F. General Application of Sanctioning Guidelines.

(1) Sections [E] F and [F] G of this regulation and Regulation .16A and B of this chapter do not apply to offenses for which a mandatory sanction is set by statute or regulation.

(2) Except as provided in [§F] §G of this regulation, for violations of the sections of the Maryland Polysomnography Act listed in the sanctioning guidelines, the Board shall impose a sanction not less severe than the minimum listed in the sanctioning guidelines nor more severe than the maximum listed in the sanctioning guidelines for each offense.

(3) Ranking of Sanctions.

(a)—(b) (text unchanged)

(c) A stayed suspension not meeting the criteria for [§E(3)(b)] §F(3)(b) of this regulation is ranked as a reprimand.

(4)—(7) (text unchanged)

(8) Depending on the facts and circumstances of each case, and to the extent that the facts and circumstances apply, the Board may consider the aggravating and mitigating factors set out in [§F(4) and (5)] §G(4) and (5) of this regulation and may in its discretion determine, based on those factors, that an exception should be made and that the sanction in a particular case should fall outside the range of sanctions listed in the sanctioning guidelines.

(9) (text unchanged)

[F.] G. Aggravating and Mitigating Factors.

(1) Depending on the facts and circumstances of each case, and to the extent that the facts and circumstances apply, the Board may consider the aggravating and mitigating factors set out in [§G(4) and (5)] §H(4) and (5) of this regulation and may in its discretion determine, based on those factors, that an exception should be made and that the sanction in a particular case should fall outside the range of sanctions listed in the sanctioning guidelines.

(2)—(6) (text unchanged)

[G.] H.—[H.] I. (text unchanged)

**.13 Sanctioning Guidelines for Polysomnographic Technologists.**

A. Subject to provisions of Regulation [.12E and F] .12F and G of this chapter, the Board may impose sanctions as outlined in §B of this regulation on polysomnographic technologists for violations of Health Occupations Article, §14-5C-17(a), Annotated Code of Maryland.

B. Range of Sanctions.

Ground	Maximum Sanction	Minimum Sanction	<i>Maximum Fine</i>	<i>Minimum Fine</i>
(1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant, licensee, or for another	Revocation	Reprimand with probation for 2 years	\$5,000	\$1,000
(2) Fraudulently or deceptively uses a license	Revocation	Probation	\$5,000	\$1,000
(3) Is guilty of unprofessional or immoral conduct in the practice of polysomnography	Revocation	Reprimand with probation for 2 years	\$5,000	\$1,000
(4) Incompetence. (a) Is physically or mentally incompetent	Revocation	Suspension until professional incompetence is addressed to Board's satisfaction	\$5,000	\$1,000
(b) Is professionally incompetent	Revocation	Suspension until physical or mental incompetence is addressed to Board's satisfaction	\$5,000	\$0
(5) Abandons a patient	Revocation	Reprimand	\$5,000	\$1,000
(6) Is habitually intoxicated	Revocation	Suspension until licensee is in treatment and has been abstinent for 6 months	\$5,000	\$0
(7) Is addicted to or habitually abuses any narcotic or controlled dangerous substance as defined in Criminal Law Article, §5-101, Annotated Code of Maryland	Revocation	Suspension until licensee is in treatment and has been abstinent for 6 months	\$5,000	\$0
(8) Provides professional services while: (a) Under the influence of alcohol; or (b) Using any narcotic or controlled dangerous substance as defined in Criminal Law Article, §5-101, Annotated Code of Maryland, or any other drug that is in excess of therapeutic amounts or without valid medical indication	Revocation	Suspension until licensee is in treatment and has been abstinent for 6 months	\$5,000	\$500
(9) Promotes the sale of services, drugs, devices, appliances, or goods to a patient so as to exploit the patient for financial gain	Suspension for 5 years	Reprimand	\$5,000	\$1,000
(10) Willfully makes or files a false report or record in the practice of polysomnography	Revocation	Reprimand	\$5,000	\$1,000
(11) Willfully fails to file or record any report as required under law, willfully impedes or obstructs the filing or recording of a report, or induces another to fail to file or record a report	Revocation	Reprimand	\$5,000	\$1,000
(12) Breaches patient confidentiality	Revocation	Reprimand	\$5,000	\$1,000
(13) Pays or agrees to pay any sum or provide any form of remuneration or material benefit to any person for bringing or referring a patient or accepts or agrees to accept any sum or any form of remuneration or material benefit from an individual for bringing or referring a patient	Revocation	Reprimand	\$5,000	\$500

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(14) Knowingly makes a misrepresentation while practicing polysomnography	Revocation	Reprimand	\$5,000	\$1,000
(15) Knowingly practices polysomnography with an unauthorized individual or aids an unauthorized individual in the practice of polysomnography	Revocation	Reprimand	\$5,000	\$1,000
(16) Knowingly delegates a polysomnographic duty to an unlicensed individual	Revocation	Reprimand	\$5,000	\$1,000
(17) Offers, undertakes, or agrees to cure or treat disease by a secret method, treatment, or medicine	Revocation	Reprimand	\$5,000	\$1,000
(18) Is disciplined by a licensing or disciplinary authority or is convicted or disciplined by a court of any state or country or is disciplined by any branch of the United States uniformed services or the U.S. Department of Veterans Affairs for an act that would be grounds for disciplinary action under the Board's disciplinary statutes	Penalty comparable to what the Board imposes under equivalent Maryland ground for discipline	Penalty equivalent to that imposed by original licensing authority if this is less than the Board sanction would be	<i>Fine comparable to what the Board imposes under equivalent Maryland ground for discipline</i>	<i>Fine equivalent to that imposed by the original licensing authority if this is lesser than the Board sanction would be</i>
(19) Fails to meet appropriate standards for the delivery of polysomnographic services performed in a hospital sleep laboratory or stand-alone sleep center	Revocation	Reprimand	\$5,000	\$500
(20) Knowingly submits false statements to collect fees for which services are not provided	Revocation	Reprimand	\$5,000	\$1,000
(21) Has been subject to investigation or disciplinary action by a licensing or disciplinary authority or by a court of any state or country for an act that would be grounds for disciplinary action under the Board's disciplinary statutes and has: (a) Surrendered the license, if any, issued by the state or country; or (b) Allowed the license, if any, issued by the state or country to expire or lapse	Penalty comparable to what the Board imposes under equivalent Maryland ground for discipline	Penalty equivalent to that imposed by original licensing authority if this is less than the sanction would be from the Board	<i>Fine comparable to what the Board imposes under equivalent Maryland ground for discipline</i>	<i>Fine equivalent to that imposed by the original licensing authority if this is less than the Board sanction would be</i>
(22) Knowingly fails to report suspected child abuse in violation of Family Law Article, §5-704, Annotated Code of Maryland	Revocation	Reprimand	\$5,000	\$500
(23) Sells, prescribes, gives away, or administers drugs for illegal or illegitimate medical purposes	Revocation	Reprimand, probation for 3 years with practice oversight	\$5,000	\$500
(24) Practices or attempts to practice beyond the authorized scope of practice	Revocation	Suspension for 3 months	\$5,000	\$2,500
(25) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside	Revocation	Suspension	\$5,000	\$500
(26) Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the licensee is licensed and qualified to render because the individual is HIV positive	Suspension for 1 year	Reprimand	\$5,000	\$500

(27) Practices or attempts to practice a polysomnography procedure or uses or attempts to use polysomnography equipment if the applicant or licensee has not received education and training in the performance of the procedure or the use of the equipment	Revocation	Suspension for 3 months	\$5,000	\$2,500
(28) Fails to cooperate with a lawful investigation conducted by the Board	Revocation	Reprimand	\$5,000	\$1,000

### 10.32.11 Licensing of Respiratory Care Practitioners

Authority: Health Occupations Article, §§14-5A and 14-5C-03, Annotated Code of Maryland

#### .08 Qualifications for Respiratory Care Practitioners Practicing Polysomnography.

A. A respiratory care practitioner licensed by the Board to practice respiratory care on or before December 31, 2012, whose duties include practicing respiratory care in a sleep laboratory or practicing polysomnography, is not required to obtain an additional license to practice polysomnography.

B. A respiratory care practitioner licensed after December 31, 2012, whose duties include practicing polysomnography shall obtain a separate license to practice polysomnography.

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

## Subtitle 36 BOARD OF EXAMINERS OF PSYCHOLOGISTS

### Notice of Proposed Action

[15-083-P]

The Secretary of Health and Mental Hygiene proposes to:

(1) Amend Regulations .01—.04-4 and .06—.08, adopt new Regulation .09, amend and recodify existing Regulation .09 to be Regulation .10, and recodify existing Regulations .10—.12 to be Regulations .11—.13 under **COMAR 10.36.01 Procedures**;

(2) Amend Regulations .01—.05 and .07—.09 and adopt new Regulation .05-1 under **COMAR 10.36.02 Continuing Education**;

(3) Amend Regulations .01, .02, .07, and .09 under **COMAR 10.36.03 Procedure for Board Hearings**;

(4) Amend Regulations .01—.08 under **COMAR 10.36.05 Code of Ethics and Professional Conduct**;

(5) Amend Regulation .02 under **COMAR 10.36.06 Fee Schedule**;

(6) Repeal existing Regulations .01—.07 and adopt new Regulations .01—.06 under **COMAR 10.36.07 Psychology Associate**; and

(7) Amend Regulations .02—.07 under **COMAR 10.36.08 Disciplinary Sanctions, Monetary Penalties, and Civil Fines**.

This action was considered at a public meeting on September 12, 2014, notice of which was given on the Board’s website at <http://dhmh.maryland.gov/psych/SitePages/Home.aspx>, pursuant to State Government Article §10-506(c)(1), Annotated Code of Maryland.

#### Statement of Purpose

The purpose of this action is to:

(1) Apply certain COMAR regulations to psychology associates, in addition to psychologists;

(2) Clarify application procedures for applicants for a license or for a registration;

(3) Establish application requirements for applicants to be a psychology associate;

(4) Clarify that certain regulations apply only to licensed psychologists and not to psychology associates;

(5) Establish requirements for registration renewal and for when a registration expires;

(6) Provide that a licensed psychologist shall earn continuing education (CE) credits in activities designed to enhance competence in the provision of supervision to psychology associates, if the psychologist supervised psychology associates during the CE reporting period;

(7) Establish the number of CEs a psychology associate is required to complete during the CE reporting period;

(8) Establish that a psychologist may obtain a certain number of CE hours through participation in a peer consultation group, set forth required practices of a peer consultation group, require certain information to be documented, and establish the number of CE hours that can be earned for a certain number of hours of participation in a peer consultation group;

(9) Set requirements for a psychology associate to reinstate their registration based on the amount of time the registration has been expired;

(10) Increase certain fees, repealing a fee, and establish new fees;

(11) Establish that a licensed psychologist shall supervise a registered psychology associate, establish responsibilities of supervisors of psychology associates and of the supervisory relationship, require certain representations to the public, establish recordkeeping requirements to document supervisory sessions and to require the signing of all clinical documents by the supervisor, and provide that the supervisory relationship is subject to review by the Board; and

(12) Apply the Board Code of Ethics and disciplinary sanctions to psychology associates.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

**I. Summary of Economic Impact.** The economic impact of these amendments will be \$27,450 per year in revenue to the Board which will help to offset the administrative cost of record management and offset the cost to offer internet base testing.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(R+)	\$62,000 per year

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

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)	\$62,000 per year
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.)

A. and D. The Board expects that approximately \$62,000 will be collected per year.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through March 9, 2015. A public hearing has not been scheduled.

**10.36.01 Procedures**

Authority: Health Occupations Article, §§18-206, 18-301(b)(3) and (d), 18-302–18-305, and 18-317, Annotated Code of Maryland

**.01 Definitions.**

- A. (text unchanged)
- B. Terms Defined.
  - (1) (text unchanged)
  - (2) “Applicant” means an individual seeking a license *or* registration to practice psychology in Maryland.
  - (3)—(11) (text unchanged)

**.02 Application Required for Licensure or Registration.**

- [A. The Board shall send an applicant the following materials:
  - (1) Application for licensure;
  - (2) Copies of the following:
    - (a) Health Occupations Article, Title 18, Annotated Code of Maryland;
    - (b) This subtitle; and
    - (c) Other Maryland laws pertaining to the practice of psychology; and
  - (3) Instructions for applicants.
- B. An application is complete when the following conditions are met:
  - (1) The completed application form is:
    - (a) Submitted to the Board and notarized; and
    - (b) Accompanied by the required, nonrefundable application fee in the form of a personal check, cashier’s check, or money order;
  - (2) Official transcripts of all post-baccalaureate studies are submitted directly to the Board by the educational institutions;

- (3) Reference letters are submitted:
  - (a) From three psychologists, preferably licensed or certified, who can address issues of professional education, professional supervised experience, competence, professional conduct, and moral character; and
  - (b) Directly to the Board from the references listed on the application form;
- (4) The Board receives written, verified evidence satisfactory to the Board that the applicant has:
  - (a) Completed the application for a criminal history records check; and
  - (b) Paid all fees required by the Central Repository and the FBI; and
- (5) An applicant who is a nonresident or is not employed within the State submits a statement to show the reasons for seeking licensure in the State.]

A. An application packet for licensure is complete when the following conditions are met:

- (1) The completed application packet is:
  - (a) Submitted to the Board and notarized; and
  - (b) Accompanied by the required nonrefundable application fee in the form of a personal check, cashier’s check or money order;
- (2) An application packet includes:
  - (a) Answers to application questions;
  - (b) Documentation of supervised professional experience;
  - (c) Attestations of supervised professional experience submitted to the Board by the persons providing the references;
  - (d) Official transcripts of all post-baccalaureate studies submitted to the Board by the educational institutions;
  - (e) An Examination for Professional Practice in Psychology (EPPP) score, if applicable, submitted to the Board by the Association of State and Provincial Psychology Boards (ASPPB); and
  - (f) Criminal history records check reports are received by the Board; and
- (3) An applicant who is a nonresident or is not employed within the State submits a statement to show the reasons for seeking licensure in the State.

B. An application packet for registration is complete when the following conditions are met:

- (1) The application packet is:
  - (a) Submitted to the Board and notarized; and
  - (b) Accompanied by the required nonrefundable application fee in the form of a personal check, cashier’s check, or money order;
- (2) Official transcripts of all studies are submitted to the Board by the educational insitutions; and
- (3) Criminal history records check reports are received by the Board.

C. The official date of receipt of the application [form] is the date on which the Board [has received] receives both the:

- (1)—(2) (text unchanged)
- D. The Board shall notify the applicant of missing required documents not more than [10] 15 business days after receipt of the application.
- E. An application is terminated when:
  - (1) (text unchanged)
  - (2) The applicant fails either the [Examination for Professional Practice in Psychology (JEPPP)] if applicable or the Maryland examination.

- F. Review of Completed Applications by the Board.
  - (1) (text unchanged)
  - (2) If the applicant for licensure is applying for limited practice reciprocity, as described in Regulation .07 of this chapter, the application shall be reviewed within [10] 15 business days after the required documents are on file.

(3)—(5) (text unchanged)

G. (text unchanged)

H. The Board may not approve an applicant for licensure *or* registration until the Board has:

(1)—(2) (text unchanged)

I. An applicant whose application for licensure *or* registration is rejected shall be notified of the basis for that rejection.

J. An applicant may appeal a rejection of application for licensure *or* registration by notifying the Board in writing, by certified mail, within 60 days of receipt of the Board's decision, and by:

(1)—(2) (text unchanged)

K. An applicant who fails [one or both examinations] *an examination* may begin the application process again by submitting:

(1) A new application for licensure *or* registration along with the required application fee; and

(2) (text unchanged)

L. (text unchanged)

**.03 Education Required for Licensure.**

A. The applicant *for licensure* shall have a doctoral degree in psychology as defined in Health Occupations Article, [§18-101 (g)] §18-101(c), Annotated Code of Maryland.

B. *The applicant for registration as a psychology associate shall meet the educational requirement as defined in Health Occupations Article, §18-302(g), Annotated Code of Maryland.*

**.04 Professional Supervised Experience Required for Licensure — General.**

A. An applicant *for licensure* shall present evidence of having completed 2 years of supervised professional experience before taking the examinations required in Regulation .06 of this chapter.

B. (text unchanged)

C. Supervision Generally.

(1)—(3) (text unchanged)

(4) Psychology associates accruing supervised professional experience toward licensure shall receive the required amount of supervision specified in COMAR [10.36.07.05A] 10.36.07.03.

(5)—(6) (text unchanged)

**.04-1 Supervised Professional Experience — Programs That Are Not Practice-Oriented.**

A. For applicants *for licensure* graduating from programs that are not practice-oriented, supervised professional experience may be accrued in professional work in psychology using the methods, principles, and procedures of psychology, including, but not limited to:

(1)—(3) (text unchanged)

B.—C. (text unchanged)

**.04-2 Supervised Professional Experience — Practice-Oriented Programs.**

A. For applicants *for licensure* graduating from practice-oriented programs, supervised professional experience may be accrued through:

(1)—(4) (text unchanged)

B.—I. (text unchanged)

**.04-3 Post-Doctoral Supervised Professional Experience — General.**

A.—I. (text unchanged)

J. If a supervisee is accruing post-doctoral supervision as a registered [Psychology Associate] *psychology associate*, the supervisee shall also comply with the requirements of Regulation [.08].04-4 of this chapter.

**.04-4 Post-Doctoral Supervised Professional Experience as a Registered Psychology Associate.**

A. An applicant accruing post-doctoral supervised experience in an activity that is not exempt under Health Occupations Article, §§18-301 or 18-102(3), Annotated Code of Maryland, shall apply to the Board for [approval] *registration* as a psychology associate in accordance with COMAR 10.36.07.

B. (text unchanged)

C. [Psychology] *Registered psychology* associates accruing post-doctoral supervised professional experience toward licensure shall obtain supervision in accordance with the [psychology associate] requirements of COMAR 10.36.07.

**.06 Examinations Required for Licensure or Registration.**

A. (text unchanged)

B. *The Board requires applicants for registration to receive a passing score of at least 75 percent on the Maryland Examination prepared and scored by the Board.*

[B.] C. The Board shall ensure that the Maryland Examination tests applicants *for licensure or registration* on:

(1)—(2) (text unchanged)

[C.] D. The Board shall provide each applicant [with a copy of] *access to* all regulations and laws tested on the Maryland Examination.

[D. An applicant who fails either the Examination for Professional Practice in Psychology or the Maryland Examination may retake:

(1) Both examinations; or

(2) Only the Maryland Examination if a passing score was received on the Examination for Professional Practice in Psychology.]

E.—F. (text unchanged)

G. Limited Examination Reciprocity *for Licensure Applicants.*

(1)—(4) (text unchanged)

**.07 Exceptions to Licensure.**

A. (text unchanged)

B. Limited Practice Reciprocity.

(1) (text unchanged)

(2) The Board shall withdraw the temporary exception to practice psychology if the applicant fails [one or both of the examinations set forth in Regulation .06 of this chapter] *an examination required by the Board.*

(3)—(4) (text unchanged)

**.08 License Renewal, Expiration, and Inactive Status.**

A.—B. (text unchanged)

C. Inactive Status.

(1) A psychologist in good standing may request inactive status for [5] 2 years upon:

(a)—(b) (text unchanged)

(2) A licensee on inactive status may apply to have the inactive license status extended for an additional [5] 2 years upon payment of the inactive status fee.

(3) (text unchanged)

**.09 Registration Renewal and Expiration.**

A. *Renewal.*

(1) *A registration shall expire on March 31 unless it is renewed for an additional term as provided in this section.*

(2) *A registration may not be renewed for a term longer than 2 years.*

(3) *At least 90 days before the registration expires, the Board shall send a renewal notice to the registrant:*

(a) *By first class mail to the last known address of the registrant; or*

(b) *By electronic means to the last known electronic mail address of the registrant.*

(4) *The renewal notice shall state:*

(a) *The date the registration expires;*

(b) *Continuing education requirements;*

(c) *The date by which the renewal application must be received by the Board for the renewal to be issued and mailed before the registration expires; and*

(d) *The amount of the renewal fee.*

*B. Expiration. A registration automatically expires when the psychology associate fails to meet the renewal requirements by March 31.*

**[.09].10 Petitioning for Reinstatement Following Revocation.**

The Board may not consider a petition for reinstatement of a license *or registration* to practice psychology that has been revoked until at least 5 years have passed from the date of revocation.

**10.36.02 Continuing Education**

Authority: Health Occupations Article, §18-309[(d)](f), Annotated Code of Maryland

**.01 Scope.**

This chapter applies to all psychologists *and psychology associates* who want to renew their licensure *or registration* in the State.

**.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1)—(4) (text unchanged)

(5) “Continuing education (CE)” means learning experiences that:

(a) Are professional activities beyond that required for licensure *or registration*;

(b) (text unchanged)

(c) Enable psychologists *and psychology associates* to keep pace with emerging issues and technology; and

(d) Allow psychologists *and psychology associates* to develop, maintain, and increase competencies in order to improve services to the public and enhance contributions to the profession.

(6) (text unchanged)

(7) [“Course” means an activity with an instructor who:

(a) Is an expert in the course topic; and

(b) Imparts knowledge by a systematic presentation to participants.] *Course.*

(a) “Course” means an activity:

(i) *With one or more instructors who are experts in the topic and impart knowledge or professional skills by a systematic presentation to participants;*

(ii) *That may be offered in person or in real time through electronic means; and*

(iii) *That allows for interaction between the leader and the participants or among the participants.*

(b) “Course” includes seminars, symposiums, and workshops.

(8) “Independent study” means an activity requiring the study of [a book or other] *print or electronic materials offered by approved sponsors approved [by the American Psychological Association] for CE for independent or home study that is not a course as defined in §B(7) of this regulation.*

(9) “Peer consultation group” means a group of psychologists that meets in person, in a structured and organized manner, and discusses the clinical practice of psychology in order to broaden professional knowledge and expertise.

[(9)] (10) “Reporting period” means a 2-year period beginning on April 1, except as stated in Regulation .04C of this chapter, during which the completion of a minimum number of CE hours is required to renew a license *or registration* by March 31 following the reporting period.

[(10) “Seminar” means an activity with an expert leader who conducts a discussion on a specific topic with highly experienced participants.

(11) “Symposium” means an activity with:

(a) Two or more speakers having different views on a specific topic; and

(b) A discussant who summarizes the issues.

(12) “Workshop” means an activity with an instructor who:

(a) Is an expert in the specific topic; and

(b) Imparts knowledge to participants who have ample opportunity to interact.]

**.03 Goals of Continuing Education Activities.**

To qualify for approval by the Board, continuing education activities:

A. Shall meet one or more of the following objectives:

(1) Maintains the professional competency of psychologists *or psychology associates*;

(2) Increases the professional skills and knowledge of psychologists *or psychology associates*;

(3) Prepares psychologists *or psychology associates* for new roles or responsibilities in the practice of psychology; or

(4) (text unchanged)

B. (text unchanged)

**.04 Requirements.**

A. A psychologist shall complete a minimum of 40 CE hours during each reporting period with a:

(1) Maximum of 20 CE hours in independent study [that is approved by the American Psychological Association];

(2) Minimum of 3 CE hours in activities whose content area is:

(a)—(b) (text unchanged)

(c) Managing risks associated with the practice of psychology; [and]

(3) Minimum of 3 CE hours in activities designed to enhance competence in the provision of psychological services to culturally diverse populations; *and*

(4) *If the psychologist supervised psychology associates during the reporting period, minimum of 3 CE hours in activities designed to enhance competence in the provision of clinical supervision*

B. A psychology associate shall complete a minimum of 20 CE hours during each reporting period with a:

(1) Maximum of 10 CE hours in independent study;

(2) Minimum of 3 CE hours in activities whose content area is:

(a) Laws pertaining to the practice of psychology;

(b) Ethics and professional conduct in the practice of psychology; *or*

(c) Managing risks associated with the practice of psychology; *and*

(3) Minimum of 3 CE hours in activities designed to enhance competence in the provision of psychological services to culturally diverse populations.

[B.] C. (text unchanged)

[C.] D. Reporting Period.

(1) The reporting period for psychologists *or psychology associates* with license *or registration* numbers ending with an:

(a)—(b) (text unchanged)

(2) For psychologists *or psychology associates* receiving their initial license *or registration* with less than 12 months before the end of their reporting period, CE hours are not required for that reporting period.



(3) Psychologists receiving their *initial* license with 12 months or more before the end of their reporting period shall be required to complete 20 CE hours.

(4) *Psychology associates* receiving their initial registration 12 months or more before the end of their reporting period shall be required to complete 10 CE hours.

[D.] E. CE Audits.

(1) The Board shall *randomly* audit the continuing education documentation of all psychologists [randomly selected by license numbers] and *psychology associates*.

(2) *Psychologists and psychology associates* selected for an audit shall renew their license or registration by March 1.

[(2)] (3) Within [30] 10 days following notification by the Board, a psychologist or *psychology associate* who is audited shall provide:

(a)—(c) (text unchanged)

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

[(4)] (5) To earn CE credits for independent study, a psychologist or *psychology associate* shall:

(a)—(b) (text unchanged)

**.05 Types of Approved Continuing Education Activities.**

A. The total number of hours that may be used to fulfill CE requirements for scholarly activities included in §C of this regulation may not exceed 30 hours for *psychologists* or 15 hours for *psychology associates* during each 2-year reporting period.

B. (text unchanged)

C. Approved CE activities include the following:

(1) Authoring, editing, presenting, or reviewing a scholarly publication where:

(a) A maximum of 20 CE hours for *psychologists* or 10 CE hours for *psychology associates* may be earned during each 2-year reporting period [of] for publication by the author or authors of a book during the year of publication;

(b) A maximum of 15 CE hours for *psychologists* or 8 CE hours for *psychology associates* may be earned for each 2-year reporting period during the year of publication for serving as the:

(i)—(iii) (text unchanged)

(c) A maximum of 15 CE hours for *psychologists* or 8 CE hours for *psychology associates* may be earned for each 2-year reporting period for service by the editor or associate editor of a peer-reviewed scientific journal; and

(d) A maximum of 15 CE hours for *psychologists* or 8 CE hours for *psychology associates* may be earned for each 2-year reporting period for service as an editorial board member of a peer-reviewed scientific journal;

(2) Three CE hours may be earned for each hour of presentation of the first offering of scholarly papers[, seminars, symposia, or workshops] for an authorized sponsor with a maximum of 15 CE hours for *psychologists* or 9 CE hours for *psychology associates* for each 2-year reporting period;

(3) Three CE hours may be earned for developing and presenting a scholarly poster with a maximum of 15 CE hours for *psychologists* or 9 CE hours for *psychology associates* [earned] for each 2-year reporting period; and

(4) A maximum of 15 CE hours for *psychologists* or 8 CE hours for *psychology associates* may be earned for developing and instructing a new graduate level psychology course during each 2-year reporting period.

D. A maximum of 4 CE hours may be earned by a psychologist for participation in a peer consultation group during each 2-year reporting period, as specified in Regulation .05-1 of this chapter.

[D.] E. CE hours may be earned for attending courses [, symposia, and workshops] offered by an authorized sponsor specified in Regulation .06 of this chapter.

**.05-1 Peer Consultation Groups.**

A. A psychologist may earn CE credit for participation in a peer consultation group.

B. A peer consultation group shall:

(1) Meet to discuss the clinical practice of psychology;

(2) Assign a recording secretary to keep attendance and record a brief summary of what was discussed at the meeting;

(3) Meet for no less than 1 hour for every session; and

(4) Consist of no fewer than three psychologists and no more than six psychologists.

C. The recording secretary:

(1) Shall provide a copy of the meeting summary to each psychologist in attendance and keep a copy in a file maintained by the recording secretary;

(2) Shall complete, sign, and provide to each psychologist member a certificate at the end of the reporting period that verifies attendance and specifies the number of hours the psychologist participated in the peer consultation group;

(3) Shall ensure that another peer consultation group participant act as a substitute recording secretary at any group meeting at which the recording secretary is absent; and

(4) May be a role fulfilled by different psychologist participants during the life of the peer consultation group.

D. A psychologist participating in a peer consultation group:

(1) Shall provide the certificate of attendance to the Board at the time of renewal to verify participation in the peer consultation group;

(2) Shall provide copies of the meeting summaries to the Board in the event of a CE audit;

(3) Shall only receive CE credit for hours of peer consultation group meetings actually attended; and

(4) May participate in more than one peer consultation group, in which case hours of participation in all peer consultation groups shall be added together to calculate CE credit.

E. CE hours for participating in a peer consultation group may be earned as follows:

(1) One CE hour for 7 to 13 hours of participation in a peer consultation group during the reporting period;

(2) Two CE hours for 14 to 20 hours of participation in a peer consultation group during the reporting period;

(3) Three CE hours for 21 to 27 hours of participation in a peer consultation group during the reporting period; and

(4) Four CE hours for 28 or more hours of participation in a peer consultation group during the reporting period.

F. Extra hours of participation in a peer consultation group may not be carried over to the next reporting period for CE credit.

**.07 Denial of License or Registration Renewal for Failure to Meet Continuing Education Requirements.**

A. The Board shall deny a renewal application if:

(1) The psychologist or *psychology associate* did not complete required continuing education hours within the reporting period; or

(2) The psychologist or *psychology associate* did not fulfill audit requirements within 30 days.

B. Upon denying a renewal application, the Board shall notify the psychologist or *psychology associate* by certified mail that the psychologist's or *psychology associate's* renewal application has been denied for failure to comply with the continuing education requirements.

C. A psychologist or *psychology associate* may request a hearing on the denial of the renewal application. The request shall be:

(1)—(2) (text unchanged)

D. If requested by the psychologist or *psychology associate*, the Board shall convene a hearing within a reasonable time on the denial of the renewal application.

E. (text unchanged)

**.08 Continuing Education Required for License Reactivation or License or Registration Reinstatement.**

A. (text unchanged)

B. Expired License or Registration.

(1) A psychologist who applies for reinstatement of a license that expired less than 1 year from the date of application shall:

(a) Provide documentation of a minimum of 20 CE hours completed during the current reporting period, with not more than 10 CE hours in independent [or home] study;

(b)—(c) (text unchanged)

(2) A psychology associate who applies for reinstatement of a registration that expired less than 1 year from the date of application shall:

(a) Provide documentation of a minimum of 10 CE hours completed during the current reporting period, with not more than 5 CE hours in independent study;

(b) Complete the remainder of continuing education requirements by the end of the reporting period; and

(c) Pay the reinstatement and renewal fees as specified in COMAR 10.36.06.

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

(4) A psychology associate who applies for reinstatement of a registration that expired more than 1 year but less than 5 years from the date of application shall:

(a) Provide documentation of 20 CE hours for the current reporting period; and

(b) Pay the reinstatement and renewal fees as specified in COMAR 10.36.06.

[(3)] (5) A psychologist whose license has been expired for more than 5 years and who did not make application to go on inactive status shall reapply for licensure.

(6) A psychology associate whose registration has been expired for more than 5 years shall reapply for a registration.

[(4)] (7) (text unchanged)

**.09 Modifications of CE Requirements.**

A. (text unchanged)

B. To request modifications of the CE requirements, a psychologist or psychology associate shall:

(1)—(2) (text unchanged)

(3) Specify acceptable procedures for completion and documentation of [40 CE] the required hours within the reporting period.

**10.36.03 Procedure for Board Hearings**

Authority: Health Occupations Article, §§18-206 and 18-315, State Government Article, §10-206, Annotated Code of Maryland

**.01 Scope.**

This chapter applies to all contested case hearings held under the authority of Health Occupations Article, §18-315, Annotated Code of Maryland, which concern possible action to be taken by the State Board of Examiners of Psychologists under Health Occupations Article, §18-313, Annotated Code of Maryland, regarding the licensure or registration, or discipline of psychologists and psychology associates. This chapter does not apply to conferences or other informal investigations or proceedings.

**.02 Notice of Hearing.**

A. Written notice of charges and a hearing shall be sent by the Chairman of the Board to the licensee, registrant, or applicant for licensure or registration at least 30 days before the hearing. The notice shall state the date, time, and place of the hearing. It also shall state the issues or charges involved in the proceedings.

B.—C. (text unchanged)

**.07 Decision and Order.**

A. Each decision and order rendered by the Board shall be in writing and shall be accompanied by findings of fact and conclusions of law. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed promptly to each party or his attorney of record. In any order involving patients or clients of a [licensee] psychologist or psychology associate these individuals will not be referred to by name if in the Board's opinion confidentiality is in their best interests.

B. If the [license holder] psychologist or psychology associate is found not to be in violation of Health Occupations Article, Title 18, Annotated Code of Maryland, the Board immediately shall order a dismissal of the charges and the exoneration of the accused, and no further action may be taken by the Board on the charges involved. Upon a finding not in violation of Health Occupations Article, Title 18, the Board shall expunge the record of the proceedings.

**.09 Appeal.**

Any person whose license or registration has been revoked or suspended by the Board, or any person placed on probation or reprimanded by the Board, may seek judicial review of the Board's decision. This review shall be in accordance with the provisions of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

**10.36.05 Code of Ethics and Professional Conduct**

Authority: Health Occupations Article, §§1-212, 18-311, and 18-313(7), Annotated Code of Maryland

**.01 Scope.**

This chapter governs the professional conduct of licensed psychologists, registered psychology associates, and applicants for both.

**.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) "Client" means the individual, couple, family, group, business, agency, school, organization, or association that the psychologist or psychology associate provides, or has provided, with professional services.

(3)—(4) (text unchanged)

(5) "Psychology associate" means an individual who is registered by the Board to practice psychology under the supervision of a psychologist.

[(5)] (6) "Public statement" means any oral, printed, or electronic communication or announcement made by or on behalf of a psychologist, psychology associate, or applicant, and directed to another individual or group.

[(6)] (7) (text unchanged)

**.03 Responsibilities and Requirements.**

A. (text unchanged)

(1) A psychologist shall:

(a) Be fully responsible for the psychologist's professional decisions and professional actions;

(2) A psychologist and psychology associate shall be jointly responsible for the psychology associate's professional decisions and professional actions.

(3) A psychologist or psychology associate shall:

[(b)] (a)—[(c)] (b) (text unchanged)

[(d)] (c) Make known the psychologist's *or psychology associate's* commitment to the Code of Ethics and Professional Conduct and resolve potential conflicts with the Code of Ethics and Professional Conduct in a responsible manner;

[(e)] (d) (text unchanged)

[(f)] (e)—[(g)] (f) (text unchanged)

[(2)] (4) A psychologist *or psychology associate* may not:

(a)—(c) (text unchanged)

(d) Take credit for work the psychologist *or psychology associate* has not actually performed or supervised.

B. (text unchanged)

C. Research. A psychologist *or psychology associate* shall:

(1)—(6) (text unchanged)

(7) Report research findings accurately, presenting only the psychologist's *or psychology associate's* work or making appropriate citations when needed.

D. Teaching. A psychologist *or psychology associate* shall ensure that statements in course catalogs, seminar brochures, and course outlines are accurate and not misleading, particularly in terms of the:

(1)—(3) (text unchanged)

**.04 Competence.**

A. Professional Competence. A psychologist *or psychology associate* shall:

(1)—(3) (text unchanged)

(4) Use interventions and assessment techniques only when the psychologist *or psychology associate* knows that the circumstances are appropriate applications of those interventions and techniques, supported by reliability, validation, standardization, and outcome studies;

(5) (text unchanged)

(6) Engage in ongoing consultation with other psychologists, *psychology associates*, or relevant professionals and seek appropriate education, training, and experience, when developing competence in a new service or technique; and

(7) (text unchanged)

B. (text unchanged)

(1) A psychologist *or psychology associate* shall:

(a) Represent accurately and objectively the psychologist's *or psychology associate's* professional qualifications; and

(b) Seek competent professional assistance to determine whether to suspend, terminate, or limit the scope of professional or scientific activities when the psychologist *or psychology associate* becomes or is made aware that the psychologist's *or psychology associate's* competence is impaired.

(2) A psychologist *or psychology associate* may not:

(a) Undertake or continue a professional relationship with a client when the competence or objectivity of the psychologist *or psychology associate* is or could reasonably be expected to be impaired due to:

(i) (text unchanged)

(ii) The psychologist's *or psychology associate's* present or previous familial, social, sexual, emotional, financial, supervisory, political, administrative, or legal relationship with the client or a person associated with or related to the client; or

(b) Engage in other relationships that could limit the psychologist's *or psychology associate's* objectivity or create a conflict of interest or the appearance of a conflict of interest.

**.05 Representation of Services and Fees.**

A. (text unchanged)

(1) A psychologist *or psychology associate* shall:

(a) Represent accurately and objectively the psychologist's *or psychology associate's* professional qualifications, education, experience, and areas of competence;

(b) Correct others who misrepresent the psychologist's *or psychology associate's* professional qualifications or affiliations; and

(c) (text unchanged)

(2) A psychologist *or psychology associate* may not:

(a) Misrepresent, directly or by implication, the affiliations or the purposes or characteristics of institutions and organizations with which the psychologist *or psychology associate* is affiliated;

(b) Claim organizational membership in a manner that suggests specialized competence or qualifications that the psychologist *or psychology associate* does not have;

(c)—(d) (text unchanged)

B. Informed Consent. When conducting research or providing assessment, psychotherapy, counseling, or consulting with an individual or organization in person or by electronic transmission or other forms of communication, a psychologist *or psychology associate* shall:

(1)—(3) (text unchanged)

C. Financial Arrangements and Fees. A psychologist *or psychology associate* shall:

(1)—(4) (text unchanged)

(5) Refrain from signing statements for insurance purposes as though the psychologist *or psychology associate* provided a service that was actually provided by someone else.

**.06 Psychological Assessment.**

A. A psychologist *or psychology associate* shall:

(1)—(9) (text unchanged)

B. A psychologist *or psychology associate* may not:

(1)—(3) (text unchanged)

**.07 Client Welfare.**

A. A psychologist *or psychology associate* shall:

(1) Take appropriate steps to disclose to all involved parties conflicts of interest that arise, with respect to a psychologist's *or psychology associate's* clients, in a manner that is consistent with applicable confidentiality requirements; and

(2) Make arrangements for another appropriate professional to deal with emergency needs of the psychologist's *or psychology associate's* clients as appropriate, during periods of anticipated absences from professional availability.

B. Exploitation. A psychologist *or psychology associate* may not:

(1)—(4) (text unchanged)

(5) Enter into a new nonpsychological, nonprofessional relationship with a former client that is considered exploitative dependent on, but not limited to:

(a)—(c) (text unchanged)

(d) The mental stability of the psychologist *or psychology associate* and former client;

(e) The circumstances of termination, including, but not limited to, statements or actions of the psychologist *or psychology associate* suggesting or inviting the possibility of a post-termination relationship; and

(f) (text unchanged)

C. Sexual Misconduct. A psychologist *or psychology associate* may not:

(1) (text unchanged)

(2) Engage in sexual intimacies with a former client:

(a) (text unchanged)

(b) After the 2 years following the cessation or termination of professional services if the sexual relationship is exploitative in light of the following factors:

(i)—(iii) (text unchanged)

(iv) The mental stability of the psychologist *or psychology associate* and former client;

(v) The circumstances of termination including, but not limited to, statements, or actions of the psychologist *or psychology*

*associate* suggesting or inviting the possibility of a post-termination sexual or romantic relationship; and

(vi) (text unchanged)

(3)—(6) (text unchanged)

D. Harassment. A psychologist *or psychology associate* may not:

(1) Engage in sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature, which behavior occurs in connection with the psychologist's *or psychology associate's* professional role;

(2) Engage in sexual harassment of the psychologist's *or psychology associate's* past or present clients, supervisees, research participants, or employees, with deliberate or repeated comments, gestures, or physical contacts of a sexual nature; or

(3) (text unchanged)

E. A psychologist *or psychology associate* shall:

(1)—(2) (text unchanged)

F. Termination of Services. A psychologist *or psychology associate* shall:

(1) (text unchanged)

(2) Unless precluded by the actions of the client, terminate the professional relationship in an appropriate manner, notify the client in writing of this termination, and assist the client in obtaining services from another professional, if:

(a)—(c) (text unchanged)

(d) The psychologist *or psychology associate* has been threatened or otherwise endangered by the client or another person with whom the client has a relationship.

**.08 Confidentiality and Client Records.**

A. A psychologist *or psychology associate* shall:

(1) Maintain confidentiality regarding information obtained from a client in the course of the psychologist's *or psychology associate's* work;

(2)—(8) (text unchanged)

B. Legal and Ethical Limits. A psychologist *or psychology associate* shall inform:

(1) (text unchanged)

(2) Clients below the age of minority, or who have legal guardians, of the limits the law imposes on the right of confidentiality with respect to communications with the psychologist *or psychology associate*, to the extent that the client can understand, at the beginning of the professional relationship;

(3)—(4) (text unchanged)

C. Record Keeping. A psychologist *or psychology associate* shall:

(1)—(4) (text unchanged)

(5) Limit access to client records and ensure that a person[‘s] working under the psychologist's *or psychology associate's* authority including, but not limited to[, psychology associates and] office personnel, comply with the requirements for confidentiality of client material; and

(6) (text unchanged)

**10.36.06 Fee Schedule**

Authority: Health Occupations Article, §§18-206, 18-207, 18-301, and 18-310, Annotated Code of Maryland

**.02 Fees.**

The following fees are established by the Board:

A. Licensure application fee — [~~\$200~~] \$300;

B. Psychology associate *registration* application fee — [~~\$100~~] \$200;

[C. Psychology associate administrative fee — \$100;]

[D.] C. Examination fees:

(1) National examination — [~~\$500~~] \$650;

(2) (text unchanged)

[E.] D. Verification of licensure *or registration* — \$20;

[F.] E. Biennial licensure renewal fee — [~~\$350~~] \$400;

F. Biennial *registration* renewal fee — \$300;

G. (text unchanged)

H. Inactive status fee (every [5] 2 years) — \$200;

I. Reinstatement fee *for license*[, which includes the \$350 renewal fee] — [~~\$650~~] \$700;

J. Reinstatement fee *for registration* — \$600;

[J.] K. Penalty for returned check — [~~\$25~~] \$50;

[K.] L. Duplicate license *or registration*:

(1) (text unchanged)

(2) Wallet card — [~~\$10~~] \$30;

[L.] M. (text unchanged)

N. Roster of licensed psychologists *a or registered psychology associates* — \$150.

**10.36.07 Psychology Associate**

Authority: Health Occupations Article, §§18-101, 18-206, and 18-301, Annotated Code of Maryland

**.01 Scope.**

*This chapter applies to:*

A. Registered psychology associates; and

B. Licensed psychologists who supervise psychology associates.

**.02 Definitions.**

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

B. *Terms Defined.*

(1) “Board” means the Board of Examiners of Psychologists.

(2) “Full-time” means the provision of psychological services through direct client contact at least 26 hours per week.

(3) “Registered psychology associate” means an individual who meets the requirements set forth in the Maryland Psychologists Act and is registered by the Board to practice psychology under the supervision of a licensed psychologist.

(4) “Supervisor” means a psychologist licensed in Maryland with at least 2 years of post-licensure experience who supervises a registered psychology associate.

**.03 Responsibilities of Supervisors.**

A. *Requirements of the Supervisory Relationship.*

(1) A supervisor of a registered psychology associate shall supervise only in those areas within the supervisor's competence as determined by education, training, and experience.

(2) A supervisor shall ensure that a registered psychology associate is practicing within the scope of the registered psychology associate's competence as demonstrated by the registered psychology associate's documented education, training, and experience in the particular practice area.

(3) A supervisor:

(a) May delegate some supervisory responsibilities to another psychologist licensed by the Board to:

(i) Ensure competent supervision of a registered psychology associate in areas outside the area of expertise of the supervisor; or

(ii) Provide temporary supervision when the supervisor is unavailable; and

(b) Shall:

(i) Document the delegated supervision in accordance with Regulation .05B(1) of this chapter; and

(ii) Continue to assume responsibility for the psychological services and activities performed by the registered psychology associate during the period in which supervisory responsibilities have been delegated.

(4) Adequate and appropriate supervision shall be determined by the:

(a) Education, training, and experience of the registered psychology associate;

(b) Nature and extent of services performed by the registered psychology associate; and

(c) Setting in which the services are performed.

(5) Adequate and appropriate supervision for full-time provision of psychological services by each registered psychology associate shall consist of:

(a) One hour or more per week for a registered psychology associate who has earned a doctoral degree in psychology;

(b) Two hours or more per week for a registered psychology associate who has been admitted to a candidacy for a doctoral degree in clinical psychology, counseling psychology, school psychology, or education with a field of specialization in psychology or counseling psychology in a program accredited by the Council for Higher Education, who has satisfactorily:

(i) Completed at least 3 years of postgraduate education in psychology; and

(ii) Passed preliminary doctoral examinations; or

(c) Three hours or more per week for all other registered psychology associates.

(6) In addition to the requirements set forth in §A(5) of this regulation, adequate supervision of a registered psychology associate shall include a minimum of 1 hour of supervision for every 5 hours of comprehensive evaluation and testing of a client.

(7) The amount of supervision required by §A(5) and (6) of this chapter:

(a) May be reduced by one-half for a registered psychology associate who has had 3 years of full-time experience, or its equivalent, as a psychology associate; and

(b) May be reduced proportionately for a registered psychology associate who provides services less than full-time.

(8) Adequate and appropriate supervision shall be:

(a) Provided to a registered psychology associate at a face-to-face meeting, which may include videoconferencing, unless granted an exemption by the Board; and

(b) Exclusive of supervision on administrative issues.

(9) If the supervisor is not practicing at the same site as the registered psychology associate, the supervisor shall conduct quarterly site visits at the location where the registered psychology associate is providing services.

(10) The registered psychology associate shall inform the supervisor of all complaints, regardless of nature or origin, related to conduct of or services provided by the registered psychology associate.

**B. Termination of the Supervisory Relationship.**

(1) Either party to the supervisory relationship may terminate the supervisory relationship.

(2) In the event of a termination of a supervisory relationship, the registered psychology associate may only continue to practice psychology under the supervision of another licensed psychologist who meets the requirements of this chapter.

(3) The registered psychology associate and the supervisor in the terminated supervisory relationship shall submit notice of the termination to the Board in accordance with Regulation .06 of this chapter.

**C. Responsibilities of the Supervisor.**

(1) A supervisor shall be available for emergency consultation and direction of a registered psychology associate, and for client management.

(2) A supervisor may supervise a maximum of five registered psychology associates.

(3) A supervisor may not engage in supervision that would constitute a multiple relationship.

(4) A supervisor shall take responsibility for all services provided by a registered psychology associate under the supervisor's supervision.

(5) A supervisor shall comply with additional continuing education requirements for supervisors set forth in COMAR 10.36.02.

**.04 Representations to the Public.**

**A. A registered psychology associate:**

(1) Shall make personal reference as a "registered psychology associate under the supervision of a licensed psychologist" in all promotional materials and other communications relating to the provision of psychological services; and

(2) May not make personal reference as a psychologist, either orally or in writing.

**B. A supervisor or registered psychology associate shall inform all clients of the supervision arrangement and its possible implications insurance reimbursement and confidentiality.**

**C. A supervisor and registered psychology associate shall ensure that those who are billed for services by the registered psychology associate are informed that the registered psychology associate provided the services under the supervision of a licensed psychologist.**

**D. A registered psychology associate may not engage in, or give the appearance of, practicing psychology independently of the supervisor.**

**.05 Recordkeeping.**

**A. The recordkeeping requirements of this regulation are in addition to the recordkeeping requirements in COMAR 10.36.05.**

**B. Supervisory Sessions.**

(1) A supervisor and registered psychology associate shall maintain appropriate documentation of the nature and extent of the supervision provided or delegated, including the:

(a) Dates and duration of supervisory sessions;

(b) Client names or other identification for all cases;

(c) Outcome of each case reviewed;

(d) Signatures of both the supervisor and registered psychology associate; and

(e) Reason for any delegation of supervisory responsibility.

(2) A supervisor and registered psychology associate shall provide documentation of supervisory sessions upon request by the Board.

(3) Documentation of the supervisory sessions shall be maintained by the supervisor and registered psychology associate for at least 5 years.

**C. Clinical Records.**

(1) A registered psychology associate shall have the supervisor co-sign all clinical documents, including:

(a) Evaluations;

(b) Authorizations for release;

(c) Treatment plans; and

(d) Report.

(2) Except as otherwise required, after the initial entry of the supervisor's name and license number in a client file or medical record, a registered psychology associate may omit repetitive references to the supervisor.

(3) Routine entries made by a registered psychology associate do not have to be cosigned by the supervisor, unless failure to do so would result in a misrepresentation of the services provided.

**D. Documentation of site visits shall be maintained by the supervisor and the registered psychology associate for at least 5 years, and shall include:**

(1) Date and time of visit;

- (2) Site location; and
- (3) Any issues or concerns relating to the registered psychology associate's provision of services at the site.

**.06 Board Review and Reporting Requirements.**

- A. The supervisory relationship is subject to review by the Board.
- B. At the time of renewal of the supervisor, the supervisor shall submit to the Board a list of all registered psychology associates supervised by the supervisor on a form approved by the Board that includes the beginning and ending dates of supervision for each registered psychology associate:
  - (1) Supervised during the previous licensure period; and
  - (2) Currently being supervised.
- C. At the time of renewal of the registered psychology associate, the registered psychology associate shall submit to the Board the name and license number of any supervisors who provided supervision to the registered psychology associate:
  - (1) During the previous registration period; and
  - (2) During the present registration period.
- D. A supervisor and registered psychology associate shall immediately report to the Board in writing the date of termination of the supervisory relationship.
- E. A registered psychology associate shall immediately report in writing to the Board any change of supervisor or addition of a supervisor.

**10.36.08 Disciplinary Sanctions, Monetary Penalties, and Civil Fines**

Authority: Health Occupations Article, §§1-606, 18-313, 18-313.1, and 18-404, Annotated Code of Maryland

**.02 Definitions.**

- A. (text unchanged)
- B. Terms Defined.
  - (1)—(4) (text unchanged)
  - (5) "Registrant" means a psychology associate who is registered by the Board to practice psychology under the supervision of a licensed psychologist.
  - (6) "Registration" means a registration issued by the Board to practice psychology under the supervision of a licensed psychologist.
  - [(5)] (7) (text unchanged)

**.03 Imposition of a Penalty After a Hearing.**

If the Board finds that there are grounds under Health Occupations Article, §18-313, Annotated Code of Maryland, to suspend or revoke a license or registration or to reprimand a licensee or registrant, the Board may impose a penalty as set forth in this chapter:

- A. Instead of suspending the license or registration; or
- B. In addition to suspending or revoking the license or registration.

**.04 Guidelines for Disciplinary Sanctions and Imposition of Penalties.**

A. Subject to the provisions of this chapter, the Board may impose sanctions and penalties for violations of the Maryland Psychologists Act and its regulations according to the guidelines set forth in the following categories:

	Violation	Minimum Sanction	Maximum Sanction	Minimum Penalty	Maximum Penalty
(1)—(2)	(text unchanged)				
(3)	Criminally convicted of, or pled guilty to, a felony or crime of moral turpitude	Probation for 1 year	Denial of license or registration application or revocation	\$100	\$10,000
(4)—(7)	(text unchanged)				
(8)	Fraudulently or deceptively obtaining, attempting to obtain, or using a license or registration	Active suspension for 90 days	Denial of license or registration application or revocation	\$1,000	\$10,000
(9)	Willfully making or filing a false report or record in the practice of psychology	Active suspension for 90 days	Denial of license or registration application or revocation	\$1,000	\$10,000
(10)	(text unchanged)				
(11)	Physical or mental incompetence	Probation for 1 year	Denial of license or registration application or revocation	N/A	N/A
(12)—(14)	(text unchanged)				
(15)	Reciprocal discipline	Reprimand	Denial of license or registration application or revocation	\$100	\$10,000
(16)	(text unchanged)				
(17)	Sexual misconduct	Active suspension for 2 years	Denial of license or registration application or revocation for 10 years	\$5,000	\$10,000

(18)—(20)	(text unchanged)				
(21)	Aiding another to practice without a license <i>or registration</i> or misrepresenting to the public that a person is a licensed psychologist <i>or registered psychology associate</i>	Reprimand	Denial of license <i>or registration</i> application or revocation	\$500	\$5,000
(22)	(text unchanged)				
(23)	Failure to cooperate in a Board investigation or comply with a Board order	Reprimand	Denial of license <i>or registration</i> application or revocation	\$100	\$10,000
(24)—(26)	(text unchanged)				
(27)	Other violation of the Act not specifically enumerated in this chapter	Reprimand	Denial of license <i>or registration</i> application or revocation	\$100	\$10,000

B. If a licensee *or registrant* is found in violation of more than one category enumerated in this regulation, the category or categories containing the highest maximum sanction and penalty shall control.

C. Notwithstanding the guidelines set forth in this regulation, in order to resolve a pending disciplinary action, the Board and licensee *or registrant* may agree to a surrender of a license *or registration* or to a consent order with terms, sanction, and penalty agreed to by the Board and the licensee *or registrant*.

D. (text unchanged)

**.05 Mitigating and Aggravating Factors to Be Considered in the Assessment of the Sanction.**

A. Depending on the facts and circumstances of each case, and to the extent that they apply, the Board may consider the following mitigating and aggravating factors in determining whether the sanction in a particular case should fall outside the range of sanctions established by the guidelines. These factors may include, but are not limited to, the following:

(1) Mitigating Factors:

(a) The licensee's *or registrant's* lack of a prior disciplinary record;

(b) The licensee *or registrant* self-reported the violation to the Board;

(c) The licensee's *or registrant's* full and voluntary admissions of misconduct to the Board and cooperation during Board proceedings;

(d)—(h) (text unchanged)

(i) The licensee's *or registrant's* conduct was an isolated incident and not likely to recur; and

(2) Aggravating Factors:

(a) The licensee *or registrant* has a previous criminal or administrative disciplinary history;

(b)—(d) (text unchanged)

(e) The licensee *or registrant* was motivated to perform the violation for financial gain;

(f) The vulnerability of the patient or patients;

(g) The licensee *or registrant* lacked insight into the wrongfulness of the conduct;

(h) The licensee *or registrant* committed the violation under the guise of treatment; and

(i) Previous attempts at rehabilitation of the licensee *or registrant* were unsuccessful.

B.—C. (text unchanged)

**.06 Payment of a Penalty.**

A. A licensee *or registrant* shall pay to the Board a penalty imposed under this chapter as of the date the Board's order is issued, unless the Board's order specifies otherwise.

B. (text unchanged)

C. If a licensee *or registrant* fails to pay, in whole or in part, a penalty imposed by the Board under this chapter, the Board may not restore, reinstate, or renew a license *or registration* until the penalty has been paid in full.

D. (text unchanged)

**.07 Civil Fines.**

A. Practicing on an Expired License *or Registration*.

(1) The Board may impose a civil fine against a psychologist *or psychology associate* who practices psychology on an expired license *or registration* in the amount of \$100 per day of practice past the expiration date of the license *or registration*.

(2) The Board may not impose a fine under §A(1) of this regulation against a psychologist *or psychology associate* for practicing psychology on an expired license *or registration* if the psychologist's license *or the psychology associate's registration* is reinstated within 30 calendar days of the expiration date of the license *or registration* and the licensee *or registrant* complies with COMAR 10.36.02.08B.

B. Practicing Without a License *or Registration*.

(1) The Board may impose a civil fine of no less than \$5,000 and no more than \$50,000 against an individual who practices psychology without a license *or registration*.

(2) (text unchanged)

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

**Subtitle 40 BOARD OF PODIATRIC MEDICAL EXAMINERS**

**10.40.03 Collection of Fees**

Authority: Health Occupations Article, §§12–102.2 and 16–206, Annotated Code of Maryland

**Notice of Proposed Action**  
[15-082-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .02 under **COMAR 10.40.03 Collection of Fees**. This action was considered at a public meeting on June 12, 2014, notice of which was given by publication in 41:11 Md. R. 643 (May 30, 2014), pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to implement a \$1,050 fee per dispensing permit issued by the Board of Podiatric Medical Examiners, in accordance with Health Occupations Article, §12–102.2, Annotated Code of Maryland.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The Board currently has 12 licensees who hold a dispensing permit. Assuming all 12 licensees renew their permit after 5 years, the Board would retain \$600 and \$12,000 would be deposited into the General Fund.

II. Types of Economic Impact	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(R+)	\$600
B. On other State agencies:	(R+)	\$12,000
C. On local governments:	NONE	
	Benefit (+) Cost (-)	
	Magnitude	
D. On regulated industries or trade groups:	(-)	\$12,600
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.)

A. 12 permit holders × \$50 processing fee = \$600 in revenue to the Board

B. 12 permit holders × \$1,000 mandatory Division of Drug Control inspection fee = \$12,000 to the General Fund

D. \$600 + \$12,000 = \$12,600 cost to dispensing permit holders with a license.

**Economic Impact on Small Businesses**

The proposed action an impact on small businesses as follows:  
To the extent that a small business would pay the fee for a dispensing permit for a licensee, there will be an economic impact to

the small business. (See Estimate of Economic Impact for specific information.)

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through March 9, 2015. A public hearing has not been scheduled.

**.02 Fees.**

The following fees are established by the Board:

A.—C. (text unchanged)

D. Other fees:

(1)—(3) (text unchanged)

(4) Dispensing prescription drug permit fee (payable every 5 years) — [50] \$1,050 (\$50 Board processing fee + \$1,000 mandated Division of Drug Control inspection fee for permit to dispense prescription drugs);

(5)—(7) (text unchanged)

E. (text unchanged)

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

**Subtitle 42 BOARD OF SOCIAL WORK EXAMINERS**

**10.42.05 Fee Schedule**

Authority: Health Occupations Article, §§19–205, 19–206, and 19–308, Annotated Code of Maryland

**Notice of Proposed Action**

[15-057-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01 and .02 under **COMAR 10.42.05 Fee Schedule**. This action was considered at a public meeting on November 14, 2014, notice of which was given on the Board’s website at <http://dhmh.maryland.gov/bswe/SitePages/Home.aspx> pursuant to State Government Article §10-506(c)(1), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to:

(1) Increase certain fees;

(2) Decrease certain fees;

(3) Repeal fees for a replacement pocket card license or wall certificate;

(4) Establish new fees for rosters and to apply for authorization to sponsor continuing education programs; and

(5) Prohibit the Board from refunding fees.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The estimated additional revenue for the Board and cost to the licensees is estimated to cover a projected \$170,000 budget shortfall while, at the same time, reductions in certain fees are expected to offset the impact of the increased fees.



II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(R+)	\$170,000
B. On other State agencies:	NONE	
C. On local governments:	NONE	
<hr/>		
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	(-)	\$170,000
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.)

A. and D. This proposal was crafted to provide the Board with an estimated additional \$170,000 in revenue that is expected to fill a projected shortfall.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through March 9, 2015. A public hearing has not been scheduled.

**.01 Scope.**

This chapter governs all persons licensed as social workers [and provisional graduate social workers] in the State and all persons, agencies, institutions, or organizations seeking to provide continuing education programs who submit applications to the Board for sponsorship authorization and program approval under the requirements of COMAR 10.42.06.

**.02 Fees.**

A. The following fees are established by the Board:

[A.] (1)—[B.] (2) (text unchanged)

[C.] (3) License renewal fee:

[(1)] (a) Bachelor [Associate] level — [\$80] \$100;

[(2)] (b) Graduate level — [\$165] \$200;

[(3)] (c) Certified level — [\$225] \$275;

[(4)] (d) Certified-clinical level — [\$225] \$275;

[D.] (4) Inactive status fee — [\$25] \$15;

[E.] (5) Reactivation processing fee to change from inactive status to active status:

[(1)] (a) Bachelor [Associate] level — [\$105] \$125;

[(2)] (b) Graduate level — [\$190] \$225;

[(3)] (c) Certified level — [\$250] \$300;

[(4)] (d) Certified-clinical level — [\$250] \$300;

[F. Repealed.]

[G.] (6) Reinstatement processing fee to change from non-renewed status to active status:

[(1) Associate] (a) Bachelor level — [\$180] \$125;

[(2)] (b) Graduate level — [\$265] \$225;

[(3)] (c) Certified level — [\$325] \$300;

[(4)] (d) Certified-clinical level — [\$325] \$300;

[H. Replacement fees:

(1) Pocket card license — \$25;

(2) Wall certificate — \$50;]

[I.] (7) Application for authorization to sponsor continuing education programs (required only if not automatically entitled to sponsor programs under COMAR 10.42.06) — [\$100]:

(a) Application — \$200;

(b) Program Approval — \$100;

[J.] (8) (text unchanged)

[K.] (9) Penalty for returned checks — [\$25] \$50;

[L.] (10) Failure to notify the Board of change of address — [\$25] \$50;

[M.] (11) Supervisor registration fee — [\$10] \$20;

[N.] (12) (text unchanged)

(13) Rosters:

(a) Bachelor and graduate levels — \$80;

(b) Certified and certified — clinical levels — \$150.

B. The Board may not refund a fee.

C. The Maryland Health Care Commission may assess a fee for health care professionals which the applicant shall pay at the time of license renewal as specified in COMAR 10.25.02.

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

**Subtitle 44 BOARD OF DENTAL EXAMINERS**

**10.44.12 Anesthesia and Sedation**

Authority: Health Occupations Article, §4-205 Annotated Code of Maryland

**Notice of Proposed Action**

[15-088-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .03, .08, .09, and .11, adopt new Regulations .12 and .35, recodify Regulations .12—, .15, .17, .18, .21—, .25, .27, .29, .33, .35—, .37 to be Regulations .13—, .16, .18, .19, .22—, .26, .28, .30, .34, and .37—, .39, respectively, and amend and recodify Regulations .16, .19, .20, .26, .28, .30—, .32, and .34 to be Regulations .17, .20, .21, .27, .29, .31—, .33, and .36, respectively, under COMAR 10.44.12 Anesthesia and Sedation. This action was considered by the Board of Dental Examiners at a public meeting held on November 5, 2014, notice of which was given under the Notice of Public Meetings link on the Board’s website pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to:

- (1) Clarify the definition of “anxiolysis” to explain the doses of sedatives that may be used when performing anxiolysis;
- (2) Define “accredited facility”;
- (3) Expand the testing criteria to be included in the clinical evaluation;
- (4) Clarify the facility evaluation criteria for Class II and Class III permits;
- (5) Establish how evaluations will be enacted;

(6) Expand the requirements for conversion permits, unannounced inspections, and continuing education requirements for renewal of a permits;

(7) Add the requirement that a dentist is to be present in the operatory during the administration of anesthesia or sedation and also establish exceptions for anesthesia and sedation permits and dentist certifications;

(8) Establish the requirement that a dentist is to submit a morbidity or mortality report when complications or a disabling incident occurs that requires admission to a hospital for longer than 24 hours or for purposes other than for observation; and

(9) Establish the right of the Board to initiate a complaint based on the contents of a morbidity or mortality report.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through March 9, 2015. A public hearing has not been scheduled.

**.03 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) "Accredited facility" means a facility holding current certification from:

(a) The Accreditation Association for Ambulatory Health Care (AAAHC);

(b) The Joint Commission on Accreditation of Healthcare Organizations (JCAHO);

(c) The Joint Commission Ambulatory Health Care Accreditation (JCAHCA);

(d) The American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF); or

(e) Their successor organizations.

[(1)] (2)—[(4)] (5) (text unchanged)

[(5)] (6) Anxiolysis.

(a) "Anxiolysis" means a drug-induced state, with or without nitrous oxide/oxygen to decrease anxiety, in which patients respond normally to tactile stimulation and verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are maintained and require no assistance.

(b) "Anxiolysis" includes a single dose of one sedative prescribed by the treating dentist and taken the evening before a procedure or the morning of a procedure, or both, provided that the dosage complies with the definition of anxiolysis under §B(5)(a) of this regulation.

(c) "Anxiolysis" does not include the administering, prescribing, or dispensing of any other drug by a dentist to a patient to be taken the evening before a procedure or the morning of a procedure.

[(6)] (7)—[(25)] (26) (text unchanged)

**.08 Qualifications for Obtaining a Permit.**

A.—E. (text unchanged)

F. In addition to the requirements outlined in §D of this regulation, an applicant for a Class I permit shall:

(1) Hold current certification in either ACLS or PALS, which the permit holder may not allow to expire, or successfully complete a course approved by the Board that provides instruction on medical emergencies and airway management;

(2)—(4) (text unchanged)

G. (text unchanged)

H. Class II: Moderate Parenteral Sedation Permit. To qualify for a Class II permit, an applicant shall successfully complete:

(1) A Board-approved course of instruction that documents training of at least 60 hours of didactic instruction plus management of at least 20 dental patients, who may be simulated, per participant in moderate parenteral sedation techniques; or

(2) (text unchanged)

I. In addition to the requirements outlined in §§H and I of this regulation, an applicant for a Class II permit shall:

(1) Hold current certification in either ACLS or PALS, which the permit holder may not allow to expire;

(2)—(4) (text unchanged)

J.—K. (text unchanged)

L. In addition to the requirements outlined in §I of this regulation, an applicant for a Class III permit shall:

(1) Hold current certification in either ACLS or PALS, which the permit holder may not allow to expire;

(2)—(4) (text unchanged)

M. (text unchanged)

**.09 Administration Evaluation.**

A.—B. (text unchanged)

C. The clinical evaluation required by §A(2) of this regulation shall include evaluating treatment of at least the following:

(1)—(2) (text unchanged)

(3) Emergency airway management;

[(3)] (4)—[(8)] (9) (text unchanged)

(10) Hypoglycemia;

[(9)] (11) (text unchanged)

[(10)] (12) Seizure; and

[(11)] (13) Syncope; and].

[(12) Venipuncture complications.]

D. (text unchanged)

E. The clinical evaluation required by §D(1) of this regulation shall include evaluating the treatment of at least the following:

(1)—(2) (text unchanged)

(3) Emergency airway management;

[(3)] (4)—[(8)] (9) (text unchanged)

(10) Hypoglycemia;

[(9)] (11)—[(12)] (14) (text unchanged)

**.11 Facility Evaluation Criteria.**

A. [To] Except as otherwise provided in this regulation, to qualify for a permit, the facility and the applicant shall pass an evaluation of facility equipment, medications, and clinical records to include at least the following:

(1)—(13) (text unchanged)

[(14) Electrocardiogram (EKG), Class II and Class III permits;]

[(15)] (14)—[(16)] (15) (text unchanged)

[(17) Capnograph and temperature measuring device for the intubated patient receiving general anesthesia; and]

[(18)] (16) For deep sedation or general anesthesia in pediatric patients:

(a)—(b) (text unchanged)

- (c) A capnograph[.]; and
- (17) For Class II and Class III permits:
  - (a) An electrocardiogram (EKG);
  - (b) A capnograph measuring device; and
  - (c) Pulse oximeter.

B. (text unchanged)

C. An applicant for a permit may not transport anesthesia or sedation equipment from one dental office to another for facility examination purposes.

**.12 Evaluation Results.**

A. A Board evaluator shall hold a permit at the same or higher level as the permit sought by the applicant being evaluated.

B. To the extent practicable, a Board evaluator shall provide the results of the evaluation to the Board in writing within 7 days of an applicant's evaluation.

C. Either the Board or the Board's Anesthesia Committee shall:

- (1) Review the results of the evaluation; and
- (2) Notify the applicant of the results in a timely manner.

D. If requested, an applicant shall be provided with a copy of the evaluation provided to the Board.

E. An applicant who fails either an administration evaluation or a facility evaluation twice shall be required to pay a fee equal to the renewal fee for the permit sought by the applicant before either the third evaluation or any subsequent evaluations.

**[.16] .17 Conversion of General Anesthesia and Parenteral Sedation Administration Permits in Existence on January 4, 2010.**

A.—D. (text unchanged)

E. The evaluation outlined in §C(2) of this regulation shall consist of an evaluation of:

- (1) (text unchanged)
- (2) Simulated management of emergencies with the participation of the clinical office staff trained to handle emergencies; and

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

F.—P. (text unchanged)

**[.19] .20 Renewal of Class I and Class II Permits.**

A. (text unchanged)

B. Before a Class I or Class II permit expires, an applicant may apply to renew the permit for an additional 5-year term if the applicant:

- (1)—(2) (text unchanged)
- (3) Provides an affidavit to the Board indicating whether the applicant, since the issuance of the original permit or renewal, whichever is later, has treated a patient under deep sedation or general anesthesia with an incident[.]; requiring admission to a hospital either for a period greater than 24 hours, or for purposes other than observation.
- (4)—(5) (text unchanged)

C.—G. (text unchanged)

**[.20] .21 Renewal of Class III Permits.**

A. (text unchanged).

B. Before a permit expires, an applicant may apply to renew the permit for an additional 5-year term if the applicant:

- (1)—(3) (text unchanged)
- (4) Provides an affidavit to the Board indicating whether the applicant, since the issuance of the original permit or renewal, whichever is later, has treated a patient under deep sedation or general anesthesia with an incident requiring admission to a hospital either for a period greater than 24 hours, or for purposes other than observation;
- (5)—(6) (text unchanged)

C. (text unchanged)

D. The renewal evaluation outlined in §B(2) of this regulation shall consist of an evaluation of an administration evaluation that consists of an office inspection and clinical evaluation[.].

[(1) Anesthesia and monitoring equipment to ensure they are in proper working order; and

- (2) Drugs in the office to ensure that the applicant:
  - (a) Maintains the appropriate drugs on the premises; and
  - (b) Only utilizes drugs on the premises the dates of which have not expired.]

E. The clinical evaluation required by §D of this regulation shall:

- (1) Require the participation of the clinical office staff; and
- (2) Evaluate the technical competency of the dentist to:
  - (a) Safely administer general anesthesia, deep sedation, and moderate parenteral sedation; and
  - (b) Effectively respond to simulated anesthesia related emergencies with the participation of the clinical office staff trained to handle emergencies.

F. The clinical evaluation outlined in §E of this regulation shall include evaluating the treatment of at least the following:

- (1) Laryngospasm;
- (2) Foreign body airway obstruction;
- (3) Emergency airway management;
- (4) Emesis and aspiration;
- (5) Acute allergic reaction;
- (6) Asthmatic attack;
- (7) Bronchospasm;
- (8) Angina;
- (9) Conditions requiring advanced cardiac life support,

including:

- (a) Bradycardia;
- (b) Tachycardia;
- (c) Ventricular fibrillation; and
- (d) Cardiac arrest;
- (10) Hypotension;
- (11) Hypoglycemia;
- (12) Hypertension;
- (13) Seizure; and
- (14) Syncope.

G. In addition to the requirements of §D of this regulation, a dentist who wishes to renew a Class III permit shall pass a facility evaluation of facility equipment, medications, and clinical records to include at least the following:

- (1) Oxygen and gas delivery system, backup system, back-up system fail-safe;
- (2) Gas storage facility;
- (3) Safety indexed gas system;
- (4) Suction and backup system;
- (5) Auxiliary lighting system;
- (6) Suitability of operating room:
  - (a) Size;
  - (b) Lighting;
  - (c) Communications; and
  - (d) EMT accessibility;
- (7) Recovery area, including oxygen, suction, and visual and electronic monitoring, which may include the operating room;
- (8) Appropriate emergency drugs;
- (9) Nonexpired drugs;
- (10) Appropriate devices to maintain an airway with positive pressure ventilation;
- (11) Preoperative medical history and physical evaluation form;
- (12) Anesthesia records, including monitoring and discharge records;

(13) Monitoring equipment, including pulse oximeter and blood pressure monitoring;

(14) Electrocardiogram (EKG);

(15) Anesthesia and monitoring equipment to ensure that they are in proper working order;

(16) Defibrillator and automated external defibrillator (AED) for adult patients;

(17) Capnograph measuring device; and

(18) In addition to the requirements of this section, for deep sedation or general anesthesia in pediatric patients a dentist shall have a pulse oximeter and either a:

(a) Precordial stethoscope; or

(b) Pretracheal stethoscope.

H. The applicant and the applicant's staff shall be present in the operatory during the evaluation.

[E.] I.—[G.] K. (text unchanged)

**[.26] .27 Unannounced Inspection Visits.**

[A. The Board or its designee may conduct, during reasonable business hours, unannounced inspection visits of any dental office or facility for which a dentist holds:

(1) A Class I permit;

(2) A Class II permit;

(3) A Class III permit;

(4) A general anesthesia administration permit;

(5) A general anesthesia facility permit;

(6) A parenteral sedation administration permit; or

(7) A parenteral sedation facility permit.

B. During inspection visits, inspectors shall:

(1) Examine the facility's equipment to determine if it is in proper working order;

(2) Determine if appropriate emergency drugs are present; and

(3) Determine if emergency drugs are nonexpired.]

A. During reasonable business hours, the Board or its designee may conduct unannounced inspection visits of any dental office or facility if the Board has:

(1) Received a complaint or has initiated a complaint; and

(2) Reason to believe that anesthesia or sedation has been administered:

(a) Without an appropriate permit; or

(b) In violation of this chapter.

[C.] B. Dentists and [their employees and staff] all associated personnel shall cooperate with the inspectors.

[D.] Within 30 days of the conclusion of the inspection, the inspectors shall make reasonable efforts to submit a written report of the inspection to:

(1) (text unchanged)

[(2) Each dentist who holds the:

(a) Class I permit;

(b) Class II permit;

(c) Class III permit;

(d) General anesthesia administration permit;

(e) General anesthesia facility permit;

(f) Parenteral sedation administration permit; or

(g) Parenteral sedation facility permit.]

(2) Each dentist and individual who was the subject of the inspection.

**[.28] .29 Continuing Education Requirements for Renewal of a Permit.**

A. Renewal of a Class I, Class II, or Class III Permit.

(1) [An] Beginning in 2016 and thereafter, an applicant who seeks renewal of a Class I, Class II, or Class III permit shall:

[(1)] (a) Complete not less than [10] 24 hours of clinical continuing education related to sedation or anesthesia in a classroom setting during the 5-year term of the permit; and

[(2)] (b) Maintain cardiopulmonary resuscitation certification from one of the following programs:

[(a)] (i)—[(d)] (iv) (text unchanged)

B. Additional Requirements for Renewal of a Class I Permit.

(1) In addition to the requirements outlined in §A of this regulation, an applicant for the renewal of a Class I permit shall [do one of the following]:

(a) Complete a Board-approved course of at least 4 hours that provides instruction on medical emergencies and airway management;

[(1)] (b) Maintain Advanced Cardiac Life Support (ACLS) certification; or

[(2)] (c) Maintain Pediatric Advanced Life support certification (PALS); or].

[(3) Complete a Board-approved course that provides instruction on medical emergencies and airway management.]

(2) The following courses may count toward the required hours of continuing education:

(a) Advanced Cardiac Life Support (ACLS) course;

(b) Pediatric Advanced Life Support (PALS) course; or

(c) A Board-approved course in medical emergency and airway management.

C. Additional Requirements for Renewal of a Class II or Class III Permit.

(1) In addition to the requirements outlined in §A of this regulation, an applicant for the renewal of a Class II or Class III permit shall [either]:

(a) Complete a Board-approved course of at least 4 hours that provides instruction on medical emergencies and airway management;

[(1)] (b)—[(2)] (c) (text unchanged)

(2) The following courses may count toward the required hours of continuing education:

(a) Advanced Cardiac Life Support (ACLS) course;

(b) Pediatric Advanced Life Support (PALS) course; or

(c) A Board-approved course in medical emergency and airway management.

**[.30] .31 Administration by Physicians or Dentists at the Site of a Treating Dentist.**

A.—G. (text unchanged)

H. A dentist who holds a certificate to allow a physician or another dentist to administer anesthesia or sedation shall be present in the operatory during the administration of the anesthesia or sedation.

[H.] I.—[M.] N. (text unchanged)

**[.31] .32 Certification of a Dentist Providing Treatment Outside the Dentist's Location.**

A.—H. (text unchanged)

I. A treating dentist who holds a certificate to treat a patient at a practice location other than the dentist's own location, at which anesthesia or sedation are administered to the patient, shall be present in the operatory during the administration of the anesthesia or sedation.

[I.] J.—[N.] O. (text unchanged)

**[.32] .33 Administration by a Certified Registered Nurse Anesthetist.**

A.—E. (text unchanged)

F. A treating dentist who holds a certificate to allow a certified registered nurse anesthetist to administer anesthesia or sedation shall be present in the operatory during the administration of the anesthesia or sedation.

[F.] G.—[M.] N. (text unchanged)

**.35 Exceptions to Anesthesia and Sedation Permits and Dentist Certification.**

A dentist who treats a patient at an accredited facility as defined in Regulation .03 of this chapter where anesthesia or sedation is being administered to the patient by either another dentist, physician, or certified registered nurse anesthetist is not required to hold:

- A. A Class I, Class II, or Class III permit; or
- B. A certification to allow another dentist, physician, or certified registered nurse anesthetist to administer anesthesia or sedation.

**[.34].36 Morbidity and Mortality Reports.**

A. (text unchanged)  
 B. A dentist shall report to the Board, in writing, any [substantially] complication or disabling incident [caused by or resulting from] requiring admission to a hospital either for a period greater than 24 hours, or for purposes other than observation, as a result of the dentist’s administration of anxiolysis, moderate sedation, deep sedation, or general anesthesia within 15 days after its occurrence.

- C.—D. (text unchanged)
- E. The Board may initiate a complaint based upon the contents of a morbidity or mortality report.
- F. A Board initiated complaint under §E of this regulation shall be independent of and may not prejudice the filing of a complaint by a third party.

JOSHUA M. SHARFSTEIN, M.D.  
 Secretary of Health and Mental Hygiene

**Subtitle 44 BOARD OF DENTAL EXAMINERS**

**Notice of Proposed Action**  
 [15-064-P]

The Secretary of Health and Mental Hygiene proposes to:  
 (1) Amend Regulation .02 under **COMAR 10.44.20 Fees**; and  
 (2) Adopt new Regulations .01—.07 under a new chapter, **COMAR 10.44.35 Limited Dental Drug Dispensing Permits**.

This action was considered by the Board of Dental Examiners at a public meeting held on October 2, 2013, and July 2, 2014, notice of which was given under the Notice of Public Meetings link on the Board’s website pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to establish a procedure for the issuance of a new limited drug dispensing permit for dentists who wish to dispense only prescription strength home fluoride products, dentin/enamel remineralizing products, and antimicrobial rinses by establishing new regulations under COMAR 10.44.35. In COMAR 10.44.20 the purpose of the proposal is to establish a new \$75 fee for a 5-year limited drug dispensing permit and to comply with the mandate of S.B 603, Ch. 267, Acts of 2012, requiring the Dental Board to charge a fee to dentists who hold drug dispensing permits in an amount to approximate but not exceed the costs to the Division of Drug Control for two inspections of the drug dispensing permit holders during the duration of their 5-year permit. The inspection fees are to be collected by the Dental Board and passed through to the General Fund of the State.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The Board anticipates that, commencing on or about October 1, 2014, and in the subsequent 12

months, approximately 2,500 dentists will apply for a limited drug dispensing permit. The total increase is estimated at \$187,500. In addition, the contribution to the General Fund will increase by \$1,000 per permit holder due to the increased cost of full dispensing permits.

		Revenue (R+/R-)	
<b>II. Types of Economic Impact.</b>		Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(R+)		\$187,500
B. On other State agencies:			
Division of Drug Control	(R+)		\$12,000
C. On local governments:	NONE		
		Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:			
(1) Limited drug dispensing permit	(-)		\$187,500
(2) Full drug dispensing permit	(-)		\$12,000
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.)

- A. The total revenue increase for the Board is as follows:  
 $2,500 \text{ dentists} \times \$75 = \$187,500.$
- B. Benefit of \$12,000 to the General Fund of the State to approximate but not exceed the documented costs to the Division of Drug Control for two inspections over a 5-year period for each holder of a drug dispensing permit. The Board estimates that there will be 12 permit holders each paying \$1,000 for the inspections. The Board notes that it presently charges a fee of \$75 for a drug dispensing permit. That fee will not increase at this time. Applicants will pay a total of \$1,075 for a drug dispensing permit. The only increase is the cost of inspections.  
 $12 \times \$1,000 = \$12,000.$
- D(1). The total revenue increase for the Board is as follows:  
 $2,500 \text{ dentists} \times \$75 = \$187,500.$
- D(2). Cost to the 12 dispensing permit holders will be \$1,000 each.  
 $12 \times \$1,000 = \$12,000.$

**Economic Impact on Small Businesses**

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

The regulations will have an economic impact on dental offices, some of which are small businesses, as indicated in the Estimate of Economic Impact.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and

Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through March 9, 2015. A public hearing has not been scheduled.

**10.44.20 Fees**

Authority: Health Occupations Article, §§4-205, 4-207b), 4-304, and 12-102.1, Annotated Code of Maryland

**.02 Fee Schedule.**

The following fees are established by the Board:

A.—W. (text unchanged)

X. [Dispensing prescription drug permit fee] *Board fee for full permit to dispense prescription drugs* — \$75;

Y. *Required Division of Drug Control inspection fee for full permit to dispense prescription drugs* — \$1,000;

Z. *Limited permit for dispensing prescription drugs:*

(1) *Initial application* — \$75;

(2) *Renewal* — \$75;

[Y.] AA.—[GG.] II. (text unchanged)

**10.44.35 Limited Dental Drug Dispensing Permits**

Authority: Health Occupations Article, §4-207(b), Annotated Code of Maryland

**.01 Scope.**

A. This chapter covers the issuance by the State Board of Dental Examiners of a limited dental drug dispensing permit for dentists who wish to dispense only prescription strength:

(1) *Home fluoride products;*

(2) *Dentin/enamel remineralizing products; or*

(3) *Antimicrobial rinses.*

B. This chapter does not apply to a dentist who dispenses prescription drugs in the course of treating a patient at a:

(1) *Medical facility or clinic that is operated on a nonprofit basis;*

(2) *Health center that operates on a campus of an institution of higher learning;*

(3) *Public health facility;*

(4) *Medical facility under contract with the State or local health department; or*

(5) *Facility funded with public funds.*

C. A dentist who dispenses a full course of antibiotics to a patient for infection control is not required to obtain a drug dispensing permit if the dispensing meets the requirements of Regulation .05A of this chapter.

D. A dentist who wishes to dispense prescription drugs other than those covered in this chapter is required to obtain a drug dispensing permit as required by COMAR 10.13.01.

**.02 Definitions.**

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

B. *Terms Defined.*

(1) “Administer” means the direct introduction of a single dosage of a drug at a given time, whether by injection or other means, and whether in liquid, tablet, capsule, or other form.

(2) “Board” means the Maryland State Board of Dental Examiners.

(3) “Dentist” means an individual who holds a current license to practice dentistry in Maryland.

(4) “Limited dental drug dispensing permit” means a drug dispensing permit for dentists who wish to dispense only prescription strength:

(a) *Home fluoride products;*

(b) *Dentin/enamel remineralizing products; or*

(c) *Antimicrobial rinses.*

(5) “Starter dosage” means an amount of a drug sufficient to begin therapy:

(a) *Of short duration of 72 hours or less; or*

(b) *Before obtaining a large quantity of the drug to complete the therapy.*

**.03 Permit Required.**

Subject to the exception contained in Regulation .05 of this chapter, a dentist may not dispense home fluoride products, dentin/remineralizing products or antimicrobial rinses unless the dentist holds a limited drug dispensing permit issued by the Board.

**.04 Issuance and Renewal of Permit.**

A. A permit expires on October 1 of the 5th year following the effective date of the permit.

B. To obtain a permit, a dentist shall:

(1) *Submit to the Board an application on a form provided by the Board; and*

(2) *Pay the fee set by the Board in COMAR 10.44.20.*

C. The Board shall mail a renewal application to each dentist holding a limited dental drug dispensing permit at least 90 days before the expiration of the permit.

D. Before the permit expires, an applicant may apply to renew the permit for an additional 5-year term if the applicant:

(1) *Submits to the Board a renewal application on a form provided by the Board; and*

(2) *Pays the renewal fee set by the Board in COMAR 10.44.20.*

**.05 Exceptions.**

A. *Drug Samples.* A dentist is not required to have a limited dental drug dispensing permit to dispense drug samples if:

(1) *The sample complies with the labeling requirements contained in Health Occupations Article, §12-505, Annotated Code of Maryland, except that the labeling requirements may not apply if the dentist dispenses the drug:*

(a) *In an emergency situation; or*

(b) *As a sample dispensed in the regular course of the dentist’s practice;*

(2) *No charge is made for the sample; and*

(3) *The dentist enters an appropriate record in the patient’s chart.*

B. *Starter Dosages.* A dentist is not required to have a limited dental drug dispensing permit to dispense starter dosages if:

(1) *The starter dosage complies with the labeling requirements contained in Health Occupations Article, §12-505, Annotated Code of Maryland, except that the labeling requirements may not apply if the dentist dispenses the drug:*

(a) *In an emergency situation; or*

(b) *As a starter dosage dispensed in the regular course of the dentist’s practice;*

(2) *No charge is made for the starter dosage; and*

(3) *The dentist enters an appropriate record in the patient’s chart.*

C. *Course of Treating a Patient.* A dentist is not required to have a limited drug dispensing permit to administer a prescription drug in the course of treating a patient.

**.06 Violations.**

A. After an opportunity for a hearing, the Board may revoke or suspend a limited permit or take disciplinary action under Health Occupations Article, §4-315(a) or (b), Annotated Code of Maryland, if the Board finds that the holder of the permit violates any provision of this chapter.

B. Failure to comply with the provisions of this chapter constitutes unprofessional conduct and may constitute other violations of law.

**.07 Summary Suspension of a Permit.**

A. The Board may order the summary suspension of a permit if the Board:

(1) Finds that the public health, safety, or welfare imperatively requires emergency action; and

(2) Promptly gives the licensee:

(a) Written notice of the suspension, the finding, and the reasons that support the finding; and

(b) An opportunity to be heard.

B. Service of the notice of the suspension, the finding, the reasons that support the finding, and the notice of the opportunity to be heard may be effected upon the holder of a permit by:

(1) Personal service; or

(2) Written notice sent by certified mail and regular mail to the permit holder's address on file with the Board.

C. Service made pursuant to §B(2) of this regulation shall be effective upon mailing.

D. The methods of service provided in this regulation are in addition to and not exclusive of any other means of service that are reasonably calculated to provide notice.

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

# Title 14 INDEPENDENT AGENCIES

## Subtitle 35 MARYLAND HEALTH BENEFIT EXCHANGE

### 14.35.11 Fair Hearings of Individual Exchange Eligibility Determinations

*Authority: Insurance Article, §§31-106(c)(1)(iv) and 31-108(b)(1), (10), and (17), Annotated Code of Maryland*

**Notice of Proposed Action**  
[15-086-P]

The Maryland Health Benefit Exchange proposes to adopt new Regulations .01—14 under a new chapter, **COMAR 14.35.11 Fair Hearings of Individual Exchange Eligibility Determinations**.

**Statement of Purpose**

The purpose of this action is to provide notice of the process by which an individual who receive an eligibility determination or eligibility redetermination through the Maryland Health Benefit Exchange's Individual Exchange may appeal the individual's determination or redetermination.

**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 action will have an economic impact on the Maryland Health Benefit Exchange and the Office of Administrative Hearings.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:		
(1) Staff Budget	(E+)	Minimal
(2) Office of Administrative Hearings Charges	(E+)	Minimal
B. On other State agencies:		
Office Of Administrative Hearings	(E+)	Indeterminable
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE	
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.)

A. While we have budgeted FY 2015 monies for Office Of Administrative Hearings charges, the OAH charges are what is billed of all agencies to reimburse them for their time and effort. Since the Maryland Health Benefit Exchange cannot base its estimate for next year's charges on the previous year's experience, as most agencies do, our budget is based on complete estimation.

B. Since the OAH charges are what is billed of all agencies to reimburse them for their time and effort and the MHBE cannot base its estimate for next year's charges on the previous year's experience, we do not currently know what expenses OAH will incur as a result of OAH hearing MHBE appeals.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Ms. Carolyn Quattrocki, Executive Director, Maryland Health Benefit Exchange, 750 E. Pratt Street, Baltimore, MD 21202, or call (410) 547-1270, or email to mhbe.publiccomments@maryland.gov, or fax to (410) 547-7373. Comments will be accepted through March 9, 2015. A public hearing has not been scheduled.

**.01 Scope.**

*This chapter applies to eligibility determinations and redeterminations for enrollment in qualified health plans, advance payments of the premium tax credit, and cost-sharing reductions offered through the Individual Exchange, as well as for MAGI-based*

eligibility determinations and redeterminations for the Maryland State Medicaid program and the Maryland Children's Health Insurance Program.

**.02 Definitions.**

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

B. Terms Defined.

(1) "Administrative law judge" means an individual appointed by the Chief Administrative Law Judge under State Government Article, §9-1604, Annotated Code of Maryland, or designated by the Chief Administrative Law Judge under State Government Article, §9-1607, Annotated Code of Maryland, to adjudicate contested cases at the Maryland Office of Administrative Hearings.

(2) "Affordable Care Act" means the Patient Protection and Affordable Care Act of 2010 (Pub.L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub.L. 111-152), as amended by the Three Percent Withholding Repeal and Job Creation Act (Pub.L. 112-56).

(3) "Appellant" means any individual who requests a fair hearing for the reasons specified in Regulation .03 of this chapter or that individual's authorized representative, whether regarding an initial determination or a redetermination.

(4) "Authorized representative" has the same meaning as in Regulation .14 of this chapter.

(5) "Catastrophic plan" means a plan established under §1302(e) of the Affordable Care Act.

(6) "Consolidated Services Center" means the call center operated by the Maryland Health Benefit Exchange to assist consumers who apply for, or participate in, a qualified health plan or the insurance affordability programs offered through the Maryland Health Connection.

(7) "Delegate agency" means the Department of Human Resources and its affiliate local departments which, under contractual agreements with the Department, determine initial and continuing eligibility in the Program.

(8) "Department" means the Department of Health and Mental Hygiene, the single State agency which, pursuant to Title XIX of the Social Security Act, implements fair hearing requirements for Program applicants and recipients.

(9) "Individual Exchange" has the meaning stated in Insurance Article, §31-101(h), Annotated Code of Maryland.

(10) "Insurance affordability program" means a program that is one of the following:

(a) The Maryland State Medicaid program;

(b) The Maryland Children's Health Insurance Program (CHIP), including the program known as Maryland Children's Health Program (MCHP) Premium;

(c) A State basic health program established under §1331 of the Affordable Care Act;

(d) A program that makes available to eligible individuals coverage in a qualified health plan through the Maryland Health Benefit Exchange with advance payments of the premium tax credit established under §36B of the Internal Revenue Code; or

(e) A program that makes available to eligible individuals coverage in a qualified health plan through the Maryland Health Benefit Exchange with cost-sharing reductions established under §1402 of the Affordable Care Act.

(11) "MAGI" means modified adjusted gross income, as calculated for purposes of determining or redetermining eligibility for insurance affordability programs under the Affordable Care Act, as defined in 26 CFR §1.36B-1(e)(2).

(12) "Maryland Health Benefit Exchange" or "Exchange" means the unit of State government that determines initial and continuing eligibility for the MAGI-based insurance affordability

programs, including, by delegation, certain eligibility in the Program.

(13) "Maryland Health Connection" means the electronic eligibility system maintained by the Maryland Health Benefit Exchange.

(14) "Program" means the Department's Medical Assistance Program.

(15) Qualified Health Plan.

(a) "Qualified health plan" means a health benefit plan that has been certified by the Maryland Health Benefit Exchange to meet the criteria for certification described in §1311(c) of the Affordable Care Act and Insurance Article, §31-115, Annotated Code of Maryland.

(b) "Qualified health plan" includes a catastrophic plan.

**.03 Opportunity for a Fair Hearing.**

A. An opportunity for a fair hearing shall be granted if an applicant claims that:

(1) The determination or redetermination received from the Exchange of the applicant's eligibility for enrollment in a qualified health plan is incorrect;

(2) The determination or redetermination received from the Exchange of the applicant's eligibility for an insurance affordability program is incorrect; or

(3) The determination or redetermination received from the Exchange of the applicant's eligibility for enrollment in a qualified health plan or an insurance affordability program is untimely as set forth in applicable law.

B. The administrative law judge need not grant a fair hearing if the sole issue is a federal or State law requiring an automatic change adversely affecting some or all applicants.

**.04 Notification of Right to Request a Fair Hearing.**

A. The Exchange shall notify an individual and the individual's authorized representative, if previously designated by the individual or recognized as valid by the Exchange, in writing:

(1) Of the right to obtain a fair hearing;

(2) Of the method to obtain the hearing;

(3) That the individual may represent the individual or use an authorized representative at a fair hearing;

(4) Of the circumstances under which the individual's eligibility may be maintained or reinstated pending an appeal decision; and

(5) That an appeal decision for one household member may result in a change in eligibility for other household members, and that such a change will be handled as a redetermination of eligibility for other household members.

B. The notification specified in §A of this regulation shall:

(1) Be provided by the Exchange when:

(a) The individual applies for enrollment in a qualified health plan and, if applicable, for an insurance affordability program; or

(b) Any Exchange action affects the individual's claim to enrollment in a qualified health plan, or to eligibility for, or the amount of, an insurance affordability program.

(2) Include a statement of the action the Exchange intends to take;

(3) Include the reasons for the intended action;

(4) Include the specific regulations that support, or the change in federal or State law that requires, the action;

(5) To the extent required by law for Program benefits, include an explanation of the individual's right to request a fair hearing, including that expenses incurred in connection with a fair hearing, such as transportation and baby-sitting costs, but not including attorney's fees, shall be paid by the Department when incurred by the



appellant and may be paid by the Department when incurred by the appellant's witnesses;

(6) Include information about fair hearings;

(7) Include an explanation of the circumstances under which Program benefits are continued if a fair hearing is requested as provided in Regulation .05 of this chapter;

(8) Identify who may act as an authorized representative of the appellant in the fair hearing process, explain how an applicant may designate an authorized representative, and provide information about designation procedures under Regulation .14 of this chapter;

(9) Specify that the appellant or the appellant's authorized representative may examine the appellant's records upon reasonable notice to the Exchange; and

(10) For termination of Program benefits, be mailed at least 10 days before the date of action except as specified under COMAR 10.01.04.03C.

C. The notice specified in §A of this regulation shall be mailed in accordance with 45 CFR §155.310(g) if the action is a determination or redetermination regarding eligibility for enrollment in a qualified health plan or eligibility for an insurance affordability program described in Regulation .02B(10)(d) or (e) of this chapter.

**.05 Request for Fair Hearing.**

**A. Statement of Request.**

(1) Any individual, either personally or through an authorized representative, may request a fair hearing by giving a clear statement, oral, electronic, or written, that the individual desires an opportunity to present for review any matter which is the proper subject of a fair hearing as provided in Regulation .03 of this chapter. The request shall be made by:

(a) Contacting the Exchange in writing, by mail, telephone, email, or fax;

(b) Contacting the Consolidated Services Center maintained by the Exchange by mail, telephone, or fax;

(c) Contacting the delegate agency in person or by mail, telephone, or fax;

(d) Contacting the Department's Office of Health Services in person or by mail, telephone, or fax; or

(e) Contacting the Office of Administrative Hearings in person, or by mail or fax.

(2) The Program's Office of Health Services, the Exchange, the Consolidated Services Center, or the delegate agency that is contacted by an appellant or the appellant's authorized representative about requesting a hearing shall assist the appellant or the appellant's authorized representative in preparing the request.

(3) The Program's Office of Health Services, the Exchange, the Consolidated Services Center, or the delegate agency that receives or prepares a written statement on behalf of the appellant or the appellant's authorized representative requesting an appeal shall:

(a) Immediately forward an applicant's statement to the Office of Administrative Hearings;

(b) Indicate whether the appeal is for a determination or redetermination of eligibility to enroll in a qualified health plan or eligibility for an insurance affordability program, if known; and

(c) Note in its correspondence with the Office of Administrative Hearings if the appeal:

(i) Concerns an immediate need for health services where the appellant's life, health, or ability to attain, maintain, or regain maximum function would be jeopardized by the standard appeal process; and

(ii) To the extent required by applicable law, must be heard and decided within 3 working days after the Office of Administrative Hearings receives the fair hearing request.

(4) If a request for a hearing is made by someone other than the applicant, the Office of Administrative Hearings shall:

(a) Treat the appeal as timely noted if it complies with §D of this regulation, provided documentation pursuant to §A(4)(b) is provided on or before the hearing date, except that no documentation shall be required for representation pursuant to §A(4)(c) of this regulation;

(b) Accept appropriate documentation, up to and including the date of the fair hearing, demonstrating that the representative is authorized; and

(c) Accept the representation of any member of the bar of Maryland that the individual appellant is the member's client without further documentation.

**B. Acknowledgement. The Office of Administrative Hearings shall:**

(1) Send timely acknowledgement to the appellant, and the appellant's authorized representative, if applicable, of the receipt of the fair hearing request;

(2) Give advance notice in writing of the date, time, and place of the fair hearing;

(3) Provide the appellant with the information specified in Regulation .04A(4) of this chapter; and

(4) Provide an explanation that any advance payments of the premium tax credit paid on behalf of the appellant pending appeal are subject to reconciliation pursuant to 26 CFR §1.36B-4.

**C. Postponements.**

(1) If any party notifies the Office of Administrative Hearings that either the time or place designated by the Office of Administrative Hearings is not convenient to the party, and requests a different time or place for the fair hearing, the administrative law judge shall designate another time or place convenient to the parties if the administrative law judge deems that the party has sufficient reason for requesting the change.

(2) If the appellant is employed during the periods when fair hearings are normally held, the administrative law judge shall attempt to schedule the hearing so that the appellant will not be required to miss employment.

D. Timeliness of Appeal. A request for a fair hearing may not be granted unless the request pursuant to §A of this regulation is filed within 90 days of the receipt of the notification specified in Regulation .04A of this chapter, in one of the following methods:

(1) Postmarked, delivered in person, or faxed to the Office of Administrative Hearings;

(2) Postmarked, emailed, telephoned, or faxed to the Exchange;

(3) Postmarked, telephoned, or faxed to the Consolidated Services Center;

(4) Postmarked, delivered in person, telephoned, or faxed to the delegate agency; or

(5) Postmarked, delivered in person, telephoned, or faxed to the Department's Office of Health Services.

**E. Dismissal.**

(1) The Exchange or the Office of Administrative Hearings may dismiss a request for a fair hearing when the appeal has been:

(a) Withdrawn in writing, either electronically or in hard copy; or

(b) Abandoned.

(2) An appellant shall be deemed to have abandoned the appellant's request for a fair hearing if the appellant fails to appear for the fair hearing on the established date without good cause as determined by the administrative law judge.

F. Program's Response. In responding to timely filed requests for a fair hearing, the Office of Administrative Hearings:

(1) May respond to a series of individual requests for hearing by conducting a single group hearing;

(2) May consolidate hearings only in cases in which the sole issue involved is one of federal or State law or policy; and

(3) Shall permit each applicant to present the appellant's own case or be represented by the appellant's authorized representative.

**.06 Prehearing Procedures.**

A. A hearing summary shall be prepared containing pertinent information detailing the specific action that is the basis for the appeal. The summary shall be forwarded to the appellant or the appellant's authorized representative and to the Office of Administrative Hearings at least 6 days before the hearing date.

B. The appellant and the Exchange may request the names of all witnesses that the other party intends to call at the fair hearing.

**.07 Hearing Procedures.**

A. The appellant and the Exchange shall have the opportunity to:

- (1) Present witnesses;
- (2) Present documentary evidence;
- (3) Present oral and written argument without undue interference;
- (4) Establish all facts and circumstances the administrative law judge judges to be relevant; and
- (5) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine all witnesses the administrative law judge judges to be adverse.

B. All parties that wish to call a witness at the hearing shall subpoena the witness in accordance with Office of Administrative Hearings procedures in COMAR 28.02.01.14. The appellant or authorized representative may subpoena any employee of the Exchange whose action is being contested by the appellant or whose testimony may be relevant to the issues under consideration as determined by the administrative law judge.

C. Right to Review Record.

(1) If the Exchange introduces as evidence documents from the case record, special investigation file, or other sources, the appellant shall have the opportunity to examine the:

- (a) Persons who prepared the documents; and
- (b) Case record or special investigation file for the purpose of discovering information favorable to the appellant's case.

(2) The Exchange shall have access to relevant portions of the appellant's medical record in accordance with Health-General Article, §4-305, Annotated Code of Maryland, to the extent required by law.

D. To the extent required by law, when a hearing involves a medical issue, such as a diagnosis, an examining physician's report, or a medical review team's decision, an additional medical assessment of the appellant's condition shall be obtained and made part of the record if the administrative law judge considers it necessary. Any additional medical assessment shall be made by a person other than the person who made the original medical assessment and shall be obtained at the Exchange's expense.

**.08 The Record.**

A. A verbatim recording of the fair hearing shall be made. Nonrecorded or confidential information, which the appellant does not have an opportunity to hear or see, may not be made a part of the hearing record. One transcribed copy of the recording shall be supplied to the appellant at no cost if the appellant takes a further appeal.

B. The following shall constitute the exclusive record of the hearing:

- (1) The transcript or recording of testimony and exhibits, or an official report containing the substance of what happened at the hearing;
- (2) All papers and requests, including those maintained electronically, filed in the proceeding; and
- (3) The administrative law judge's decision.

C. The recording of testimony shall remain in the custody of the Office of Administrative Hearings for a period not to exceed 2 years, or until all litigation involving the decision is terminated. All other components of the record shall remain in the custody of the Exchange for a period not to exceed 2 years, or until all litigation involving the decision is terminated.

**.09 Findings, Timing of Decision, and Effect of Decision.**

A. Findings.

(1) The administrative law judge shall:

- (a) Prepare a written summary of findings and conclusions based exclusively on the record; and
  - (b) Make a decision based on his findings and conclusions.
- (2) The summary of findings and conclusions shall:
- (a) State the evidence, policies, regulations, or laws upon which the administrative law judge's decision is based; and
  - (b) Provide written notice to the appellant that, if they are not satisfied with the decision, they may seek additional appeals as specified in §C of this regulation.

B. Timing of Hearing Decision.

(1) The administrative law judge shall forward to the appellant, and to appellant's authorized representative, if applicable, a copy of the findings, conclusions, and decision within 90 days from the date the appellant or appellant's representative filed a request for a fair hearing pursuant to Regulation .05A of this chapter.

(2) If the date of the fair hearing is postponed at the appellant's request, the length of the postponement may not be counted as part of any of the time period specified in §B(1) of this regulation.

C. Appeal Rights.

(1) Any party may seek judicial review as provided in State Government Article, §10-222, Annotated Code of Maryland.

(2) An administrative law judge's decision:

- (a) Related to Program benefits:
  - (1) Shall be implemented immediately, if adverse to the appellant.
  - (2) If favorable to the appellant, shall be implemented retroactively to the date the incorrect action was taken; or
  - (b) Related to eligibility for enrollment in a qualified health plan, advance payments of the premium tax credit, or cost-sharing reductions shall be implemented in accordance with 45 CFR §155.545(c)(1).
- (3) To the extent an administrative law judge's decision upholds the determination or redetermination of the Exchange with respect to an applicant for eligibility for enrollment in a qualified health plan or for an insurance affordability program described in Regulation .02B(10)(d) or (e), the applicant may appeal to the United States Department of Health and Human Services pursuant to 45 CFR §155.520(c).

D. Effect of Decision.

- (1) When the decision requires action by the Department, the Exchange shall notify the Department.
- (2) When the decision is favorable to the appellant, or when the Exchange grants the appellant the relief the appellant requests before the decision, the Exchange, where applicable, shall authorize corrected payments or relief retroactive to the date the incorrect action was taken and redetermine eligibility for household members whose eligibility may be affected by the appeals decision.
- (3) Any payment or action by the Exchange under §D(2) of this regulation may not constitute a waiver of the Exchange's sovereign immunity from suit.

**.10 Confidentiality.**

A. If the appellant waives in writing his privilege of confidentiality as to the fair hearing, the administrative law judge shall permit members of the public to attend the hearing.

B. The administrative law judge may cause the removal of any member of the public whose conduct impedes the orderly progress of the hearing, or recess the hearing until it may proceed in orderly fashion.

C. The administrative law judge may exclude from the hearing individuals who have not given the Exchange advance notice of their intention to attend if the size of the hearing room is too small to accommodate them.

**.11 Program Benefits During Appeals Process.**

**A. Benefits Pending Outcome of the Hearing.**

(1) The Program may terminate or reduce services effective as of the date specified in the notice if the Program timely mails the notice as required under Regulation .04 of this chapter and:

(a) The appellant or the appellant’s authorized representative does not timely request a hearing in accordance with Regulation .05 of this chapter; or

(b) The appellant or the appellant’s authorized representative withdraws in writing or abandons a request for a fair hearing.

(2) Except as provided in §A(3) of this regulation, the Program may not terminate or reduce services until a decision is rendered after the hearing if:

(a) The Program timely mails the notice as required under Regulation .04 of this chapter; and

(b) The appellant requests a hearing before the date of the action.

(3) The Program may terminate or reduce services before an administrative law judge renders a decision after a hearing if:

(a) The administrative law judge determines at the hearing that the sole issue is one of federal or State law or policy, or the request for a fair hearing is withdrawn in writing or abandoned; and

(b) The Program includes in the notification required by Regulation .04 of this chapter that services are to be terminated or reduced pending the hearing decision.

**B. Reinstating Benefits.**

(1) If the Program terminates or reduces services pursuant to §A of this regulation, the Program may reinstate services if a Program recipient requests a hearing not more than 10 days after the date of action.

(2) The reinstated services shall continue until a hearing decision, unless, at the hearing, the administrative law judge determines that the sole issue is one of federal or State law or policy.

(3) The Program shall reinstate and continue services until a decision is rendered after a hearing if:

(a) Action is taken without the advance notice being given to the recipient as required by Regulation .04 of this chapter;

(b) The recipient requests a hearing within 10 days of the mailing of the notice of action; and

(c) The Program determines that the action resulted from other than the application of federal or State law or policy.

(4) If a recipient’s whereabouts are unknown, as indicated by the return of unforwardable Program mail directed to the recipient, any discontinued services shall be reinstated if the recipient’s whereabouts become known during the time the recipient is eligible for services.

(5) The administrative law judge may provide for an additional period during which time the request for a fair hearing will result in reinstatement of a recipient’s assistance to be continued until the hearing decision.

**.12 Eligibility for Enrollment in a Qualified Health Plan, for Advance Payments of Premium Tax Credit, and for Cost-Sharing Reductions Pending Appeal.**

**A. Eligibility for Enrollment in a Qualified Health Plan.**

(1) If, upon initial determination, an applicant has been determined to be ineligible to enroll in a qualified health plan, the

applicant may not enroll in a qualified health plan pending the outcome of the appeal.

(2) Except where the applicant does not appeal a redetermination of eligibility within 90 days of such redetermination, an applicant enrolled in a qualified health plan who, upon redetermination, is found ineligible to remain enrolled in the qualified health plan may remain enrolled in the qualified health plan pending the outcome of the appeal.

**B. Eligibility for Advance Payments of the Premium Tax Credit and/or Cost-Sharing Reduction.**

(1) Except where the applicant does not appeal an initial determination of eligibility within 90 days of such determination, an applicant who, upon initial determination, has been determined to be eligible to enroll in a qualified health plan may enroll in a qualified health plan within 90 days of the determination of eligibility for a qualified health plan notwithstanding ineligibility for or the amount of Advance Payments of the Premium Tax Credit or Cost-Sharing Reduction for which the applicant was determined to be eligible.

(2) Pending the outcome of the appeal, the applicant under §B(1) of this regulation will receive only the amount of the advance payments of the premium tax credit and/or cost-sharing reduction, if any, for which applicant was determined to be eligible upon initial determination.

(3) Except where the applicant does not appeal a redetermination of eligibility within 90 days of such redetermination, an applicant who is receiving advance payments of the premium tax credit and/or cost-sharing reduction and is found to be ineligible for, or subject to a reduced amount of, advance payments of the premium tax credit and/or cost-sharing reduction during a redetermination may elect to continue to receive the advance payments of the premium tax credit and/or cost-sharing reduction that the applicant had been receiving immediately prior to the redetermination pending the outcome of the appeals process, provided that the applicant attests to understanding that by continuing to receive the advance payments of the premium tax credit the applicant may incur a liability to the Internal Revenue Service pursuant to 26 U.S.C. §36B.

**.13 Applicability of Regulations.**

If a conflict exists between this chapter and the Rules of Procedure of the Office of Administrative Hearings in COMAR 28.02.01, this chapter shall govern.

**.14 Authorized Representatives.**

**A. Definitions.**

(1) “Authorized representative” means an individual or organization acting responsibly on behalf of the applicant in accordance with this regulation, in assisting with an applicant’s application, renewal of eligibility, appeals, and other ongoing communications with the Exchange.

(2) “Signature” includes electronic, including telephonically recorded, signatures and handwritten signatures transmitted by facsimile or other electronic transmissions.

**B. Designating an Authorized Representative.**

(1) An applicant may designate any individual or organization to serve as authorized representative.

(2) An authorized representative may be designated either:

(a) In writing, including the applicant’s signature; or

(b) By providing proof of legal authority to act on behalf of an applicant.

(3) Legal authority includes, but is not limited to the:

(a) Applicant’s parent, if the applicant is a minor;

(b) Applicant’s legal guardian, if one has been appointed, or a person who has in good faith filed an application to be appointed the applicant’s legal guardian but who has not yet been appointed the applicant’s legal guardian;

(c) Applicant’s healthcare surrogate as defined in Health-General Article, §5-605, Annotated Code of Maryland;

(d) Personal representative of applicant’s estate, or a person who has in good faith filed an application to be appointed the personal representative of the applicant’s estate but who has not yet been appointed the personal representative of the applicant’s estate;

(e) Individual appointed to make legal or medical decisions on behalf of the applicant pursuant to a validly executed power of attorney; or

(f) Attorney or paralegal retained by the applicant.

(4) For individuals who lack the capacity to designate an authorized representative and for whom no other individual or organization has the legal authority to act under §B(2) of this regulation, an authorized representative can be any individual or organization acting responsibly on behalf of the applicant who:

(a) In good faith, is acting in the best interest of the applicant; and

(b) Declares the applicant lacks legal capacity, and for organizations, declares that its directors, employees, officers or employers, if any, do not have a direct financial interest in the outcome of the fair hearing.

(5) For individuals who lack the capacity to designate an authorized representative, for whom no other individual or organization has the legal authority to act under §B(2) of this regulation, and on behalf of whom no individual or organization covered by §B(4) of this regulation is willing and able to act, an authorized representative can be any individual or organization with a direct financial interest in the outcome of the hearing or whose employer has a direct financial interest in the outcome of the hearing who:

(a) In good faith is acting in the best interest of the applicant;

(b) Declares that the applicant lacks legal capacity; and

(c) Declares that to the best of the authorized representative’s belief, no other individual or organization is willing and able to act on the applicant’s behalf.

C. Time for Authorization. Designation of an authorized representative, or the declarations by an individual or organization required under §B(4) or (5) of this regulation to become an authorized representative, can take place at any time, including, but not limited to, the time of application, upon redetermination, upon filing an appeal, and at the appeal hearing.

D. Duration of Representation. The power to act as an authorized representative is valid until the applicant modifies the authorization or notifies the Exchange that the representative is no longer authorized to act on his or her behalf, there is a change in the legal authority upon which the individual or organization’s authority was based, or the authorized representative informs the Exchange, as required by 45 CFR §155.227(d)(2), that the representative no longer has legal authority to act on behalf of the applicant. Such notice shall be in writing and shall include the applicant’s signature or the authorized representative’s signature, as appropriate.

E. Powers of Authorized Representative. Authorized representatives may be authorized to perform all, or fewer than all, of the following:

(1) Sign an application on the applicant’s behalf;

(2) Complete and submit an update or a renewal form or respond to a request for redetermination;

(3) Receive copies of the applicant’s notice and other communications from the Exchange; and

(4) Act on behalf of the applicant in all matters with the Exchange including appeals.

F. Obligations of Authorized Representative. An authorized representative:

(1) Is responsible for fulfilling all the responsibilities encompassed within the scope of the authorized representation as described in §E of this regulation to the same extent as the individual the representative represents;

(2) Shall agree to maintain, or be legally bound to maintain, the confidentiality of any information regarding the applicant provided by the Exchange.

G. Authorized Representatives Through an Organization. A provider, staff member, or volunteer of an organization shall sign an agreement to adhere to the federal regulations governing authorized representatives as laid out in 42 CFR §435.923 or 45 CFR §155.227, as applicable, as well as relevant State and federal laws concerning conflicts of interest and confidentiality of information.

BOARD OF TRUSTEES  
Maryland Health Benefit Exchange

## Subtitle 35 MARYLAND HEALTH BENEFIT EXCHANGE

### Notice of Proposed Action

[15-085-P]

The Maryland Health Benefit Exchange proposes to adopt:

(1) New Regulations .01—.08 under a new chapter, **COMAR 14.35.12 Application Counselor Sponsoring Entity Designation Standards**; and

(2) New Regulations .01—.10 under a new chapter, **COMAR 14.35.13 Application Counselor Training and Certification Standards**.

### Statement of Purpose

The purpose of this action is to provide the standards by which application counselor sponsoring entities (ACSE) will be designated by the Maryland Health Benefit Exchange and the training and certification standards the ACSE’s agents must follow in order to obtain application counselor certification.

### 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 action will have an economic impact on the Maryland Health Benefit Exchange and the Office of Administrative Hearings.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:		
(1) Staffing costs	(E+)	Minimal
(2) Training costs	(E+)	Minimal
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE	

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.)

A(1). The Maryland Health Benefit Exchange has one full-time program manager for the application counselor program. This individual’s salary and fringe accounts for the staffing costs.

A(2). Application counselors utilize a subset of training materials developed by the MHBE for consumer assistance workers.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Ms. Carolyn Quattrocki, Executive Director, Maryland Health Benefit Exchange, 750 E. Pratt Street, Baltimore, MD 21202, or call (410) 547-1270, or email to mhbe.publiccomments@maryland.gov, or fax to (410) 547-7373. Comments will be accepted through March 9, 2015. A public hearing has not been scheduled.

**14.35.12 Application Counselor Sponsoring Entity Designation Standards**

*Authority: Insurance Article, §§31-106 and 31-113(r), Annotated Code of Maryland*

**.01 Scope.**

*In General. This chapter applies to any community-based organization, health care provider, unit of State or local government, or other entity seeking designation as an application counselor sponsoring entity by the Maryland Health Benefit Exchange.*

**.02 Definitions.**

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

**B. Terms Defined.**

(1) *“Applicant” means a community-based organization, health care provider, unit of State or local government, or other entity applying for designation as an application counselor sponsoring entity.*

(2) *“Application counselor” has the meaning set forth in Insurance Article, §31-101(a-1), Annotated Code of Maryland.*

(3) *“Application counselor sponsoring entity” or “sponsoring entity” has the meaning set forth in Insurance Article, §31-101(a-2), Annotated Code of Maryland.*

(4) *“Assister” means an individual employed or engaged by an Individual Exchange connector entity capable of providing the services set forth under Insurance Article, §31-113(d)(2), Annotated Code of Maryland.*

(5) *“Commissioner” means the Maryland Insurance Commissioner.*

(6) *“Consolidated Services Center” has the meaning set forth in Insurance Article, §31-101(c-2), Annotated Code of Maryland.*

(7) *“Individual Exchange” or “Exchange” has the meaning set forth in Insurance Article, §31-101(h), Annotated Code of Maryland.*

(8) *“Individual Exchange connector entity” has the meaning set forth under Insurance Article, §31-101(k), Annotated Code of Maryland.*

(9) *“Individual Exchange navigator” has the meaning set forth under Insurance Article, §31-101(i), Annotated Code of Maryland.*

(10) *“Maryland Health Benefit Exchange” has the meaning set forth under Insurance Article, §31-101(e), Annotated Code of Maryland.*

**.03 Eligibility Requirements.**

*To be eligible for designation as an application counselor sponsoring entity, an applicant shall:*

A. *Complete and submit to the Maryland Health Benefit Exchange the application counselor sponsoring entity application set forth under Regulation .05 of this chapter;*

B. *Agree to comply with the requirements set forth in the application counselor sponsoring entity application, including the requirements for oversight of its certified application counselors;*

C. *Comply with any applicable requirements of the Department of Health and Mental Hygiene and the Commissioner; and*

D. *Enter into a formal written agreement with all employed or engaged certified application counselors whereby certified application counselors agree to comply with the provisions of the application counselor training and certification standards under COMAR 14.35.13 and 45 CFR §155.225.*

**.04 Scope of Authority.**

A. *A designated application counselor sponsoring entity may employ or engage certified application counselors to:*

(1) *Provide information to consumers about the full range of qualified health plan and qualified dental plan options and insurance affordability programs, including advance premium tax credits and cost-sharing subsidies, the Maryland Medical Assistance Program, and the Maryland Children’s Health Program, for which they are eligible;*

(2) *Assist consumers with the application process for determining eligibility for insurance affordability programs, including advance premium tax credits and cost-sharing subsidies, the Maryland Medical Assistance Program, and the Maryland Children’s Health Program;*

(3) *Facilitate plan selection and enrollment of eligible individuals in qualified health plans, qualified dental plans, and access to advance premium tax credit and other cost-sharing subsidies; and*

(4) *Provide to consumers uniform, factual, and unbiased information approved by the Maryland Medical Assistance Program about all participating managed care organizations, including report cards, lists of enhanced benefits and covered services, and participating providers.*

B. *A designated application counselor sponsoring entity may not permit certified application counselors to:*

(1) *Enroll Maryland Medical Assistance Program/Maryland Children’s Health Program eligible individuals into managed care organizations; or*

(2) *Express a personal or professional assessment about which Maryland Medical Assistance Program/Maryland Children’s Health Program managed care organization may be most appropriate for an eligible individual, may not make a managed care organization selection on the applicant’s behalf, and may not otherwise counsel an applicant about the selection of a managed care organization.*

C. *Where a Maryland Medical Assistance Program/Maryland Children’s Health Program eligible consumer seeks further counseling or additional assistance in choosing a managed care organization, a designated application counselor sponsoring entity shall instruct the certified application counselor to refer the consumer to the Consolidated Services Center or to an Individual*

Exchange navigator, an assister, or a caseworker unaffiliated with the certified application counselor's designated application counselor sponsoring entity.

D. An Individual Exchange connector entity may also be a designated application counselor sponsoring entity only under the following conditions:

(1) No agent, employee, or volunteer of the Individual Exchange connector entity may hold more than a single certification as either an Individual Exchange navigator, an assister, or a certified application counselor;

(2) All Individual Exchange connector entity grant funds must be wholly segregated from certified application counselor program funding;

(3) No certified application counselor may be compensated in whole or in part from Individual Exchange connector entity grant funding, and no Individual Exchange navigator or assister may be compensated in whole or in part from application counselor program funding;

(4) All utilities, computer systems, and other components of operations which are utilized jointly by both the Individual Exchange connector and application counselor programs, including executive and administrative staff, shall be cost allocated as directed by the Maryland Health Benefit Exchange and Department of Health and Mental Hygiene in relation to the percentage of consumers served by the entity who are determined eligible for Maryland Medical Assistance Program/Maryland Children's Health Program, advance premium tax credits, or cost-sharing subsidies, and who are enrolled in qualified health plans and managed care organizations; and

(5) No individuals seeking assistance in enrolling in a managed care organization may be referred by a certified application counselor engaged by an Individual Exchange connector entity to an Individual Exchange navigator or assister employed by the same individual exchange connector entity, and no consumers served by an Individual Exchange connector entity, Individual Exchange navigator, or assister may be referred to or served also by a certified application counselor retained by the same Individual Exchange connector entity.

**.05 Application Procedures.**

A. In order to obtain an application counselor sponsoring entity designation, the applicant shall submit to the Maryland Health Benefit Exchange:

(1) An application on the form approved by the Maryland Health Benefit Exchange in consultation with the Commissioner and the Department of Health and Mental Hygiene;

(2) An attestation that the applicant will notify the Maryland Health Benefit Exchange of any changes in information the applicant provides or to which the applicant attests on the application form within 30 days of such change;

(3) An attestation that the applicant will not impose a fee on individuals for services provided by certified application counselors employed or engaged by the applicant;

(4) An attestation that the applicant will disclose to the Maryland Health Benefit Exchange and to individuals to whom certified application counselors employed or engaged by the applicant provide services any relationships it has with a carrier, an insurance producer, or a third-party administrator or a managed care organization that participates in the Maryland Medical Assistance Program/Maryland Children's Health Program;

(5) An attestation that the applicant will act in the best interest of the individuals for whom the certified application counselors employed or engaged by the applicant are authorized to provide services;

(6) An attestation that the applicant will not receive compensation from a carrier, insurance producer, managed care

organization, or a third-party administrator for application counselor services provided by certified application counselors employed or engaged by the applicant;

(7) An attestation that the applicant will compensate employed or engaged certified application counselors in the manner approved by the Maryland Health Benefit Exchange working in consultation with the Commissioner and the Department of Health and Mental Hygiene;

(8) An attestation that the applicant will not directly or through employed or engaged certified application counselors provide monetary or other financial incentives to individuals to apply for health insurance coverage through Maryland Health Connection;

(9) An attestation that the applicant will not receive compensation from the Maryland Health Benefit Exchange for certified application counselor services;

(10) An attestation that the applicant will monitor the performance of its certified application counselors in accordance with the requirements set forth by the Maryland Health Benefit Exchange;

(11) An attestation that the applicant will enforce the required agreement set forth under Regulation .03D of this chapter;

(12) An attestation that the applicant will oversee employed or engaged certified application counselors pursuant to the oversight plan approved by the Maryland Health Benefit Exchange, in consultation with the Commissioner and the Department of Health and Mental Hygiene;

(13) An attestation that the applicant will comply with all applicable federal and State privacy and security standards, and will ensure that its certified application counselors also comply with these standards;

(14) An attestation that the applicant will operate within its scope of authority and ensure that it and its certified application counselors comply with the requirements set forth under Regulation .04 of this chapter;

(15) An attestation that the applicant will comply with any applicable requirements of Department of Health and Mental Hygiene and the Commissioner; and

(16) An application fee to the extent permitted by law and in the manner specified by the Maryland Health Benefit Exchange.

B. The Maryland Health Benefit Exchange may not consider an application to be complete until it has received all required materials.

C. If the application is not completed with all required materials within 45 days after the Maryland Health Benefit Exchange receives the signed application form, the Maryland Health Benefit Exchange may consider the application withdrawn.

D. The Maryland Health Benefit Exchange, in consultation with the Commissioner and the Department of Health and Mental Hygiene, shall approve or deny an application within 45 days after its completion and receipt of all required materials.

E. Approval of an application will be contingent on the applicant's execution of a designation agreement, in the form presented by the Maryland Health Benefit Exchange working in consultation with the Commissioner and the Department of Health and Mental Hygiene.

F. In consultation with the Commissioner and the Department of Health and Mental Hygiene, the Maryland Health Benefit Exchange may exercise its discretion in approving an application and designating an entity as an application counselor sponsoring entity, taking into consideration:

(1) The applicant's ability to satisfy the requirements set forth in the application; and

(2) The resources, oversight capacity, and needs of the Maryland Health Benefit Exchange, the Connector Program, the

Maryland Insurance Administration, the Department of Health and Mental Hygiene, and other outreach and enrollment efforts.

**.06 Designation Term and Renewal.**

A. Term. An application counselor sponsoring entity designation expires 2 years after the date it is issued unless it is renewed or revoked prior to that time.

B. Renewal.

(1) Notice.

(a) At least 60 days before the expiration of an application counselor sponsoring entity designation, the Maryland Health Benefit Exchange shall notify the application counselor sponsoring entity directly at the entity's address on file, including email address, with the Maryland Health Benefit Exchange, of the expiration date of an application counselor sponsoring entity designation.

(b) The notification shall include:

(i) A renewal application;

(ii) The date by which the Maryland Health Benefit Exchange must receive the renewal application for the renewal to be issued before the designation expires; and

(iii) The amount of any renewal fee.

(2) Eligibility for Renewal. An application counselor sponsoring entity designation may be renewed for an additional 2-year term if the holder:

(a) Is otherwise entitled to receive application counselor sponsoring entity designation, in accordance with the eligibility requirements set forth under Regulation .03 of this chapter;

(b) Files a timely renewal application on the form approved by the Maryland Health Benefit Exchange, either by mail or electronically; and

(c) Pays to the Maryland Health Benefit Exchange a renewal fee to the extent permitted by law and in the manner specified by the Maryland Health Benefit Exchange.

**.07 Reinstatement.**

A. For up to 1 year after the expiration of a designation, an entity whose application counselor sponsoring entity designation has expired may apply to reinstate the expired designation by:

(1) Filing a reinstatement application, either by mail or electronically, on a form approved by the Maryland Health Benefit Exchange;

(2) Paying to the Maryland Health Benefit Exchange the renewal fee if permitted by law and in the manner specified by the Exchange; and

(3) Paying to the Maryland Health Benefit Exchange a reinstatement fee if permitted by law and in the manner specified by the Maryland Health Benefit Exchange.

B. An entity that does not file for reinstatement within 1 year after the expiration date of the designation shall apply for an application counselor sponsoring entity designation under the application procedures set forth under Regulation .05 of this chapter.

**.08 Revocation of Designation.**

The Maryland Health Benefit Exchange, in consultation with the Commissioner and Department of Health and Mental Hygiene, shall revoke an application counselor sponsoring entity designation for any failure to act in accordance with the application counselor sponsoring entity attestations set forth under Regulation .05A of this chapter pursuant to the procedures for withdrawal or revocation set forth under the agreement between the Maryland Health Benefit Exchange and the application counselor sponsoring entity.

**14.35.13 Application Counselor Training and Certification Standards**

Authority: Insurance Article, §§31-106 and 31-113(r), Annotated Code of Maryland

**.01 Scope.**

This chapter sets forth the qualifications, training, and certification standards for an agent, employee, or volunteer of an application counselor sponsoring entity who applies to receive an application counselor certification and is required under Insurance Article, §31-113(r)(1)(ii), Annotated Code of Maryland, to hold an application counselor certification to provide the services set forth below.

**.02 Definitions.**

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

B. Terms Defined.

(1) "Applicant" means an agent, employee, or volunteer of an application counselor sponsoring entity who is applying for certification as an application counselor.

(2) "Application counselor" has the meaning set forth in Insurance Article, §31-101(a-1), Annotated Code of Maryland.

(3) "Application counselor sponsoring entity" or "sponsoring entity" has the meaning set forth in Insurance Article, §31-101(a-2), Annotated Code of Maryland.

(4) "Assister" means an individual employed or engaged by an Individual Exchange connector entity capable of providing the services set forth under Insurance Article, §31-113(d)(2), Annotated Code of Maryland.

(5) "Commissioner" means the Maryland Insurance Commissioner.

(6) "Consolidated Services Center" has the meaning set forth in Insurance Article, §31-101(c-2), Annotated Code of Maryland.

(7) "Individual Exchange" or "Exchange" has the meaning set forth in Insurance Article, §31-101(h), Annotated Code of Maryland.

(8) "Individual Exchange connector entity" has the meaning set forth in Insurance Article, §31-101(k), Annotated Code of Maryland.

(9) "Individual Exchange navigator" has the meaning set forth under Insurance Article, §31-101(i), Annotated Code of Maryland.

(10) "Insurance affordability programs" has the meaning set forth at 42 CFR §435.4.

(11) "Maryland Health Benefit Exchange" has the meaning set forth under Insurance Article, §31-101(e), Annotated Code of Maryland.

**.03 Eligibility Requirements.**

To qualify for an application counselor certification, an applicant shall:

A. Be of good character and trustworthy;

B. Be at least 18 years old;

C. Be an agent, employee, or volunteer of an application counselor sponsoring entity;

D. Not be an Individual Exchange navigator or assister;

E. Enter into a formal written agreement with an application counselor sponsoring entity agreeing to comply with the provisions of this chapter and 45 CFR §155.225;

F. Successfully complete and comply with any ongoing requirements of the training program set forth under Regulation .06 of this chapter;

G. Complete and submit to the Maryland Health Benefit Exchange an application counselor application set forth under Regulation .05 of this chapter;

H. Agree to comply with the requirements set forth in the application counselor application; and

I. Comply with any applicable requirements of the Department of Health and Mental Hygiene and the Commissioner.

**.04 Scope of Authority.**

A. A certified application counselor may:

(1) Provide information to consumers about the full range of qualified health plan and qualified dental plan options and insurance affordability programs, including advance premium tax credits and cost-sharing subsidies, the Maryland Medical Assistance Program, and the Maryland Children's Health Program, for which they are eligible;

(2) Assist consumers with the application process for determining eligibility for insurance affordability programs, including advance premium tax credits and cost-sharing subsidies, the Maryland Medical Assistance Program, and the Maryland Children's Health Program;

(3) Facilitate plan selection and enrollment of eligible individuals in qualified health plans, qualified dental plans, and access to advance premium tax credit and other cost-sharing subsidies; and

(4) Provide to consumers uniform, factual, and unbiased information approved by the Maryland Medical Assistance Program about all participating managed care organizations, including report cards, lists of enhanced benefits and covered services, and participating providers.

B. A certified application counselor may not express a personal or professional assessment about which Maryland Medical Assistance Program/Maryland Children's Health Program managed care organization may be most appropriate for an eligible individual, may not make a managed care organization selection on the applicant's behalf, and may not otherwise counsel an applicant about the selection of a managed care organization.

C. Where a Maryland Medical Assistance Program/Maryland Children's Health Program eligible consumer seeks further counseling or additional assistance in choosing a managed care organization, a certified application counselor shall refer the consumer to the Consolidated Services Center or to an Individual Exchange navigator, an assister, or a caseworker unaffiliated with the certified application counselor's designated application counselor sponsoring entity.

D. A certified application counselor may not hold an Individual Exchange navigator certification or be an assister.

**.05 Application Procedures.**

A. In order to obtain an application counselor certification, the applicant shall submit to the Maryland Health Benefit Exchange:

(1) An application, on the form approved by the Maryland Health Benefit Exchange in consultation with the Commissioner and the Department of Health and Mental Hygiene;

(2) An attestation that the applicant will notify the Maryland Health Benefit Exchange of any changes to information that the applicant provides or to which the applicant attests on the application form within 30 days of such change;

(3) An attestation that the applicant will not impose a fee on individuals to whom the applicant provides services;

(4) An attestation that the applicant will disclose to the Maryland Health Benefit Exchange, the application counselor sponsoring entity, and individuals to whom the applicant provides services any relationships the applicant has with a carrier, an insurance producer, a third-party administrator, or a managed care organization that participates in the Maryland Medical Assistance Program/Maryland Children's Health Program, as well as other potential conflicts of interest;

(5) An attestation that the applicant will act in the best interest of the individuals for whom the applicant is authorized to provide services;

(6) An attestation that the applicant will not receive compensation from a carrier, insurance producer, managed care organization or third-party administrator for application counselor services;

(7) An attestation that the applicant will not receive compensation from the Maryland Health Benefit Exchange; (8) An attestation that the applicant will accept compensation for application counselor-related duties only from its application counselor sponsoring entity, as approved by the Maryland Health Benefit Exchange in consultation with the Commissioner and the Department of Health and Mental Hygiene;

(8) An attestation that the applicant will not provide monetary or other financial incentives to individuals to apply for health insurance coverage through Maryland Health Connection;

(9) An attestation that the applicant will comply with the oversight plan adopted by its application counselor sponsoring entity approved by the Maryland Health Benefit Exchange, in consultation with the Commissioner and the Department of Health and Mental Hygiene;

(10) An attestation that the applicant will comply with all State requirements, restrictions, and conflict of interest rules applicable to Individual Exchange navigators;

(11) An attestation that the applicant will comply with the required agreement set forth under Regulation .03A(5) of this chapter;

(12) An attestation that the applicant will comply with all applicable federal and State privacy and security standards;

(13) An attestation that the applicant will operate within the applicant's scope of authority and ensure that he or she complies with the requirements set forth under Regulation .04 of this chapter;

(14) An attestation that the applicant will comply with any applicable requirements of the Department of Health and Mental Hygiene and the Commissioner;

(15) An application fee if permitted by law and in the manner specified by the Maryland Health Benefit Exchange; and

(16) Evidence that the applicant has successfully completed the Maryland Health Benefit Exchange application counselor certification training program specified under COMAR 14.35.02.04A and passed the examination specified under COMAR 14.35.02.04D.

B. The Exchange may not consider an application to be complete until it has received all required materials.

C. If the application is not completed with all required materials within 45 days after the Maryland Health Benefit Exchange receives the signed application form, the Maryland Health Benefit Exchange may consider the application withdrawn.

**.06 Training Requirements.**

In order to obtain application counselor certification, an individual shall:

A. Complete the training program specified under COMAR 14.35.02.04A; and

B. Pass the examination specified under COMAR 14.35.02.04D.

**.07 Term.**

An application counselor certification expires 2 years after the date it is issued unless it is renewed.

**.08 Renewal.**

A. Notice.

(1) At least 60 days before the expiration of an application counselor certification, the Maryland Health Benefit Exchange shall notify the application counselor using the address on file, including



email address, with the Maryland Health Benefit Exchange, of the expiration date of an application counselor certification.

(2) The notification shall include:

(a) A renewal application;

(b) The date by which the Maryland Health Benefit Exchange must receive the renewal application for the renewal to be issued before the certification expires; and

(c) The amount of any renewal fee.

**B. Eligibility for Renewal.** An application counselor certification may be renewed for an additional 2-year term if the holder:

(1) Is otherwise entitled to receive application counselor certification, in accordance with the eligibility requirements set forth under Regulation .03 of this chapter;

(2) Files a timely renewal application on the form approved by the Maryland Health Benefit Exchange, either by mail or electronically;

(3) Pays to the Maryland Health Benefit Exchange a renewal fee to the extent permitted by law and in the manner specified by the Maryland Health Benefit Exchange; and

(4) Has completed the education requirements set forth under COMAR 14.35.03.02B(4), 14.35.03.02C, and 14.35.03.02D, where determined to be applicable by the Maryland Health Benefit Exchange.

**.09 Reinstatement.**

A. For up to 1 year after the expiration of a certification, an individual whose application counselor certification has expired may apply to reinstate the expired certification by:

(1) Filing a reinstatement application, either by mail or electronically, on a form approved by the Maryland Health Benefit Exchange;

(2) Paying to the Maryland Health Benefit Exchange the renewal fee if permitted by law and in the manner specified by the Maryland Health Benefit Exchange; and

(3) Paying to the Maryland Health Benefit Exchange a reinstatement fee if permitted by law and in the manner specified by the Maryland Health Benefit Exchange.

B. An individual who does not file for reinstatement within 1 year after the expiration date of the certification shall apply for an application counselor certification under the application procedures set forth under Regulation .05 of this chapter.

**.10 Suspension or Revocation.**

A. The Commissioner may suspend or revoke an application counselor certification for any reason set forth under Insurance Article, §31-113(l)(1), Annotated Code of Maryland, made applicable to application counselors pursuant to Insurance Article, §31-113(r), Annotated Code of Maryland, or for any reason set forth under 45 CFR §155.225.

B. An application counselor's certification is automatically suspended if his or her application counselor sponsoring entity's designation expires or is withdrawn by the Maryland Health Benefit Exchange.

C. An application counselor's certification that has been suspended under §B of this regulation may be reinstated if the application counselor becomes an agent, employee, or volunteer of another application counselor sponsoring entity with a valid designation and executes the agreement required under Regulation .03A(5) of this chapter.

BOARD OF TRUSTEES  
Maryland Health Benefit Exchange

**Subtitle 35 MARYLAND HEALTH  
BENEFIT EXCHANGE**

**14.35.14 Eligibility Standards for Enrollment in  
Qualified Health Plans, Advance Payments of  
the Premium Tax Credit, and Cost-Sharing  
Reductions**

Authority: Insurance Article, §§31-106 and 31-108, Annotated Code of Maryland

**Notice of Proposed Action**

[15-084-P]

The Maryland Health Benefit Exchange proposes to adopt new Regulations .01— .07 under a new chapter, **COMAR 14.35.14 Eligibility Standards for Enrollment in Qualified Health Plans, Advance Payments of the Premium Tax Credit, and Cost-Sharing Reductions.**

**Statement of Purpose**

The purpose of this action is to provide the standards that the Maryland Health Benefit Exchange utilizes in making eligibility determinations for advance payments of the premium tax credit, cost-sharing reductions, and enrollment in qualified health plans.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Ms. Carolyn Quattrochi, Executive Director, Maryland Health Benefit Exchange, 750 E. Pratt Street, Baltimore, MD 21202, or call (410) 547-1270, or email to mhbe.publiccomments@maryland.gov, or fax to (410) 547-7373. Comments will be accepted through March 9, 2015. A public hearing has not been scheduled.

**.01 Scope.**

This chapter sets forth the eligibility standards for enrollment in qualified health plans, advance payments of the premium tax credit, and cost-sharing reductions.

**.02 Definitions.**

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

B. Terms Defined.

(1) "Advance payments of the premium tax credit" means payment of the federal tax credits specified in §36B of the Internal Revenue Code (as added by §1401 of the Affordable Care Act) which are provided on an advance basis to an eligible individual enrolled in a qualified health plan through an Exchange in accordance with §1412 of the Affordable Care Act.

(2) "Affordable Care Act" means the Patient Protection and Affordable Care Act, Pub. L. 111-148, as amended by the Health Care and Education Reconciliation Act, Pub. L. 111-152.

(3) "Catastrophic plan" means a qualified health plan described in §1302(e) of the Affordable Care Act.

(4) “Cost-sharing reductions” means reductions in cost sharing, including, but not limited to, reductions in out-of-pocket limits, for an eligible individual enrolled in a silver level plan in the Exchange or for an eligible individual who is an Indian enrolled in a qualified health plan through the Exchange.

(5) “Indian” has the meaning set forth under 45 CFR §155.300.

(6) “Maryland Health Benefit Exchange” has the meaning set forth in Insurance Article, §31-101(e), Annotated Code of Maryland.

(7) “Qualified Health Plan” has the meaning set forth in Insurance Article, §31-101(r), Annotated Code of Maryland.

**.03 Eligibility Requirements for Enrollment in a Qualified Health Plan.**

The Maryland Health Benefit Exchange shall determine an applicant’s eligibility for enrollment in a qualified health plan based on the criteria set forth under 45 CFR §155.305(a).

**.04 Eligibility for Qualified Health Plan Enrollment Periods.**

The Exchange shall determine an applicant eligible for an enrollment period if he or she meets the criteria for an annual enrollment period, as specified in 45 CFR §155.410, or for a special enrollment period, as specified in 45 CFR §155.420 and the Maryland Health Benefit Exchange’s Procedures on Eligibility and Enrollment – Special Enrollment Periods.

**.05 Eligibility Requirements for Advance Payments of the Premium Tax Credit.**

The Maryland Health Benefit Exchange shall determine a tax filer’s eligibility for advance payments of the premium tax credit based on the criteria set forth under 45 CFR §155.305(f) and 26 CFR §1.36B-2.

**.06 Eligibility Requirements for Cost-Sharing Reductions.**

A. The Maryland Health Benefit Exchange shall determine an applicant’s eligibility for cost-sharing reductions based on the criteria set forth under 45 CFR §155.305(g).

B. Where an applicant is an Indian, the Maryland Health Benefit Exchange shall determine the applicant’s eligibility for any cost-sharing reductions based on the criteria set forth under 45 CFR §155.350.

**.07 Eligibility Requirements for Enrollment in a Catastrophic Plan.**

The Maryland Health Benefit Exchange shall determine an applicant’s eligibility for enrollment in a catastrophic plan based on the criteria set forth under 45 CFR §155.305(h).

BOARD OF TRUSTEES  
Maryland Health Benefit Exchange

# Errata

## COMAR 10.32.02

At 41:25 Md. R. 1508 (December 12, 2014), col. 1, AFTER line 22 from the top:

INSERT: This action was considered by the Board of Physicians at a public meeting held on September 24, 2014, notice of which was given by publication on the Board of Physicians web site at <http://www.mbp.state.md.us/forms/sep14Bagenda.pdf> from September 10, 2013 – September 24, 2014, pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

[15-03-38]

## COMAR 10.32.10

At 41:25 Md. R. 1517 (December 12, 2014), col. 2, AFTER line 1 from the bottom:

INSERT: This action was considered by the Board of Physicians at a public meeting held on August 27, 2014, notice of which was given by publication on the Board of Physicians web site at <http://www.mbp.state.md.us/forms/aug14Bagenda.pdf> from August 14, 2014 – August 27, 2014, pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

[15-03-39]

# Special Documents

## MARYLAND HEALTH CARE COMMISSION

### PROJECTED ADULT CARDIAC SURGERY CASES BY HEALTH PLANNING REGION, CY2014—CY2019

In accordance with COMAR 10.24.17.08, the Maryland Health Care Commission (MHCC) publishes the following notice of projected cardiac surgery cases by health planning region. These updated utilization projections will apply in the review of Certificate of Need (CON) applications acted on by MHCC during the period during which these projections are in effect. These published projections supersede the utilization projections published on January 23, 2015 and remain in effect until MHCC publishes updated projections.

#### Projected Adult Cardiac Surgery Case Volume by Health Planning Region, Calendar Year (CY) 2014-2019

Region	Year					
	2014	2015	2016	2017	2018	2019
<b>Baltimore Upper Shore</b>	3,007	2,935	2,853	2,777	2,704	2,635
<b>Eastern (Lower Shore)</b>	416	408	401	394	388	383
<b>Metropolitan Washington</b>	2,104	2,076	2,039	2,004	1,971	1,940
<b>Western</b>	153	143	134	126	119	112
<b>Total for All Regions</b>	5,680	5,562	5,427	5,301	5,182	5,070

Sources: MHCC staff analysis of Health Services Cost Review Commission discharge abstract data for CY 2008-2013 and District of Columbia discharge abstract data. Cardiac surgery discharges included in calculations are those records that indicate patient age of 15 years or older and include one or more of the following ICD-9 procedure codes 35.00-35.09; 35.10-35.14; 35.20-35.28; 35.31-35.35; 35.39, 35.41, 35.42, 35.50, 35.51, 35.53-35.55; 35.60-35.63; 35.70-35.73; 35.81-35.84; 35.91-35.95; 35.97-35.99; 36.03, 36.10-36.17; 36.19, 36.31, 36.91, 36.99, 37.10, 37.11, 37.32, 37.33, and 37.37. The Maryland population estimates used in calculations are from the Maryland Department of Planning (July 2014). The District of Columbia population estimates are from the U.S. Census Bureau for CY 2000 and 2010-2013. For years 2014 and 2019, MHCC purchased population estimates from Nielsen, a commercial vendor, and interpolated the intervening years, assuming the same rate of change from year-to-year.

#### Region Definitions

**Baltimore Upper Shore:** Anne Arundel, Baltimore, Caroline, Carroll, Cecil, Harford, Howard, Kent, Queen Anne's, and Talbot Counties, and Baltimore City.

**Eastern (Lower Shore):** Dorchester, Somerset, Wicomico, and Worcester Counties.

**Metropolitan Washington:** Calvert, Charles, Frederick, Montgomery, Prince George's, and St. Mary's Counties, and the District of Columbia.

**Western:** Allegany, Garrett, and Washington Counties.

[15-03-47]

## SCHEDULE FOR CERTIFICATE OF NEED REVIEWS CARDIAC SURGERY SERVICES

The Maryland Health Care Commission provides the following schedule for the review of applications for Certificates of Need ("CON") for interested members of the public and acute care general hospital seeking to add cardiac surgery services. An applicant must demonstrate that the proposed project is consistent with the general criteria for CON review set forth at COMAR 10.24.01.08G(3). This CON review schedule updates and extends the schedules published in the *Maryland Register* on Friday, October 3, 2014 and on Friday, August 8, 2014. This review schedule is not a solicitation by the Commission for CON applications, and it does not indicate that additional capacity is needed or that CON applications submitted will be approved by the Commission. Applicants are encouraged to discuss their development plans and projects with the Commission staff prior to filing Letters of Intent or applications.

Letters of Intent and applications for scheduled reviews may only be received and reviewed according to these published schedules. All Letters of Intent and CON applications, including all of the required number of copies of CON applications, must be received at the offices of the **Maryland Health Care Commission, 4160 Patterson Avenue, Baltimore, Maryland 21215, no later than 4:30 p.m.** on the scheduled date of submission. For further information about the review schedules or procedures, call Kevin McDonald, Chief, Certificate of Need, at (410) 764-5982.

Health Planning Region	Letter of Intent Due Date	Pre-Application Conference Date	Application Submission Date
Baltimore Upper Shore <sup>1</sup>	December 5, 2014	December 17, 2014	February 20, 2015
Metropolitan Washington <sup>2</sup>	February 6, 2015	February 18, 2015	April 10, 2015
Eastern (Lower Shore)	December 4, 2015	December 16, 2015	February 19, 2016
Western	December 4, 2015	December 16, 2015	February 19, 2016

<sup>1</sup>No additional reviews will be scheduled for the Baltimore Upper Shore region until completion of the review that follows letters of intent submitted December 5, 2014.

<sup>2</sup>If no letters of intent are filed on February 6, 2015, the schedule for review of applications for the Metropolitan Washington region is the same as for the Eastern (Lower Shore) and Western regions.

#### Maryland Jurisdictions Included in Region Definitions

**Baltimore Upper Shore:** Anne Arundel, Baltimore, Caroline, Carroll, Cecil, Harford, Howard, Kent, Queen Anne's, and Talbot Counties, and Baltimore City.

**Eastern (Lower Shore):** Dorchester, Somerset, Wicomico, and Worcester Counties.

**Metropolitan Washington:** Calvert, Charles, Frederick, Montgomery, Prince George's, and St. Mary's Counties.

**Western:** Allegany, Garrett, and Washington Counties.

[15-03-48]

**SCHEDULE FOR CERTIFICATE OF  
CONFORMANCE REVIEWS  
PRIMARY PERCUTANEOUS  
CORONARY INTERVENTION  
SERVICES**

The Maryland Health Care Commission provides the following schedule for the review of applications for Certificates of Conformance to establish primary percutaneous coronary intervention (PCI) programs. This schedule applies to the entire State.

<b>Letter of Intent Due Date</b>	<b>Application Submission Date</b>
August 3, 2015	September 7, 2015

Letters of Intent and applications by acute care general hospitals that involve the establishment of new primary PCI programs may only be received and reviewed according to this published schedule. All Letters of Intent and applications must be received at the offices of the **Maryland Health Care Commission, 4160 Patterson Avenue, Baltimore, MD 21215, no later than 4:30 p.m.** on the scheduled date of submission. For further information regarding this review schedule or procedures, contact Paul Parker, (410) 764-3261.

[15-03-49]

# General Notices

## Notice of ADA Compliance

The State of Maryland is committed to ensuring that individuals with disabilities are able to fully participate in public meetings. Anyone planning to attend a meeting announced below who wishes to receive auxiliary aids, services, or accommodations is invited to contact the agency representative at least 48 hours in advance, at the telephone number listed in the notice or through Maryland Relay.

### BOARD OF ARCHITECTS

**Subject:** Public Meeting  
**Date and Time:** February 25, 2015, 10 a.m.  
**Place:** 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD  
**Contact:** Pamela J. Edwards (410) 230-6262  
 [15-03-42]

### ATHLETIC COMMISSION

**Subject:** Public Meeting  
**Date and Time:** February 25, 2015, 2 — 4 p.m.  
**Place:** 500 N. Calvert St., 3rd Fl., Baltimore, MD  
**Contact:** Patrick Pannella (410) 230-6223  
 [15-03-43]

### BOARD OF AUDIOLOGISTS, HEARING AID DISPENSERS, AND SPEECH-LANGUAGE PATHOLOGISTS

**Subject:** Public Meeting  
**Date and Time:** February 19, 2015, 4 — 6 p.m.  
**Place:** Metro Executive Bldg., 4201 Patterson Ave., MD  
**Contact:** Christopher Kelter (410) 764-4723  
 [15-03-01]

### BOARD OF BARBERS

**Subject:** Public Meeting  
**Date and Time:** March 9, 2015, 9:30 a.m.  
**Place:** 200 St Paul Pl., 3rd Fl., Baltimore, MD  
**Contact:** Shirley Leach (410) 230-6195  
 [15-03-16]

### CHILDREN'S ENVIRONMENTAL HEALTH AND PROTECTION ADVISORY COUNCIL

**Subject:** Public Meeting  
**Date and Time:** March 24, 2015, 9:30 — 11:30 a.m.; Additional Dates: May 26, July 22, September 21, and November 9, 2015, 9:30 — 11:30a.m.  
**Place:** Maryland Dept. of the Environment, 1800 Washington Blvd., Baltimore, MD  
**Contact:** Rachel Hess-Mutinda (410) 767-2196  
 [15-03-32]

### BOARD OF CHIROPRACTIC AND MASSAGE THERAPY EXAMINERS

**Subject:** Public Meeting  
**Date and Time:** February 12, 2015, 10 a.m. — 12:30 p.m.  
**Place:** Maryland Healthcare Commission Bldg., 4160 Patterson Ave., Rm. 100, Baltimore, MD  
**Contact:** James B. Gamble (410) 764-5902  
 [15-03-60]

### MARYLAND COLLECTION AGENCY LICENSING BOARD

**Subject:** Public Meeting  
**Date and Time:** February 23, 2015, 10:30 a.m. — 12:30 p.m.  
**Place:** 900 Bestgate Rd., Ste. 407, Annapolis, MD  
**Contact:** Kelly Mack (410) 230-6079  
 [15-03-26]

### BOARD OF COSMETOLOGISTS

**Subject:** Public Meeting  
**Date and Time:** March 2, 2015, 10 a.m.  
**Place:** 200 St Paul Pl., 3rd Fl., Baltimore, MD  
**Contact:** Shirley Leach (410) 260-6195  
 [15-03-15]

### GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION

**Subject:** Public Meeting  
**Date and Time:** March 9, 2015, 1 — 3 p.m.  
**Place:** 300 E. Joppa Rd., Ste. 1105, Baltimore, MD  
**Add'l. Info:** Juvenile Council Meetings  
**Contact:** Jessica Wheeler (410) 821-2828  
 [15-03-02]

### ELEVATOR SAFETY REVIEW BOARD

**Subject:** Public Meeting  
**Date and Time:** February 20, 2015, 10 a.m. — 12 p.m.  
**Place:** 500 N. Calvert St., 2nd Fl. Conf. Rm., Baltimore, MD  
**Contact:** Raquel M. Meyers (410) 230-6379  
 [15-03-29]

### EMERGENCY MEDICAL SERVICES BOARD

**Subject:** Public Meeting  
**Date and Time:** March 10, 2015, 9 — 11 a.m. Part of the meeting may include a closed session.  
**Place:** 653 W. Pratt St., Ste. 212, Baltimore, MD  
**Add'l. Info:** The State Emergency Medical Services Board (EMS Board) meets regularly on the 2nd Tuesday of each month.  
**Contact:** Leandra Gilliam (410) 706-4449  
 [15-03-36]

### MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES SYSTEMS (MIEMSS)

**Subject:** Request for Reverification  
**Place:** Office of Hospital Programs, 653 W. Pratt St., Baltimore, MD  
**Add'l. Info:** Pursuant to COMAR 30.08.02.10C, the Maryland Institute for Emergency Medical Services Systems (MIEMSS) gives notice that the following hospital has requested reverification as an Eye Trauma Center: Johns Hopkins Hospital. Any person with knowledge of any reason why the above listed hospital should not be reverified and redesignated is requested to submit a written statement of the reason to MIEMSS by March 9, 2015.

In addition, pursuant to COMAR 30.08.02.03C, hospitals not designated but who wish to be considered for designation as an Eye Trauma Center should submit a written letter of intent to the office listed above. Letters of intent are due to MIEMSS by March 9, 2015. For more information contact Carole Mays, Director, Trauma & Injury Specialty Care Program, at (410) 706-3932 or email [cmays@miemss.org](mailto:cmays@miemss.org).  
**Contact:** Leandra Gilliam (410) 706-4449  
 [15-03-37]

### FIRE PREVENTION COMMISSION

**Subject:** Public Meeting  
**Date and Time:** February 19, 2015, 9:30 a.m.  
**Place:** Taylor Avenue Fire Station, 629 Taylor Ave., Upper Classroom, Annapolis, MD  
**Add'l. Info:** If public schools in Anne Arundel County are closed due to

inclement weather, the meeting and any appeals will be rescheduled.

**Contact:** Heidi Ritchie (877) 890-0199  
[15-03-30]

**BOARD OF HEATING,  
VENTILATION, AIR-  
CONDITIONING, AND  
REFRIGERATION CONTRACTORS  
(HVACR)**

**Subject:** Public Meeting  
**Date and Time:** February 11, 2015, 10:30 a.m. — 12 p.m.  
**Place:** 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD  
**Contact:** Robin Bailey (410) 203-6160  
[15-03-13]

**DEPARTMENT OF INFORMATION  
TECHNOLOGY**

**Subject:** Public Meeting  
**Date and Time:** February 25, 2015, 1 — 3 p.m.  
**Place:** Maryland Dept. of Transportation Headquarters, Harry Hughes Conf. Rm., Hanover, MD  
**Contact:** Betsy Jackson (410) 260-6614  
[15-03-35]

**FACILITIES ADVISORY BOARD —  
JUVENILE SERVICES**

**Subject:** Public Meeting  
**Date and Time:** February 14, 2015, 10 a.m. — 12 p.m.  
**Place:** Baltimore City Juvenile Justice Center, 300 N. Gay St., 2nd Fl. Large Conf. Rm., Baltimore, MD  
**Contact:** Bridgett Tucker (410) 752-3500 x 130  
[15-03-23]

**STATE ADVISORY BOARD FOR  
JUVENILE SERVICES**

**Subject:** Public Meeting  
**Date and Time:** February 17, 2015, 2 — 4 p.m.  
**Place:** 49 Old Solomons Island Rd., Ste. 300, Annapolis, MD  
**Contact:** Tim Gilbert (410) 230-3488  
[15-03-27]

**COMMISSION ON KIDNEY DISEASE**

**Subject:** Public Meeting  
**Date and Time:** April 23, 2015, 2 p.m.  
**Place:** 4201 Patterson Ave., Rm. 108, Baltimore, MD  
**Add'l. Info:** A portion of this meeting may be closed for executive session.  
**Contact:** Eva Schwartz (410) 764-4799  
[15-03-40]

**COMMISSION ON KIDNEY DISEASE**

**Subject:** Public Meeting  
**Date and Time:** July 23, 2015, 2 p.m.  
**Place:** 4201 Patterson Ave., Rm. 108, Baltimore, MD  
**Add'l. Info:** A portion of this meeting may be closed for executive session.  
**Contact:** Eva Schwartz (410) 764-4799  
[15-03-41]

**DIVISION OF LABOR AND  
INDUSTRY/MARYLAND  
OCCUPATIONAL SAFETY AND  
HEALTH (MOSH) ADVISORY  
BOARD**

**Subject:** Public Meeting  
**Date and Time:** February 18, 2015, 10 a.m. — 12 p.m.  
**Place:** 10946 Golden West Dr., Ste. 160, Hunt Valley, MD  
**Add'l. Info:** The MOSH Advisory Board will meet to discuss issues related to occupational safety and health, including proposed regulations on hazardous drugs.  
**Contact:** Melissa Myer (410) 767-2182  
[15-03-28]

**LABORATORY ADVISORY  
COMMITTEE**

**Subject:** Public Meeting  
**Date and Time:** February 19, 2015, 8:30 — 10 a.m.  
**Place:** Laboratories Administration, 201 W. Preston St., L-37, Baltimore, MD  
**Contact:** Cindy Nguyen (410) 767-3544  
[15-03-29]

**MARYLAND STATE LOTTERY AND  
GAMING CONTROL COMMISSION**

**Subject:** Public Meeting  
**Date and Time:** February 26, 2015, 10 a.m. — 12 p.m.  
**Place:** Montgomery Park Business Center, 1800 Washington Blvd., Ste. 330, Baltimore, MD  
**Contact:** Marie A. Torosino (410) 230-8790  
[15-03-44]

**MARYLAND HEALTH CARE  
COMMISSION**

**Subject:** Public Meeting  
**Date and Time:** February 19, 2015, 1 p.m.  
**Place:** Maryland Health Care Commission, 4160 Patterson Ave., Conf. Rm. 100, Baltimore, MD  
**Contact:** Valerie Wooding (410) 764-3460  
[15-03-05]

**MARYLAND HEALTH CARE  
COMMISSION**

**Subject:** Public Meeting  
**Date and Time:** March 19, 2015, 1 p.m.  
**Place:** Maryland Health Care Commission, 4160 Patterson Ave., Conf. Rm. 100, Baltimore, MD  
**Contact:** Valerie Wooding (410) 764-3460  
[15-03-14]

**DEPARTMENT OF NATURAL  
RESOURCES/FISHERIES SERVICE**

**Subject:** Public Notice for Commercial Striped Bass Fishery  
**Add'l. Info:** Commercial Striped Bass Common Pool Gill Net Season Modification  
The Secretary of Natural Resources pursuant to COMAR 08.02.15.12H announces the re-opening of the 2015 commercial striped bass common pool gill net fishery on Tuesday, January 20, 2015, at 3 a.m. with a catch limit of 300 lbs/permit/week and 1200 lbs/vessel/day. The common pool fishery will close on Thursday, January 22, 2015, at 11:59 p.m.  
Frank Dawson  
Acting Secretary  
Maryland Department of Natural Resources

**Contact:** Tamara O'Connell (410) 260-8271  
[15-03-31]

**BOARD OF PLUMBING**

**Subject:** Public Meeting  
**Date and Time:** February 19, 2015, 10 a.m. — 12:30 p.m.  
**Place:** 500 N. Calvert St., Rm. 302, Baltimore, MD  
**Contact:** Raquel M. Meyers (410) 230-6379  
[15-03-22]

**BOARD OF PODIATRIC MEDICAL  
EXAMINERS**

**Subject:** Public Meeting  
**Date and Time:** March 12, 2015, 1 p.m.  
**Place:** 4201 Patterson Ave., Rm. 110, Baltimore, MD  
**Contact:** Sheri Henderson (410) 764-4785  
[15-03-17]

**BOARD OF PODIATRIC MEDICAL  
EXAMINERS**

**Subject:** Public Meeting  
**Date and Time:** April 9, 2015, 1 p.m.  
**Place:** 4201 Patterson Ave., Rm. 110, Baltimore, MD  
**Contact:** Sheri Henderson (410) 764-4785  
[15-03-18]

GENERAL NOTICES

406

**BOARD OF PODIATRIC MEDICAL EXAMINERS**

**Subject:** Public Meeting  
**Date and Time:** May 14, 2015, 1 p.m.  
**Place:** 4201 Patterson Ave., Rm. 110, Baltimore, MD  
**Contact:** Sheri Henderson (410) 764-4785  
[15-03-19]

**BOARD OF PODIATRIC MEDICAL EXAMINERS**

**Subject:** Public Meeting  
**Date and Time:** June 11, 2015, 1 p.m.  
**Place:** 4201 Patterson Ave., Rm. 110, Baltimore, MD  
**Contact:** Sheri Henderson (410) 764-4785  
[15-03-20]

**BOARD OF PODIATRIC MEDICAL EXAMINERS**

**Subject:** Public Meeting  
**Date and Time:** July 9, 2015, 1 p.m.  
**Place:** 4201 Patterson Ave., Rm. 110, Baltimore, MD  
**Contact:** Sheri Henderson (410) 764-4785  
[15-03-21]

**BOARD OF PUBLIC ACCOUNTANCY**

**Subject:** Public Hearing  
**Date and Time:** March 3, 2015, 9 a.m. — 12 p.m.  
**Place:** 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD  
**Contact:** Linda L. Rhew (410) 230-6258  
[15-03-04]

**STATE ADVISORY COUNCIL ON QUALITY CARE AT THE END OF LIFE**

**Subject:** Public Meeting  
**Date and Time:** March 11, 2015, 10 a.m. — 12 p.m.  
**Place:** Spring Grove Hospital Center, Office of Health Care Quality (OHCQ), 55 Wade Ave., Administrative Conf. Rm., Catonsville, MD  
**Add'l. Info:** Parking is free. The Office of Health Care Quality is on the Spring Grove Hospital Campus in the Bland Bryant Building. A map and directions may be found here:  
<http://dhmh.maryland.gov/ohcq/docs/Map%20of%20Campus.pdf>  
The meeting is open to the public.  
**Contact:** Paul Ballard (410) 767-6918  
[15-03-45]

**BOARD OF SOCIAL WORK EXAMINERS**

**Subject:** Public Meeting  
**Date and Time:** February 13, 2015, 11 a.m. — 3 p.m.  
**Place:** Metro Office Bldg., 4201 Patterson Ave., Baltimore, MD  
**Add'l. Info:** The Board may discuss/vote on proposed regulations. a portion of the meeting may be held in closed session.  
**Contact:** Stanley Weinstein (410) 764-4722  
[15-03-33]

**STATE BOARD OF INDIVIDUAL TAX PREPARERS**

**Subject:** Public Meeting  
**Date and Time:** February 23, 2015, 1 p.m. — 5 p.m.  
**Place:** 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD  
**Contact:** Douglas Blackstone (410) 230-6244  
[15-03-24]

**BOARD OF WELL DRILLERS**

**Subject:** Public Meeting  
**Date and Time:** March 25, 2015, 9 a.m. — 4 p.m.  
**Place:** MDE, 1800 Washington Blvd., Terra Conf. Rm. 1006, Baltimore, MD  
**Add'l. Info:** A portion of this meeting may be held in closed session.  
**Contact:** Willie Everett (410) 537-3644  
[15-03-03]

**WORKERS' COMPENSATION COMMISSION**

**Subject:** Public Meeting  
**Date and Time:** February 26, 2015, 9 — 11 a.m.  
**Place:** 10 E. Baltimore St., Baltimore, MD  
**Add'l. Info:** Portions of this meeting may be held in closed session.  
**Contact:** Amy Lackington (410) 864-5300  
[15-03-12]



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- 06 Diseases
- 07 Hospitals
- 08 Health Facilities Grants

#### Part 2

- 09 Medical Care Programs

#### Part 3

- 10 Laboratories
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- 12 Adult Health
- 13 Drugs
- 14 Cancer Control
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- 17 Swimming Pools and Spas
- 18 Human Immunodeficiency Virus (HIV) Infection and  
Acquired Immunodeficiency Syndrome (AIDS)
- 19 Dangerous Devices and Substances
- 20 Kidney Disease Program
- 21 Mental Hygiene Regulations
- 22 Developmental Disabilities

#### Part 4

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- 25 Maryland Health Care Commission
- 26 Board of Acupuncture
- 27 Board of Nursing
- 28 Board of Examiners in Optometry
- 29 Board of Morticians and Funeral Directors
- 30 Commission on Kidney Disease
- 31 Health Occupation Boards
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- 33 Board of Examiners of Nursing Home Administrators
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- 37 Health Services Cost Review Commission
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- 41 Board of Examiners for Audiologists, Hearing Aid  
Dispensers, and Speech-Language Pathologists
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- 44 Board of Dental Examiners
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- 49 State Anatomy Board
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- 51 Forensic Laboratories
- 52 Preventive Medicine
- 53 Board of Nursing—Electrology Practice Committee
- 54 Special Supplemental Nutrition Program for Women,  
Infants, and Children (WIC)
- 55 State Board of Spinal Cord Injury Research
- 56 Board of Dietetic Practice
- 57 Board for Certification of Residential Child Care Program  
Professionals
- 58 Board of Professional Counselors and Therapists
- 59 Catastrophic Health Emergencies
- 60 Board of Environmental Health Specialists
- 61 Health Enterprise Zone Initiative

### Title 11

Department of Transportation – Volume & Subtitles

#### Volume 1

- 01 Office of the Secretary
  - 02 Transportation Service Human Resources System
  - 03 Maryland Aviation Administration
  - 04 State Highway Administration
  - 05 Maryland Port Administration
  - 06 Mass Transit Administration
  - 07 Maryland Transportation Authority
  - 08 State Railroad Administration
  - 09 Vacant
  - 10 Vacant
- #### Volume 2 and Volume 3
- 11 Motor Vehicle Administration – Administrative Procedures
  - 12 MVA – Licensing of Businesses and Occupations
  - 13 MVA – Vehicle Equipment
  - 14 MVA – Vehicle Inspections
  - 15 MVA – Vehicle Registration
  - 16 MVA – Vehicle Operations
  - 17 MVA – Driver Licensing and Identification Documents
  - 18 MVA – Financial Responsibility Requirements
  - 19 MVA – School Vehicles
  - 20 MVA – Motorcycle Safety Program
  - 21 MVA – Commercial Motor Vehicles
  - 22 MVA – Preventive Maintenance Program
  - 23 MVA – Drivers' Schools, Instructors & Driver Education Program

### Title 26

Department of the Environment – Part & Subtitles

#### Part 1

- 01 General Provisions
- 02 Occupational, Industrial, and Residential Hazards
- 03 Water Supply, Sewerage, Solid Waste, and Pollution Control  
Planning and Funding
- 04 Regulation of Water Supply, Sewage Disposal, and Solid Waste
- 05 Board of Well Drillers
- 06 Waterworks and Waste Systems Operators
- 07 Board of Environmental Sanitarians

#### Part 2

- 08 Water Pollution
- 09 Maryland CO<sub>2</sub> Budget Trading Program
- 10 Oil Pollution and Tank Management
- 11 Air Quality
- 12 Radiation Management

#### Part 3

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- 14 Hazardous Substance Response Plan
- 15 Disposal of Controlled Hazardous Substances —  
Radioactive Hazardous Substances
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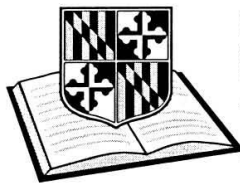
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