

Maryland Register

Issue Date: September 5, 2014
Volume 41 • Issue 18 • Pages 997-1062

Title 07 DEPARTMENT OF HUMAN RESOURCES Subtitle 03 FAMILY INVESTMENT ADMINISTRATION

07.03.07 Public Assistance to Adults

Authority: Human Services Article, §§5-205(a), 5-207(a), 5-403—5-407, and 5-409, Annotated Code of Maryland

Notice of Proposed Action [14-262-P]

The Secretary of Human Resources proposes to amend Regulations .02, .03, .09, and .12 under **COMAR 07.03.07 Public Assistance to Adults**.

Statement of Purpose

The purpose of this action is to amend the definitions in Regulations .02 and .03 to ensure appropriate PAA-funded assisted living placements; to amend Regulation .09 to help ensure appropriate and responsible representative payees are appointed as appropriate for Public Assistance to Adults recipients; and to amend Regulation .12 to ensure that a certain notice is sent except when the local department has factual information that a recipient and an assistant living operator are using program funds in a fraudulent manner.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. A sustained rise in assistance payments for Public Assistance to Adults-Assisted Living prompted the Department of Human Resources' (DHR) review of case records and an investigation by the DHR Office of the Inspector General (OIG). When findings raised concerns about program integrity in the Assisted Living category of Public Assistance to Adults (PAA), DHR decided to resolve these concerns through the regulatory process with clearer definitions and a formal process for determination of need.

Regulatory changes are expected to result in savings of State General Funds because of the PAA caseload declining to the historical levels found prior to Fiscal Year 2010. The cost of care for customers placed in PAA-Assisted Living facilities is expensive, currently \$976 per month for those who do not receive federal retirement or disability benefits. In contrast, the assistance payment standard for the Temporary Disability Assistance Program (TDAP), which serves potentially disabled, often indigent State residents, is \$185 per month.

The proposed regulations revise the determination process for the medical appropriateness of PAA-Assisted Living placements, which will help reduce unnecessary assisted living placements. Therefore, overall assistance payment expenditures for DHR will decrease when some of the current PAA-Assisted Living population returns to the community where they may take advantage of the TDAP program. DHR estimates \$1,434,885 in potential savings annually from clearer PAA-Assisted Living regulations. The change potentially affects 175 recipients over the course of a year.

There is no economic impact from changes to COMAR 07.03.07.09 or .12.

II. Types of Economic Impact.

	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:		
Expenditures	(E-)	175 individuals

B. On other State agencies: NONE
 C. On local governments: NONE

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:		
Impact on regulated industries	(-)	\$1,434,885 annually
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. Lower expenditures are expected for the Program due to a decrease in the number of people who are receiving assisted living benefits under PAA.

The expenditures will decrease an estimated \$1,434,885 savings annually or an average of \$119,573.75 per month.

D. An estimated 175 individuals may no longer qualify for PAA-Assisted Living payments as their justification for residency in assisted living facilities will fall short of a medically necessary standard. However, they may qualify for TDAP.

Economic Impact on Small Businesses

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

A majority of the assisted living facilities that actively seek PAA recipients are for-profit entities that may meet the definition of small business. Therefore, the proposed regulations could impact a narrow sector of the small business community. Some facilities impacted may find it harder to attract residents, while others will see a gain in revenue if PAA cost-of-living increases resume.

Impact on Individuals with Disabilities

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

Impacts on disabled persons who need assistance in performing the activities of daily living or instrumental activities of daily living are not anticipated. Traditional assisted living residents meeting this definition are either infirm, elderly, or profoundly disabled individuals who are unable to manage activities associated with daily living as described in COMAR 10.07.14.02B(2)(b). However, the proposed action will possibly impact PAA-Assisted Living applicants or recipients with the following characteristics:

- Individuals who claim disabilities but who do not receive a federal disability or retirement payment; and/or
- Individuals who cannot provide clear evidence that placement into an assisted living facility is medically justified.

Amendments to COMAR 07.03.07.09 help to ensure that an appropriate and responsible representative payee is appointed, as necessary in the PAA recipient’s best interest.

Opportunity for Public Comment

Comments may be sent to Andrea Shuck, Regulations Coordinator, Department of Human Resources, 311 West Saratoga Street, Room 249, Baltimore, MD 21201, or call 410-767-2149, or email to andrea.shuck@maryland.gov, or fax to 410-333-0637. Comments will be accepted through October 7, 2014. A public hearing has not been scheduled.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) “Assisted living” means [care given] services provided in a licensed protective institutional environment as described in COMAR 10.07.14 to an individual who is aged or disabled, or both, [in a licensed protective institutional environment as described in COMAR 10.07.14] and who cannot manage activities of daily living as described in COMAR 10.07.14.02B(2)(b).

(3) “CARE home” means a home that provides supervised residential alternatives to an individual who, due to physical or mental disability, cannot live unsupervised in the community and is at risk for institutionalization as described in COMAR [07.06.15] 07.02.19.

(4)—(6) (text unchanged)

(7) “Protected living arrangement” means a residential environment that provides care to vulnerable adults who are aged, disabled, or both, and who cannot manage activities of daily living as described in COMAR 10.07.14.02B(2)(b).

[(7)] (8) (text unchanged)

.03 Eligibility Criteria.

A. An individual is eligible when, in any month, the individual:

(1) (text unchanged)

[(2) Is either receiving Social Security Disability Insurance (SSDI), Supplemental Security Income (SSI), or other cash benefits, or not receiving them through no acts or omissions of the individual;]

(2) *Is receiving a federal benefit for age, blindness, or disability;*

(3) *[Is in an assisted living program, in a CARE home, or in a DHMH rehabilitative residence; and] If not receiving a federal retirement or disability benefit, has filed an application for Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI), in accordance with §B of this regulation;*

(4) *[Meets the need requirements for income and resources as described in this chapter.] Is in an assisted living program, in a CARE home, or in a DHMH rehabilitative residence while continuing to cooperate with all technical and financial requirements of eligibility; and*

(5) *Continues to cooperate with all technical and financial requirements of eligibility.*

B. *Social Security Administration Disability Benefits Applications and Appeals.*

(1) *Applicants who are not receiving a federal retirement or disability benefit shall fully cooperate with the Social Security Administration (SSA) application and appeals processes.*

(2) *Failure to cooperate shall render the applicant or recipient ineligible and result in application denial or case closure.*

C. *If SSA makes a final unfavorable decision, the customer is no longer eligible for assisted living benefits from the PAA program, unless:*

(1) *Good cause exists for continued PAA eligibility, which the DHR Appointing Authority or its designee shall determine following a review; or*

(2) *Disability Services Operations (DSO) decides that the person meets the definition of disabled following a consultative exam or coordination with the State Disability Determination Services Agency.*

D. *Determination of Medical Justification for Placement into an Assisted Living Facility.*

(1) *The Department of Human Resources shall establish a process through DSO to determine when medical justification for placement into a protected living environment is sufficient to support an individual's eligibility for the PAA-Assisted Living program.*

(2) *This provision does not apply to individuals participating in PAA-CARE homes and PAA-DHMH rehabilitative residences.*

[B.] E. (text unchanged)

[C.] F. *Cooperation with the Eligibility Process.*

(1) An individual shall:

[(1)] (a) *[Verify that the individual is not receiving Social Security, SSI, or other cash benefits through no acts or omissions of the individual] Provide all necessary information needed for initial or continued program eligibility and ensure that the information is true, correct, and complete; and*

[(2)] (b) *[Apply for the benefits as described in §C(1) of this regulation; and] Cooperate with the Agency in all aspects of program administration.*

[(3) Provide written verification that the individual has filed appropriate applications.]

(2) *The individual and the individual's authorized representative are subject to the requirements in COMAR 07.03.14 if they provide false information.*

[D.] G. [An] *After meeting all other program requirements, an individual is eligible for Public Assistance to Adults:*

(1) (text unchanged)

(2) *After the application for other benefits is denied if the individual [can provide written verification from the benefit source that the denial is not due to any acts or omissions by the individual] meets the conditions described in §A(3) of this regulation.*

[E.] H. (text unchanged)

.09 Amount of Grant and Payee.

A.—B. (text unchanged)

C. *Protective payments may be made on behalf of a recipient to an agency-appointed representative payee if:*

(1) (text unchanged)

(2) *There is available to act as representative payee, a responsible and dependable individual, other than the assisted living facility operator or staff, to receive the check on behalf of a recipient and handle the money for the recipient's interest and well-being;*

(3)—(4) (text unchanged)

(5) *Full needs by assistance standards are met; and*

(6) *The decision and plan are reviewed at least once in 6 months. [; and]*

[(7)] D. *Protective payments are terminated immediately when [the]:*

(1) *The recipient is considered able to manage funds[, or when judicial];*

(2) *Judicial* appointment is made of a guardian or other legal representative as serving the best interest of the recipient[.];

or

(3) *The agency learns that the representative payee has a conflict of interest or is handling the recipient's funds in a fraudulent or exploitative manner.*

[D.] E. (text unchanged)

F. Any program payments that are obtained or used in a fraudulent manner shall be considered an overpayment and shall be subject to recoupment in accordance with Regulation .13 of this chapter.

.12 Advance Notice of Termination or Reduction.

A.—B. (text unchanged)

C. The local department may dispense with timely notice but shall send adequate notice no later than the date of action, when:

(1)—(3) (text unchanged)

(4) A recipient has been accepted for assistance in a new jurisdiction and that fact has been established by the jurisdiction previously providing assistance; [or]

(5) The local department has factual information confirming that the recipient was admitted to a public institution; or

(6) *The local department has confirmed that the recipient and assisted living facility operator are using the program funds in fraudulent manner.*

D.— E. (text unchanged)

TED DALLAS
Secretary of Human Resources