TO: EPSDT: Private Duty Nursing Providers
    Model Waiver Nursing Providers
    Home Health Agencies

FROM: Susan J. Tuckef, Executive Director
      Office of Health Services

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

RE: Proposed Amendments to COMAR 10.09.53 Early and Periodic
    Screening, Diagnosis, and Treatment: Private Duty Nursing Program

ACTION: Proposed Regulations

WRITTEN COMMENTS TO: Michele Phinney
                        201 West Preston Street, Room 538
                        Baltimore, Maryland 21201
                        FAX: 410-767-6843 or call
                        410-767-6499 or
                        1-877-4MD-DHMH extension 6499

PROGRAM CONTACT PERSON: Nancy Cutair, Division Chief
                         Division of Nursing Services
                         410-767-1448 or
                         1-877-4MD-DHMH extension 1448

COMMENT PERIOD EXPIRES: November 1, 2004

The Maryland Medical Assistance Program has proposed amendments to
Regulations .01-.06 under COMAR 10.09.53, Early and Periodic Screening, Diagnosis
and Treatment: Private Duty Nursing Services.
The proposed amendments define the terms “emergency service,” “home,” “home health agency,” “nursing care plan,” “primary medical provider,” “progress note,” “residential service agency” and “witness.” In addition they require the provider agency to be a licensed residential service or home health agency, detail duties the registered nurse supervisor must perform, add language clarifying qualifications of nurses rendering the care, require a criminal background check for nurses, list mandatory items to be maintained in the nurse’s personnel file, limit a nurse’s shift to not more than 16 consecutive hours, list additional conditions for the agency’s participation, require signed documentation of receipt of nursing services, prohibit coverage of services under specific circumstances and add language regarding the preauthorization of services. The amendments clarify that the Program does not cover direct payment for supervisory visits, nursing services not documented as received, respite services, services provided in the nurse’s home, services rendered by a nurse who does not have a current valid license and cardiopulmonary resuscitation certification and services provided by a nurse who has a conviction, received probation before judgment or entered a plea of nolo contendere to a felony, theft or a crime of violence or moral turpitude.

The proposed amendments as they have been submitted to the Maryland Register are attached.

Attachment
18 Reimbursement of Nonrecurring Adoption Expenses.

A. — B. (text unchanged)

C. Application Process:

(1) (text unchanged)

(2) Adoptive parents shall

(a) Secure an application for reimbursement of nonrecurring adoption expenses (and a nonrecurring costs agreement) from the Social Services Administration;

(b) Complete the application [and the nonrecurring costs agreement] and return [them] it to the Administration.

(3) Documentation:

(a) In addition to the completed application [and the nonrecurring cost agreement in §C(2) of this regulation], the family shall supply the documentation necessary to determine that the child meets the definition of a child with special needs.

(b) — (c) (text unchanged)

(4) The social worker working with the family should advise the prospective adoptive parents of the availability of reimbursement for nonrecurring expenses according to the requirements set forth in §C(1) — (3) and (2) of this regulation.

(5) (text unchanged)

(6) Upon receipt of the application, the nonrecurring costs agreement, and the required documentation, the Administration shall review all documents for sufficiency and to determine eligibility.

(7) [The] If the family is determined to be eligible for nonrecurring adoption expenses, the nonrecurring cost agreement shall be [entered into] completed and signed by all appropriate parties before the final decree of adoption is issued. Payment shall be made after a copy of the final decree is received by the Department.

(8) — (9) (text unchanged)

D. — E. (text unchanged)

CHRISTOPHER J. McCARE
Secretary of Human Resources

Title 10
DEPARTMENT OF
HEALTH AND MENTAL HYGIENE
Subtitle 09 MEDICAL CARE PROGRAMS
10.09.53 Early and Periodic Screening, Diagnosis, and Treatment: Private Duty Nursing

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

Notice of Proposed Action

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01 — .06 under COMAR 10.09.53

Early and Periodic Screening, Diagnosis, and Treatment: Private Duty Nursing

Statement of Purpose

The purpose of this action is to define certain terms, require the provider agency to be a licensed residential service or home health agency, detail duties the registered nurse supervisor must perform, add language clarifying qualifications of nurses rendering the care, require a criminal background check for nurses, list mandatory items to be maintained in the nurse's personnel file, limit a nurse's shift to no more than 16 consecutive hours, list additional conditions for the agency's participation, require signed documentation in receipt of nursing services, prohibit coverage of services under specific circumstances, and add language regarding the preauthorization of services. The amendments specify that the Program does not cover direct payment for supervisory visits, nursing services not documented as received, respite services, services provided in the nurse's home, services rendered by a nurse who does not have a current valid license and cardiopulmonary resuscitation certification, and services provided by a nurse who has a conviction, received probation before judgment, or entered a plea of nolo contendere to a felony, theft, or a crime of violence or moral turpitude.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The Department proposes to require all agencies rendering private duty nursing services under this chapter be either a residential service agency or home health agency licensed by the Office of Health Care Quality. Most agencies already meet this standard. However, private duty nursing provider agencies that are not currently licensed residential service agencies will experience a $500 yearly licensing fee. In addition, there may be a nonquantifiable cost to provider agencies or nurses for criminal background investigations.

II. Types of Economic Impact:

A. On issuing agency: DHMH Office of Health Care Quality

B. On other State agencies: NONE

C. On local governments: NONE

D. On regulated industries or trade groups:

Early and Periodic Screening Diagnosis and Treatment — Private Duty Nursing providers

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. There are currently 56 agencies enrolled to provide private duty nursing services to Medicaid recipients. Of this total, 34 agencies (61 percent) are currently licensed residential service agencies. The 22 remaining agencies (39 percent) are unlicensed agencies which will be affected by the proposed regulation requiring residential service agency licensure as a condition for participation in Med-
icaid. Residential service agencies are licensed and monitored by the Department’s Office of Health Care Quality. Licensing and monitoring of the agencies enrolled to provide private duty nursing services to Medicaid clients will help the Medical Care Programs in its quality assurance efforts to ensure the provision of quality care to the medically fragile. Licensure as a residential service agency by the Department’s Office of Health Care Quality requires an annual payment of $500 for the license. 22 agencies x $500 = $11,000.

D. The $500 annual licensing fee will be a new cost incurred by the 22 private duty nursing agencies that are not currently licensed as residential service agencies. The cost of criminal background investigations for nurses is nonquantifiable. For nurses who have not had investigations completed, these costs may be absorbed by the provider agency or passed along to each nurse.

Economic Impact on Small Businesses
The proposed has minimal or no economic impact on small businesses.

Opportunity for Public Comment
Comments may be sent to Michele Phinney, Regulations Coordinator, Department of Health and Mental Hygiene, 201 West Preston Street, Room 521, Baltimore, Maryland 21201, or fax to (410) 333-7687, or email to regs@dhmh.state.md.us, or call (410) 767-6499 or 1-877-4MD-DHMH extension 6499. These comments must be received by November 1, 2004.

.01 Definitions.
A. (text unchanged)
B. Terms Defined.
[(1) “Appropriate” means suitable, taking into consideration the particular circumstances of the recipient and the relative cost of any alternative which could be used for the same purpose.]
 [(2) (1)] — [(4) (3) (text unchanged)]
[(4) “Emergency service” means a service or care rendered to a recipient exhibiting an emergency medical condition as defined in §B(3) of this regulation.]
(5) — (6) (text unchanged)
[(7) “Home” means the place of residence, occupied by the recipient, other than a residence or facility where private duty nursing services are included in the living arrangement by regulation or statute, or otherwise provided for payment.]
[(8) “Home health agency” means an agency licensed by the Department in accordance with COMAR 10.07.10.]
[(9) (9) (text unchanged)]
[(10) “Necessary” [means directly related to diagnostic, preventive, curative, palliative, or rehabilitative treatment] has the meaning stated in COMAR 10.09.36.01.]
[(11) (11) — (10) (12) (text unchanged)]
[(12) “Nursing care plan” means a plan developed by a registered nurse that identifies the patient's diagnoses and needs, the goals to be achieved, and the interventions required to meet the patient's medical condition.]
[(13) (14) (text unchanged)]
[(15) (16)] — [(17) (18) (text unchanged)]
[(18) “Private duty nursing services” means skilled nursing services for recipients [under 21 years old] who require more individual and continuous care than is available under the home health program, and which are provided by a registered nurse or a licensed practical nurse, in a recipient's own [residence] home or another setting when normal life activities take the recipient outside his or her [residence] home.]
[(16) (19) (text unchanged)]
[(20) “Progress note” means a signed and dated written notation by the home care nurse which:
(a) Summarizes facts about the care given and the participant’s responses during a given period of time;
(b) Specifically addresses the established goals of treatment;
(c) Is consistent with the participant’s plan of care; and
(d) Is written during the course of care.]
[(17) (21) — (18) (22) (text unchanged)]
[(23) “Residential service agency” means an agency licensed by the Department in accordance with COMAR 10.07.05.]
[(19) (24) — (21) (26) (text unchanged)]
[(27) “Witness” means the recipient or an individual who, on behalf of the recipient, is able to personally verify at the time of service that the recipient received private duty nursing services.]

.02 Licensing Requirements.
A. Nurses rendering or supervising the provision of private duty nursing services shall be licensed in accordance with licensing requirements specified in COMAR 10.09.36.02.
B. An agency providing services pursuant to this chapter shall meet all applicable licensure and certification requirements of the jurisdiction in which the agency is providing services.

.03 Conditions for Participation.
Requirements for participation in private duty nursing services are that a provider shall:
A. (text unchanged)
B. Be licensed as a:
(1) Residential service agency under COMAR 10.07.05; or
(2) Home health agency under COMAR 10.07.10;
[B.] C. Have on staff at least one licensed registered nurse supervisor who:
(1) Provides and documents initial direction to the participant’s caregivers and primary nurse regarding the provisions of nursing services to the participant;
(2) Documents that each nurse providing home care services has the necessary skills to meet the participant’s needs including knowledge of any medical equipment in use by the participant; [and]
(3) [Reviews on a regular basis] Conducts and documents a monthly review of the progress notes to assure adequacy and quality of [documentation:] care; and
(4) Makes supervisory visits at least monthly in the participant’s home or another site where the participant is receiving nursing services with a minimum of two visits with the primary nurse present; and
(5) Completes a monthly supervisory visit note that becomes part of the participant’s file;
(6) Provides training to the participant's family caregiver or caregivers and the individual or individuals providing backup to the family caregiver or caregivers; and
(7) Develops an initial nursing care plan which is re-evaluated 30 days after the initial assessment and modified as necessary to meet the participant's skilled nursing needs;
[C.] D. Ensure that each nurse rendering services to a participant:
(1) Has a valid signed, unrestricted nursing license to provide nursing services in the jurisdiction in which services are rendered;
(2) Has completed a skills checklist and demonstration of competency on an annual basis that was observed and documented, and verified by the signature of the RN supervisor or an RN designated by the supervisor;
(3) Has at least 1 year of clinical experience which includes pediatric direct patient care within the last 2 years;
(4) Demonstrates to the provider's nurse supervisor sufficient specialized training and experience in pediatric care to deliver the level of service required by each participant, especially when providing care to a disabled child or newborn; to whom the nurse renders direct care;
(5) Demonstrates to the provider's nurse supervisor, on a continuing basis, the ability to carry out competently the nursing services specified in a participant's nursing care plan of care, subject to review by the Department or its designee;
(6) Participates in the multidisciplinary team process, if appropriate, including attending team meetings, for children receiving home and community-based services under COMAR 10.09.27, and renders services in accordance with the plan of care recommended by the team and approved by the Department or its designee, including any subsequent revisions to that plan;
(7) Is annually recertified currently certified in cardiopulmonary resuscitation (CPR) at the time nursing services are rendered;
(8) Provides care and services in accordance with generally accepted nursing practices;
[(9) Sustains, rather than duplicates or supplants, services rendered by the recipient's family caregivers and other program services that the recipient receives or is eligible to receive.]
[(10) [9] Knows how to contact the private duty nursing provider and the RN case supervisor, and;
[(11) [10] Provides care according to the private duty nursing provider's policies for the delivery of services to participants as described in §3D $9 of this regulation; and
(11) Has not been convicted of, received a probation before judgment for, or entered a plea of nolo contendere to a felony or any crime involving moral turpitude or theft, have any other criminal history that indicates behavior which is potentially harmful to participants;
[D.] E. Develop policies for the delivery of services to participants, including policies on the following:
(1) — (13) [text unchanged]
(14) Coordination of care, when appropriate, including:
(a) Delineation of service responsibilities when other service providers are involved in a participant's care, and;
(b) Notification to participants of each service provider's responsibilities in these instances; and
(c) Development of a discharge summary plan when the participant, the participant's legal representative, or the provider terminates care;
[E.] F. Conduct a reference check on each applicant for employment, nurse rendering care to a participant consisting of:
(1) A documented face-to-face interview between agency representatives and the applicant nurse;
(2) Documented contact with the applicant's nurse's identified character references, and;
(3) Documented efforts at verification of the nurse's past employment history; and
(4) A criminal background check;
[F.] G. Maintain a personnel folder at the agency's business office for each employee nurse which shall include the following:
(1) A copy of the nurse's signed, current license;
(2) A copy of the nurse's current CPR certification;
(3) Documentation related to:
(a) The face-to-face interview;
(b) The nurse's character references; and
(c) Verification of the nurse's past employment which shall include at least 1 year of clinical experience which includes pediatric direct patient care within the last 2 years;
(4) Written verification of a criminal background check; and
(5) Documentation of a completed skills checklist;
[G.] H. Provide the participant or the participant's representative with the following written information:
(1) Name and phone number of the agency provider's contact person, and;
(2) Name of each nurse referred assigned by the provider to render the private duty nursing services to the participant;
[H.] I. Provide a mechanism for the timely investigation of written complaints such that:
(1) Disruption of service does not result from the filing of a complaint;
(2) Complete files are maintained on the source, category, and disposition of the complaint;
(3) A summary report of the complaint investigation is made available to the Department or the Department's designee;
(4) A summary report of the complaint investigation is made available for public inspection, upon request; and
(5) [text unchanged]
[I.] J. Provide back-up nursing services when the assigned nurse is unable to provide the preauthorized nursing services, and
K. Ensure a nurse's shift is not more than 16 consecutive hours and that the individual is off 8 or more hours before starting another shift unless otherwise authorized by the Department;
L. Demonstrate on a continuing basis the capacity to provide nursing services to participants in the amount and level required in the participant's nursing care plan including the development of a contingency plan to ensure coverage;
M. Provide the participant or the participant's representative with:
(1) At least 14 days written notice of termination of services when it is the provider's decision to terminate and the medical condition remains unchanged; and
(2) A copy of a discharge summary plan if the participant, the participant's representative, or the provider elects to discontinue the provider's services to the participant;
N. Ensure that each nurse rendering services to a participant:
(1) Completes a progress note for each nursing shift which becomes part of the participant's permanent record;
(2) Is providing nursing which follows the participant’s nursing care plan; and
(3) Is providing nursing which is ordered by the participant’s primary medical provider and renewed every 60 days;

04 Covered Services.
A. The Program shall cover skilled nursing services [provided] rendered by a licensed nurse when the:
   (1) — (3) (text unchanged)
   (4) Services are described in the nursing care plan [of care] and progress notes;
   (5) (text unchanged)
   (6) Services are delivered in the recipient’s [residence] home, or other setting when normal life activities take the recipient outside the [residence] home;
   (7) (text unchanged)
   (8) Services are determined medically necessary after the provider has completed an initial nursing assessment; and
   (9) Services are preauthorized in accordance with Regulation .06 of this chapter[.]; and
(10) Services are received by the recipient as documented by the signature of the recipient or the recipient’s witness on the nursing provider’s official form.
B. (text unchanged)
C. If a need for private duty nursing services is confirmed during a participant’s initial assessment, the registered nurse, in conjunction with the participant’s primary medical provider, shall develop a nursing care plan [of care]. When a participant also receives services under COMAR 10.09.27, the nurse shall participate as a member of the multidisciplinary team and recommend a plan of care. The nursing care plan [of care] shall be reviewed and updated to reflect the current service orders and shall include:
   (1) — (20) (text unchanged)
D. (text unchanged)

05 Limitations.
A. Under this chapter, the Program does not cover the following [services]:
   (1) — (4) (text unchanged)
   (5) Services delivered by a licensed [practical] nurse who is not directly supervised by a licensed registered nurse who documents all supervisory visits and activities;
   (6) (text unchanged)
   (7) Services provided to a recipient in a hospital, residential treatment center, or an intermediate care facility for mental retardation or addiction or a residence or facility where private duty nursing services are included in the living arrangement by regulation or statute, or otherwise provided for payment;
   (8) — (11) (text unchanged)
   (12) Services not ordered by [a physician, certified nurse midwife, or nurse practitioner] the recipient’s primary medical provider;
   (13) — (15) (text unchanged)
   (16) Services provided for the convenience or preference of the recipient or the primary caregiver rather than as required by the recipient’s medical condition; [and]
   (17) Services which are not initially ordered and renewed every 60 days by the recipient’s [principal physician.] primary medical provider;
   (18) Services provided by a nurse who does not possess a valid, current, signed, unrestricted nursing license to provide nursing services in the jurisdiction in which services are rendered;
   (19) Services provided by a nurse who does not have a current, signed cardiopulmonary resuscitation (CPR) certification for the period during which the services are rendered;
   (20) Direct payment for supervisory visits;
   (21) Nursing services rendered to a recipient by a nurse in the nurse’s home;
   (22) Nursing services not documented as received by the recipient as indicated by the lack of the recipient’s signature or the signature of a witness on the nursing agency’s official form; and
   (23) Respite services.
B. — C. (text unchanged)

06 Preauthorization Requirements.
A. — B. (text unchanged)
C. The provider shall request the Department or the Department’s designee to authorize the initiation or continuance of private duty nursing services [at least 1 working day] before the initiation or continuation of services unless services are rendered to a recipient in need of emergency or urgent medical services.
D. The provider shall request the Department or the Department’s designee to authorize emergency or urgent medical services rendered to a recipient not later than the close of business the next business day after the emergency or urgent service is rendered.
D. E. If private duty nursing services in excess of the initial authorized amount are necessary, then:
   (1) The nurse shall contact the [physician] primary medical provider for approval of additional hours; and
   (2) The provider shall request the Department or the Department’s designee to authorize the increase in services [at least 1 working day] before the initiation of change for nonemergency and nonurgent changes and [within 1 working day for urgent changes] not later than the close of business the next business day after the emergency or urgent service is rendered.
E. An existing preauthorization shall remain in effect when a recipient is discharged from a hospital admission of less than or equal to 72 consecutive hours and there is no substantive change in the recipient’s plan of care requiring a change in the number of authorized units of nursing services.
F. G. — F. H. (text unchanged)
G. I. Preauthorization is only valid for services rendered over a fixed period of time, such as:
   (1) (text unchanged)
   (2) For the designated time initially ordered by the [physician] recipient’s primary care provider, up to 30 days; and
   (3) For intervals of [30] 60 days after that or as considered necessary by the Department or the Department’s designee.
H. J. Authorization shall be rescinded by the Department or the Department’s designee when:
   (1) (text unchanged)
   (2) The recipient is admitted to a [hospital] residential treatment center, [or] an intermediate care facility for [mental retardation] the mentally retarded or addiction, or a nursing facility;
   (3) The recipient is discharged from a hospital admission of less than or equal to 72 consecutive hours resulting in a change in the recipient’s plan of care;
Proposed Action on Regulations

1495

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

Magnitude

Benefit (+)
Cost (-)

$14,863,362
NONE
NONE

NELSON J. SABATINI
Secretary of Health and Mental Hygiene

Subtitle 22 DEVELOPMENTAL DISABILITIES
10.22.17 Fee Payment System for Licensed Residential and Day Programs

Authority: Health-General Article, §§2-104(b), 7-106.1, 15-105, 15-107, and 15-201,
Annotated Code of Maryland

Notice of Proposed Action
[04-263-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .03, .06, .07, and .08 under COMAR 10.22.17 Fee Payment System for Licensed Residential and Day Programs.

Statement of Purpose

The purpose of this action is to implement a wage and benefits enhancement for residential, day, and supported employment direct support workers by increasing the amount of the individual, provider, and add-on components of the rates. In addition, this action updates the Personal Needs Allowance.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. This action increases the current individual and provider component base rates for residential, day, and supported employment services and also increases the add-on component rates for these services. The issuing agency (Developmental Disabilities Administration) has money budgeted for those increases.

G. Table of Individual Components Effective July 1, 2004.

(1) Residential Programs.

(a) Region 1 Table — Baltimore Metro (Baltimore City, Baltimore County, Anne Arundel, Harford, Howard, Carroll, and Queen Anne's Counties).

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Economic Impact on Small Businesses

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

The across-the-board increase in rates will positively impact all providers, large and small.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Regulations Coordinator, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 521, Baltimore, Maryland 21201, or fax to (410) 332-7687, or email to regs@dhmh.state.md.us, or call (410) 757-6499 or 1-877-4MD-DHMH, extension 6499. These comments must be received by November 1, 2004.

.03 General.

A. B. (text unchanged)
C. Personal Needs Allowance.

(1) As of July 1, 2003, the personal needs allowance is $177 per month for an individual.
(2) — (3) (text unchanged)

.06 Determination of Individual Component.

A. F. (text unchanged)
G. (proposed to repeal)