

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

## **Subtitle 09 MEDICAL CARE PROGRAMS**

### **Chapter 07 Medical Day Care Services**

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

#### **.01 Definitions.**

A. The following terms have the meanings indicated.

B. Terms Defined.

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

(2) "Adult Evaluation and Review Services (AERS)" means an entity within the local health department which, in accordance with the waiver, this chapter, and COMAR 10.09.30, assesses waiver applicants and participants.

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

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

(a) Is designed by the provider;

(b) Is signed and dated by the staff designated to take attendance or by the medical day care director; and

(c) Includes the name, medical assistance number, date of service, and arrival and departure times, of each participant, including documentation of time of temporary absences.

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

(6) "Home and Community Based Services (HCBS) Waiver" means a program implemented by the Department and approved by the Secretary of Health and Human Services, which authorizes the waiver of certain specified federal statutory requirements limiting coverage for home and community based services under the Maryland Medical Assistance Program.

(7) "Licensed practical nurse" means an individual licensed to practice licensed practical nursing under Health Occupations Article, Title 8, Annotated Code of Maryland.

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

(9) "Maintenance services" means the periodic monitoring of medically stable patients and the services provided in order to maintain their health care status.

(10) "Medical Assistance Program" means the Program administered by Maryland under Title XIX of the Social Security Act, which provides comprehensive medical and other health-related care for categorically eligible and medically needy recipients.

(11) "Medical day care" means medically supervised, health-related services provided in an ambulatory setting to medically handicapped adults, who, due to their degree of impairment, need health maintenance and restorative services supportive to their community living.

(12) "Medical day care center" means a facility operated for the purpose of providing medical day care services in an ambulatory care setting to medically handicapped adults who do not require 24-hour inpatient care, but, due to their degree of impairment, are not capable of full-time independent living.

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

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

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

(14) "Medically handicapped adult" has the meaning stated in Health-General Article, §14-301(c), Annotated Code of Maryland.

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

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

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

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

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

(16) "Multidisciplinary team" means the group consisting of appropriate members of the medical day care center's professional staff, and the participant or authorized representative, or both, that establishes and updates the service plan and the plan of care and assesses the appropriateness of the services provided to the participant by the medical day care center.

(17) "Occupational therapist" means an individual who practices occupational therapy under Health Occupations Article, Title 10, Annotated Code of Maryland.

(18) "Occupational therapy" means medically prescribed treatment concerned with improving or restoring functions which have been impaired by illness or injury or, when function has been permanently lost or reduced by illness or injury, concerned with improving the individual's ability to perform those tasks for independent functioning.

(19) "Participant" means an individual:

(a) Who is a medically handicapped adult as defined under §B(14) of this regulation and who is certified by the Department or its designee as requiring nursing facility services, as defined under COMAR 10.09.10, but whose condition does not require institutional care if medical day care services or other services that provide alternatives to institutional care are available;

(b) Who is enrolled in an HCBS waiver that includes medical day care as a waiver service; and

(c) Whose disabilities and needs cannot be satisfactorily and totally met in an episodic ambulatory care setting but require participation at least 1 day a week in a day-long rehabilitative or maintenance ambulatory care program which provides a mix of medical and social services and is authorized in the participant's HCBS waiver service plan.

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

(21) "Physical therapist" means an individual licensed to practice physical therapy under Health Occupations Article, Title 13, Annotated Code of Maryland.

(22) "Physical therapy" means treatment of disease and injury through use of:

(a) Therapeutic exercise and modalities of heat, cold, water, light, electricity, massage and radiant energy (other than roentgen rays, radium or use of electricity for cauterization in surgery); or

(b) Administration and interpretation of tests and measurements of neuromuscular and musculoskeletal functions; or

(c) Both §B(22)(a) and (b) of this regulation.

(23) "Plan of care" means a written plan established by the multidisciplinary team in accordance with an assessment of the participant's health status and all of the participant's special care requirements, including all services or interventions necessary to maintain the participant at, or to restore the participant to, optimal capability for self care.

(24) "Preventive services" means those services designed to prevent the occurrence and/or progression of disease at an early stage before complications and serious disabilities develop.

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

(26) "Provider" means a facility licensed under COMAR 10.12.04 furnishing medical day care services through an appropriate agreement with the Department and identified as a provider by the issuance of an individual account number.

(27) "Provider agreement" means a contract between the Department of Health and Mental Hygiene and the provider of medical day care, specifying the services to be performed, methods of operation, financial and legal requirements which shall be in force before Program participation in medical day care.

(28) "Recipient" means a person who is certified for, and is receiving, Medical Assistance benefits.

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

(30) "Registered nurse" means an individual licensed to practice as a registered nurse under Health Occupations Article, Title 8, Annotated Code of Maryland.

(31) "Secretary" means the Secretary of Health and Mental Hygiene.

(32) "Service Plan" means an approved document which specifies the type, amount, frequency, and duration of all waiver and other Medicaid services required to safely support the waiver participant in the community.

(33) "Specially equipped vehicles" means those vehicles used to transport participants with severe physical disabilities that limit mobility.

(34) "Supervision" means initial direction or periodic monitoring of the actual activity.

## **.02 Licensing Requirements.**

The provider shall be licensed under COMAR 10.12.04.

## **.03 Conditions for Participation.**

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

- A. Meet the licensure requirements as provided in Regulation .02 of this chapter;
- B. Meet the requirements of COMAR 10.09.36;
- C. Be open to participants at least 6 hours a day, 5 days a week, and post hours of operation;
- D. Verify the licenses and credentials for all professionals employed by or contracting with the medical day care center;
- E. Provide or arrange for the provision of any covered service, as specified in Regulation .05 of this chapter, or any other service which is required by a plan of care;
- F. Demonstrate to the satisfaction of the Program that a need exists for medical day care in the service area and that the provider has the necessary expertise to deliver the service;
- G. Have policies and procedures as required under COMAR 10.12.04;
- H. Maintain medical records for each participant which shall include, as a minimum, the following:
  - (1) An application for admission;
  - (2) The medical day care center's plan of care as required under §M(3)—(4) of this regulation;
  - (3) The current HCBS waiver service plan or the approved medical day care preauthorization form for the participant;
  - (4) Physician orders for all services rendered which may include, but is not limited to, the:
    - (a) Type and duration of service;
    - (b) Frequency of service; and
    - (c) Dosage and frequency of medications when prescribed;
  - (5) The medical history, chronic illnesses, principal and significant diagnoses, prognoses, prescribed medications, special diets, allergies, and assessments of the recipient's physical and mental status specifying the general types of activities the recipient can and cannot do;
  - (6) The documentation of daily nursing observations for the first 5 days of attendance, and monthly after the first 5 days of attendance; and

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

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

- (1) The name and telephone number of the participant's personal physician;
- (2) The advance directive in accordance with Health-General Article, §5-602, if requested or made by the participant;
- (3) All allergies identified by the participant or the participant's personal physician;
- (4) The treatments or medications for a participant's conditions; and
- (5) The name and telephone number of a family member, caregiver, or friend to be notified in case of emergency;

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

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

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

M. Establish a multidisciplinary team who shall:

- (1) Assess the participant to determine the appropriateness of the medical day care center's care, interventions, and activities;
- (2) Determine the medical, psychosocial, and functional status of each participant by:
  - (a) Establishing the ADCAPS evaluations on the date of admission; and
  - (b) Completing the assessment with an initial plan of care within 30 days, after which the ADCAPS evaluations shall be conducted quarterly;
- (3) Develop an individual plan of care in conjunction with the service plan; and
- (4) Review and update with the participant or participant's representative, the individual plan of care semi-annually or more frequently when there is a change in the participant's condition;

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

- (1) Consist of a review of medical records on all participants that evaluate the appropriateness of admissions, the efficiency, adequacy, and coordination of provided services, and the length of stay and discharge practices, as needed;
- (2) Include the following elements:
  - (a) Development of outcome criteria for presenting problems common to the medical day care center's participants;

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

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

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

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

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

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

#### **.04 Staffing Requirements.**

A. The medical day care center shall have adequate staffing capability to monitor the participants at all times. The composition of the staff depends in part on the needs of the participants and on the number of participants the medical day care center serves. At a minimum, the medical day care center shall meet the requirements of COMAR 10.12.04.13.

B. The medical day care center shall also have:

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

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

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

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

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

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

(2) Supervise health care services;

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

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

#### **.05 Covered Services.**

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

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

- (a) Participation in the development of the individual participant's plan of care;
- (b) Participation in the determination of the participant's medical, psychosocial, and functional status;
- (c) Consultation with the participant's personal physician; and
- (d) Consultation with staff regarding a participant's condition and health care needs;

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

- (a) The evaluation of the needs of the participants for nursing care;
- (b) The supervision of any nursing staff;
- (c) Preventive and maintenance services;
- (d) Observation and monitoring of participant's condition;
- (e) Rehabilitative services;
- (f) The teaching and training activities in appropriate self-care techniques;
- (g) The supervision of medication normally self-administered;
- (h) The provision of health education;
- (i) Discharge planning; and
- (j) Nursing services that may be delegated to other staff in accordance with the Maryland Nurse Practice Act, Health Occupations Article, Title 8, Annotated Code of Maryland;

(3) Physical therapy services, performed by or under supervision of a licensed physical therapist, which meet the following conditions:

- (a) Are of a diagnostic, rehabilitative, therapeutic, or maintenance nature, and are provided with the expectation based on the assessment made by the physician, that a participant will improve significantly in a reasonable and generally predictable period of time, or are necessary for the establishment of a safe and effective maintenance program required in connection with a specific disease state;
- (b) Are directly related to the physician's written plan of care which specifies:
  - (i) Part or parts to be treated;
  - (ii) Type of modalities or treatments to be rendered;

- (iii) Expected results of physical therapy treatments;
  - (iv) Frequency and duration of treatment;
  - (c) The complexity and sophistication of the services, or the condition of a participant, requires the judgment, knowledge, and skills of a licensed physical therapist; and
  - (d) The services are considered within accepted standards of medical practice to be a specified and effective treatment for a participant's condition;
- (4) Occupational therapy services, performed by an occupational therapist, that meet the following conditions:
- (a) The treatment requires the special skills of an occupational therapist;
  - (b) The services are directly related to the physician's written plan of care which specifies the treatment to be rendered, the frequency and duration of treatment, and the expected results of treatment;
  - (c) The treatment is provided with the expectation that there will be a significant practical improvement in a participant's level of functioning within a reasonable period of time; and
  - (d) The services fall within one or more of the following categories:
    - (i) Evaluation and reevaluation of a participant's level of functioning by administering diagnostic and prognostic tests;
    - (ii) Selection and teaching of task-oriented therapeutic activities designed to restore physical function;
    - (iii) Teaching of compensatory techniques to improve the level of independence in the activities of daily living;
    - (iv) Training in the use of supportive and adaptive equipment, and assistive devices required for independent performance according to COMAR 10.09.12; and
    - (v) Improvement of mobility skills;
- (5) Personal care services which include assistance with activities of daily living such as:
- (a) Bathing;
  - (b) Eating;
  - (c) Toileting;
  - (d) Dressing; and
  - (e) Ambulation;
- (6) Nutrition services which include the following:
- (a) Meals and snacks as specified under COMAR 10.12.04.19;
  - (b) Therapeutic diets as specified under COMAR 10.12.04.19; and

(c) Dietary counseling and education;

(7) Social work services performed by a licensed, certified social worker or licensed social work associate which include:

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

(b) Ongoing services to include:

(i) Identifying the emotional and social needs of participants during the rendering of medical day care services;

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

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

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

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

(vi) Counseling participants individually to assist with acclimation to the medical day care center's services and to promote active involvement in their plan of care;

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

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

(ix) Participating in the multidisciplinary team meetings; and

(c) Discharge planning and referral services including:

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

(ii) A discharge summary with post discharge goals;

(iii) Recommendations for continuing care; and

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

(8) Activity programs in accordance with COMAR 10.12.04.14C; and

(9) Transportation services that:

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

(b) Maximize the following types of transportation services in an effort to achieve the least costly, yet appropriate means of transportation for a participant:

(i) Walking, for a person who lives within walking distance of the medical day care center and who is sufficiently mobile;

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

(iii) Public transportation services;

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

(d) Are the responsibility of the provider to:

(i) Arrange contractual agreements with transportation providers to meet the transportation needs of the participants; and

(ii) Group participants, where possible, in the same taxi, van or specially equipped vehicles, to minimize the cost of transportation;

(e) Are provided in accordance with records that clearly indicate both a primary transportation plan and a back-up plan;

(f) Are documented, indicating the type of transportation used by each participant;

(g) Are scheduled to ensure that a participant's one-way transit time does not exceed 1 hour as specified under COMAR 10.12.04.27; and

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

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

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

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

(1) Authorized in the participant's waiver service plan;

(2) Medically necessary;

(3) Adequately described in progress notes in the participant's medical record, signed and dated by the individual providing care;

(4) Provided to a participant certified annually by the Department as requiring nursing facility care as specified under COMAR 10.09.10; and

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

## **.06 Limitations.**

A. Medical day care services are not covered for:

- (1) Individuals who do not meet the definition of "participant" in Regulation .01B of this chapter; and
- (2) Individuals younger than 16 years old.

B. Covered services do not include:

- (1) Days of service in excess of the frequency specified in the participant's HCBS waiver service plan;
- (2) Services which are not part of those services listed in Regulation .05 of this chapter;
- (3) More than one day of care, per participant, per day; and
- (4) A day of care provided on the same day that the following services are provided and billed to the Department:
  - (a) Day habilitation services under COMAR 10.09.26;
  - (b) Supported employment services under COMAR 10.09.26;
  - (c) Programs of All-Inclusive Care for the Elderly under COMAR 10.09.44;
  - (d) Senior center plus services under COMAR 10.09.54;
  - (e) Adult day care reimbursed under the State of Maryland's human service contracts; or
  - (f) On-site psychiatric rehabilitation services under COMAR 10.09.59.

### **.07 Authorization Requirements.**

The provider is entitled to reimbursement from the Program when:

- A. The participant is enrolled in an HCBS waiver; and
- B. The service is specified in the participant's HCBS waiver service plan.

### **.08 Payment Procedures.**

A. Requests for Payment.

- (1) All requests for payment of services rendered shall be submitted in accordance with COMAR 10.09.36.
- (2) Billing time limitations for claims submitted pursuant to this chapter are set forth in COMAR 10.09.36.

B. Payment to a provider shall be limited to the number of days each participant attends the medical day care center, as authorized by a participant's HCBS waiver service plan.

C. Payment shall be made only to a qualified medical day care provider. Payment may not be made to a participant, or to individual nurses, physicians, social workers, activity coordinators, or aides for services rendered in connection with the provision of medical day care.

D. Per Diem Rate.

(1) Payment to a provider of medical day care services shall be on a per diem basis. The per diem rate is \$73.27 effective November 1, 2008 through September 30, 2009. The per diem rate shall be \$71.80 effective October 1, 2009 through June 30, 2010.

(2) Effective July 1, 2010, subject to the limitations of the State's budget, the per diem rate shall be adjusted annually by adjusting the per diem rate for the preceding fiscal year by the percentage of the annual increase in the March Consumer Price Index for All Urban Consumers, medical care component, Washington-Baltimore, from U.S. Department of Labor, Bureau of Labor Statistics. This rate shall be established 1 month before the beginning of the State's new fiscal year and shall be applicable for the State's entire fiscal year.

(3) Any increase in the per diem rate for medical day care services as determined under §D(2) of this regulation may not be greater than 5 percent.

E. Payment to a provider of medical day care services may not exceed the lesser of the:

(1) Per diem rate established under §D of this regulation; or

(2) Provider's customary charge to the general public for services covered by the Program.

**.09 Recovery and Reimbursement.**

Recovery and reimbursement shall be in accordance with COMAR 10.09.36.

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

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

**.11 Appeal Procedures.**

Appeal procedures shall be in accordance with COMAR 10.09.36.

**.12 Interpretive Regulation.**

State regulations shall be interpreted in accordance with COMAR 10.09.36.