



STATE OF MARYLAND
DHMH

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

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

MARYLAND MEDICAL ASSISTANCE PROGRAM
Hospice Care Transmittal No. 10
August 27, 2013

TO: Hospice Providers
FROM: *Susan J. Tucker*
Susan J. Tucker, Executive Director
Office of Health Services

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

RE: Adoption of Amendments to COMAR 10.09.35 Hospice Care

The Maryland Medical Assistance Program has adopted amendments to Regulations .01, .04, .05, and .07 under COMAR 10.09.35 Hospice Care. The proposed action, published in 40:6 Md. R. 480-482 (March 22, 2013), has been adopted with non-substantive changes, effective July 22, 2013.

The purpose of this action was to eliminate outdated terminology and procedures in the Maryland Medical Assistance Hospice Program to be consistent with comparable federal terminology, procedures, and requirements. This includes the requirement that recipients who are younger than 21 years old may elect to receive hospice care without forgoing Program payments for curative treatment for the terminal illness.

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

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

Attachment
cc: The Hospice & Palliative Care Network of Maryland

Subtitle 20 BOARD OF PLUMBING**09.20.04 Cross Connection/Backflow Prevention Certification Training Program**

Authority: *Business Occupations and Professions Article, §§12-207 and 12-306(c), Annotated Code of Maryland*

Notice of Final Action

[13-106-F]

On June 20, 2013, the Board of Plumbing adopted new Regulations .01 and .02 under a new chapter, **COMAR 09.20.04 Cross Connection/Backflow Prevention Certification Training Program**. This action, which was proposed for adoption in 40:8 Md. R. 730—732 (April 19, 2013), has been adopted as proposed.

Effective Date: July 22, 2013.

MICHAEL J. KASTNER, JR.
Chairman
State Board of Plumbing

Subtitle 36 COMMISSION OF REAL ESTATE APPRAISERS, APPRAISAL MANAGEMENT COMPANIES, AND HOME INSPECTORS — HOME INSPECTORS

09.36.08 Continuing Professional Competency

Authority: *Business Occupations and Professions Article, §§16-216 and 16-3A-07(e), Annotated Code of Maryland*

Notice of Final Action

[13-105-F]

On June 11, 2013, the Commission of Real Estate Appraisers, Appraisal Management Companies, and Home Inspectors adopted new Regulations .01 — .05 under a new chapter, **COMAR 09.36.08 Continuing Professional Competency**. This action, which was proposed for adoption in 40:8 Md. R. 732—734 (April 19, 2013), has been adopted as proposed.

Effective Date: July 22, 2013.

GEORGE FAIR
Chairman
Commission of Real Estate Appraisers, Appraisal Management Companies and Home Inspectors

Title 10**DEPARTMENT OF HEALTH AND MENTAL HYGIENE****Subtitle 09 MEDICAL CARE PROGRAMS****10.09.35 Hospice Care**

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

Notice of Final Action

[13-089-F]

On June 26, 2013, the Secretary of Health and Mental Hygiene adopted amendments to Regulations .01, .04, .05, and .07 under **COMAR 10.09.35 Hospice Care**. This action, which was proposed for adoption in 40:6 Md. R. 480—482 (March 22, 2013), has been adopted with the nonsubstantive changes shown below.

Effective Date: July 22, 2013.

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 .07: The current text and the proposed text of §B and the proposed text of §C are being deleted from the proposal. Deletion of these sections is not a substantive change because they: 1) delete obsolete terminology; and 2) delete a provision that is addressed elsewhere in the regulation.

.07 Limitations.

[[A.]] When a recipient is enrolled in Medicare Part A, Program payment for hospice care shall be limited to payment of the recipient's Medicare hospice care co-insurance amounts for drugs and biologicals and for respite care and, where applicable, room and board for residents of a nursing facility under Regulation .08E of this chapter.

[[B. A recipient 21 years old or older enrolled with an HMO provider shall be disenrolled from the HMO, effective with an election of hospice care.

C. A recipient younger than 21 years old enrolled in an MCO may remain enrolled for Program payments of any curative treatment for the terminal illness.]]

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

fax to 410-767-2986. Comments will be accepted through April 22, 2013. A public hearing has not been scheduled.

J. RONALD DEJULIIS
Commissioner of Labor and Industry

Subtitle 12 DIVISION OF LABOR AND INDUSTRY

09.12.31 Maryland Occupational Safety and Health Act — Incorporation by Reference of Federal Standards

Authority: Labor and Employment Article, §§2-106(b)(4) and 5-312(b), Annotated Code of Maryland

Notice of Proposed Action
[13-084-P]

The Commissioner of Labor and Industry proposes to adopt, through incorporation by reference under **COMAR 09.12.31 Maryland Occupational Safety and Health Act — Incorporation by Reference of Federal Standards**, amendments relating to Rigging Equipment for Material Handling Construction Standard; Correction and Technical Amendment, 29 CFR Part 1926, published in 77 FR 23117 — 23118 (April 18, 2012), as amended. This action was considered by the Maryland Occupational Safety and Health Advisory Board pursuant to a meeting held on September 5, 2012, notice of which was given in accordance with State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to amend OSHA's sling standard for construction titled "Rigging Equipment for Material Handling" by removing the rated capacity tables and making minor, nonsubstantive revisions to the regulatory text.

Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

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 Debbie Stone, Regulations Coordinator, Department of Labor, Licensing, and Regulation, Division of Labor and Industry, 1100 N. Eutaw Street, Room 606, Baltimore, Maryland 21201, or call 410-767-2225, or email to dstone@dlr.state.md.us, or fax to 410-767-2986. Comments will be accepted through April 22, 2013. A public hearing has not been scheduled.

J. RONALD DEJULIIS
Commissioner of Labor and Industry

**Title 10
DEPARTMENT OF HEALTH
AND MENTAL HYGIENE**

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.35 Hospice Care

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

Notice of Proposed Action
[13-089-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01, .04, .05, and .07 under **COMAR 10.09.35 Hospice Care**.

Statement of Purpose

The purpose of this action is to eliminate outdated terminology and procedures in the Maryland Medical Assistance Hospice Program to be consistent with comparable federal terminology, procedures, and requirements.

Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

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, Maryland 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 April 22, 2013. A public hearing has not been scheduled.

.01 Definitions.

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

(1) "Attending physician" means [a]:

(a) A doctor of medicine or osteopathy[, identified at the time of the recipient's election of hospice care as having the most significant role in the determination and delivery of the recipient's medical care.] *legally authorized to practice medicine and surgery by the State; or*

(b) A nurse practitioner who meets the qualifications set forth in **COMAR 10.27.07**.

(2)—(5) (text unchanged)

(6) "Election period" means [one of three periods] a period for which a recipient may elect to receive hospice care[, consisting of two 90-day periods and one 30-day period.] *in accordance with Regulation .04 of this chapter.*

(7)—(9) (text unchanged)

(10) "Hospice nurse practitioner" means a nurse practitioner who:

- (a) Is an employee of the hospice; and
- (b) Meets the qualifications set forth in COMAR 10.27.07.

(11) "Hospice physician" means a doctor of medicine or osteopathy who is:

- (a) Employed by or contracted by the hospice; and
- (b) Legally authorized to practice medicine and surgery by the State.

[(10)] (12)—[(11)] (13) (text unchanged)

(14) "Managed care organization (MCO)" has the meaning stated in Health-General Article, §15-101, Annotated Code of Maryland.

[(12)](15)—[(22)](25) (text unchanged)

[(23)] (26) "Room and board" means [the following] services provided to a participant who is a nursing facility resident[

- (a) Lodging and food services; and
- (b) Personal care services such as:
 - (i) Assistance in activities of daily living;
 - (ii) Socializing activities;
 - (iii) Medication administration;
 - (iv) Maintenance of the cleanliness of the participant's room; and

(v) Supervision and assisting in a participant's use of durable medical equipment and prescribed therapies].

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

.04 Duration of Hospice Care.

A. Hospice care shall be available to a participant for two 90-day election periods and one 30-day election period.

B. A participant shall use the two 90-day election periods before using the 30-day election period.

C. At the expiration of the 30-day election period, hospice care may be continued without a break for one or more 30-day extended election periods, so long as the certification requirements in Regulation .05A(3) of this chapter are met.]

A. An individual may elect to receive hospice care during one or more of the following election periods:

- (1) An initial 90-day period;
- (2) A subsequent 90-day period; or
- (3) An unlimited number of subsequent 60-day periods.

B. The periods of care indicated in §A of this regulation are available in the order listed and may be elected separately at different times.

[D.] C.—[G.] F. (text unchanged)

.05 Eligibility for and Election of Hospice Care.

[A.] (proposed for repeal)

A. To be eligible for hospice care, written certification of terminal illness shall be obtained by the hospice for each of the election periods listed in Regulation .04 of this chapter. Procedures for certification of terminal illness are as follows:

- (1) The hospice shall obtain the written certification before the hospice submits a claim for payment;
- (2) If the hospice is unable to obtain written certification within 2 calendar days after an election period begins, an oral certification shall be obtained within 2 calendar days and a written certification shall be obtained before the hospice submits a claim for payment;
- (3) Certifications shall be completed not more than 15 calendar days before the start of the election period;
- (4) For the initial election period, the hospice shall obtain written certification statements and shall document oral certification statements in accordance with §A(2) of this regulation from:
 - (a) The medical director of the hospice or the physician member of the hospice interdisciplinary team; and

(b) The attending physician, if there is an attending physician;

(5) For subsequent election periods, certification by one of the physicians listed in §A(4) of this regulation is required;

(6) All certifications shall:

- (a) Be signed and dated by the certifying physician; and
- (b) Include the date of the election for which the certification applies;

(7) Certifications shall be based on the certifying physician's clinical judgment regarding the normal course of the recipient's illness and conform to the following requirements:

(a) Document that the participant's prognosis is for a life expectancy of 6 months or less if the terminal illness runs its normal course;

(b) Clinical information documenting the prognosis of a terminal illness shall accompany the certification and shall be filed in the medical record;

(c) Clinical information for the initial election period may be provided orally and shall be documented in the medical record and included as part of the hospice's eligibility assessment;

(d) A brief narrative written by the certifying physician:

- (i) Shall be included in the certification;
- (ii) Shall be located immediately before the certifying physician's signature or included as an addendum signed by the certifying physician;

(iii) Shall include a statement inserted directly above the certifying physician's signature and based on a review of the participant's medical record or examination of the participant;

(iv) Shall reflect the participant's individual clinical circumstances; and

(v) May not contain checkboxes or standard language used for all participants;

(8) To determine continued eligibility for hospice care, a face-to-face encounter by the hospice physician or the hospice nurse practitioner shall occur:

(a) When a stay across all hospices is anticipated to reach the third election period; and

(b) Not more than 30 days before the third election period and any subsequent election period; and

(9) A narrative associated with an election period requiring a face-to-face encounter shall include:

(a) An explanation of why the clinical findings support a prognosis of a terminal illness; and

(b) A written attestation of the date of the encounter and that the clinical findings were provided to the certifying physician.

B. A recipient 21 years old or older meeting the eligibility requirements and electing to receive hospice care shall file a signed election declaration with the provider which shall contain the following:

(1)—(6) (text unchanged)

C. A recipient younger than 21 years old meeting the eligibility requirements and electing to receive hospice care shall file a signed election declaration with the provider which shall contain the following:

(1) A statement that the recipient or the representative elects hospice care for the recipient;

(2) Identification of the provider that will furnish hospice care to the recipient;

(3) The effective date of the election, which may not be earlier than the date that the election is made;

(4) A statement that the recipient or representative acknowledges being given a full description of hospice care and of its palliative nature as it relates to the recipient's terminal illness and related conditions;

(5) A statement that the recipient or representative understands that hospice services shall be made available without forgoing Program payments for curative treatment for the terminal illness; and

(6) The signature of the recipient or representative.

[C.] D.—[F.] G. (text unchanged)

.07 Limitations.

A. (text unchanged)

B. A recipient 21 years old or older enrolled with an HMO provider shall be disenrolled from the HMO, effective with an election of hospice care.

C. A recipient younger than 21 years old enrolled in an MCO may remain enrolled for Program payments of any curative treatment for the terminal illness.

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

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.47 Disproportionate Share Hospitals

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

Notice of Proposed Action

[13-080-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .03 under **COMAR 10.09.47 Disproportionate Share Hospitals**.

Statement of Purpose

The purpose of this action is to redistribute uncompensated care funds if necessary. This change would allow the Program to adjust the payments after year end based on audited results.

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, Maryland 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 April 22, 2013. A public hearing has not been scheduled.

.03 Disproportionate Share Payment.

A.—G. (text unchanged)

H. If it is determined that a payment made to any hospital under this regulation exceeds the actual amount of uncompensated care and would result in reverting funds to CMS, the overpayment shall be used for another provider that received less than that provider was eligible to receive. The redistribution shall be available to all

providers that are eligible for disproportionate share payments except those whose rates are set by HSCRC.

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

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.83 Third Party Liability

Authority: Health-General Article, §§2-104(b), 15-103, 15-120—15-121.3, Annotated Code of Maryland

Notice of Proposed Action

[12-314-R]

The Secretary of Health and Mental Hygiene proposes to adopt new Regulations .01—.07 under a new chapter, **COMAR 10.09.83 Third Party Liability**. Because substantive changes have been made to the original proposal as published in 39:23 Md. R. 1546—1549 (November 16, 2012), this action is being repropose at this time.

Statement of Purpose

The purpose of this action is to set forth procedures for the calculation and recovery of the Department's subrogation claims as required by federal law. Since its initial publication of the regulations on September 24, 2010, the Department has solicited written comments from and convened numerous meetings with interested parties. As a result of these comments and meetings, the Department has agreed to modify the regulations to: (1) defer to the trier of fact's determination regarding the amount of the overall award attributable to medical expenses, compared to the amount attributable to pain and suffering and other factors, in cases involving a determination by a judge or jury; (2) clarify the right to place undisputed portions of a settlement or award into a trust; (3) clarify and modify all timing requirements to be consistent with Health-General Article, §15-120, Annotated Code of Maryland; (4) provide for a proportional reduction of recoveries if the judgment or award is greater than available liability coverage; (5) limit the Department's recoupment to only the portion of the allocation related to past medical expenses; (6) reduce the Department's recovery by one-third of the amount of the recipient's attorney's fees in the event that the Department, after notice, fails to intervene in the recipient's case; and (7) provide the recipient an opportunity to present evidence at a fair hearing to challenge the Department's proposed subrogation claim.

The repropose text is in response to several comments received during the most recent comment period.

(1) Regulation .04 has been amended to provide details about the notices the recipient's attorney and the Department are required to provide. Section D provides that the attorney is required to provide notice to the Program's Division of Recoveries and Financial Services not later than 30 calendar days after judgment, award or settlement of the amount and terms of such disposition of the action or claim. Section F provides that the Department shall advise the recipient or the attorney of the recipient whether the individual is a Medicaid recipient, a member of an MCO, or not a Medicaid recipient within 3 business of receiving the notice under Section A. Section G provides that the Department shall provide the amount of the claim and an itemized list of charges within 15 business of receiving the Section A notice.

(2) A comment suggested that the Department's notice of the recipient's right to a fair hearing under Regulation .02F(3) should await the disposition of the case, whether by judgment, award or settlement. The Department agrees with this suggestion but does not