



STATE OF MARYLAND

DHMH

Office of Health Services
Medical Care Programs

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

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

December 30, 2008

Mr. Ted Gallagher
Associate Regional Administrator
Centers for Medicare and Medicaid Services
Region III
Public Ledger Building, Suite 216
150 South Independence Mall, West
Philadelphia, Pennsylvania 19106

Re: Maryland State Plan 09-04

Dear Mr. Gallagher:

Enclosed for your review and approval is State Plan Amendment 09-04 which contains a revised Attachment 4.19D. This amendment is being submitted to reflect changes in the regulations related to reimbursement for nursing facility services.

Specifically, this amendment revises pages 1, 2, 2A, 4, 7B, and 11 of Attachment 4.19D effective November 1, 2008. These changes are as follows:

- The occupancy standard is increased from statewide average occupancy plus 1.5 percent to statewide average occupancy plus 2 percent;
- The Capital cost center rental rate is decreased from 8.07 percent to 7.57 percent;
- The Administrative/Routine cost center ceilings are decreased from 113 percent to 112 percent of median costs;
- The efficiency payment in the Administrative/Routine cost center is decreased from 45 percent to 40 percent of the difference between the ceiling and a provider's lower cost;
- The Other Patient Care cost center ceilings are decreased from 119 percent to 118 percent of median costs;
- Providers whose Nursing Service costs are less than the standard per diem Medicaid reimbursement rates may retain 60 percent of the difference between their costs and the rates, subject to a maximum percentage of the standard per diem rates. Under the provisions of this amendment, the maximum percentage is decreased from 3.5 percent to 3 percent of the Medicaid rates; and
- Reimbursement in the Administrative/Routine, Other Patient Care and Capital cost centers is further reduced by 4.816 percent.

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In accordance with Section 447.253(a), Maryland assures that the requirements set forth in paragraphs (b) through (i) are being met.

The requirements of paragraph (b)(1)(i) are met in that the Department has made a finding that the rates are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers to provide services in conformity with applicable State and federal laws, regulations, and quality and safety standards.

The requirements of paragraph (b)(1)(ii) are not applicable as they pertain to inpatient hospital services.

The requirements of paragraph (b)(1)(iii)(A) are met as the methods and standards used by the Department to determine payment rates take into account the costs of complying with the requirements of Part 483 Subpart B (except for preadmission screening for individuals with mental illness and mental retardation).

The requirements of paragraph (b)(1)(iii)(B) are not applicable as the Department does not allow any waiver of the requirement in Section 483.30(c) to provide licensed nurses on a 24-hour basis.

The requirements of paragraph (b)(1)(iii)(C) are met as the Department has established procedures under which the data and methodology used in establishing payment rates are made available to the public.

The requirements of paragraph (b)(2) are met as the Department annually determines that the per diem average of all projected Medical Assistance payments in all cost centers does not exceed the average determined if payment were to be made for Medical Assistance Program covered services on the basis of Medicare payment principles.

In addition, the Department has separately determined that its projected aggregate payments to State operated nursing facilities does not exceed the amount that it is estimated would have been paid under Medicare payment principles, in conformity with Section 447.272(b).

The requirements of paragraph (c) are not applicable as they pertain to hospitals.

The requirements of paragraph (d) are met in that, under the methodology utilized by the State for purposes of determining payment rates for nursing facilities, valuation of capital assets will not be increased solely as a result of a change of ownership.

The requirements of paragraph (e) are met as the Department provides an appeals or exception procedure that allows individual providers an opportunity to submit additional evidence and receive prompt administrative review of payment rates.

The requirements of paragraph (f) are met as all providers must submit financial and statistical data to the Department, in a form prescribed by the Department, within three months after the end of the provider's fiscal year.

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The requirements of paragraph (g) are met in that the Department or its designee will periodically conduct a field verification of the reported costs of each provider as specified by State regulation.

The requirements of paragraph (h) are met as the Department has complied with the requirement for public notice of all changes as specified in Section 447.205.

The requirements of paragraph (i) are met as the Department pays for services using rates determined in accordance with methods and standards specified in an approved State Plan.

In conformity with Section 447.255(a), the following is submitted:

The average rate paid to nursing facilities during the period July 1, 2008 through October 30, 2008 is \$223.25. The projected average payment effective November 1, 2008 is \$217.02. These amounts include patient resource.

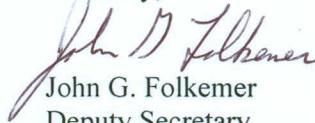
In conformity with Section 447.255(b), the following is submitted:

The reimbursement rates that become effective with this amendment are not expected to change the availability of services geographically, the type of care furnished, or the extent of provider participation, in either the short or long term.

In accordance with Section 1902(a)(13)(A) of the Social Security Act, Maryland payment for nursing facility services takes into account the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for Medicaid benefits.

I trust that this State Plan Amendment, assurances and related information are sufficient to satisfy federal requirements. If you have any questions or need any additional information, please contact Mark A. Leeds, Director of Long Term Care and Community Support Services, at (410) 767-1443.

Sincerely,


John G. Folkemer
Deputy Secretary
Health Care Financing

Attachment

cc: Mark A. Leeds
Susan J. Tucker
Stephen Hiltner
Lisa Fassett

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES	1. TRANSMITTAL NUMBER: 09-04	2. STATE Maryland
	3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
TO: REGIONAL ADMINISTRATOR CENTERS FOR MEDICARE & MEDICAID SERVICES DEPARTMENT OF HEALTH AND HUMAN SERVICES	4. PROPOSED EFFECTIVE DATE November 1, 2008	

5. TYPE OF PLAN MATERIAL (Check One):

- NEW STATE PLAN AMENDMENT TO BE CONSIDERED AS NEW PLAN AMENDMENT
COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

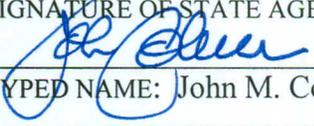
6. FEDERAL STATUTE/REGULATION CITATION: COMAR 10.09.10 Nursing Facility Services	7. FEDERAL BUDGET IMPACT: a. FFY <u>2009</u> \$ <u>(23,375,000)</u> b. FFY <u>2010</u> \$ <u>(25,500,000)</u>
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 4.19D, page 1-2, 2-A Attachment 4.19 D, Page 4 Attachment 4.19 D, Page 7B Attachment 4.19 D, Page 11	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): Attachment 4.19D, page 1-2, 2-A (08-09) Attachment 4.19 D, Page 4 (08-09) Attachment 4.19 D, Page 7B (08-09) Attachment 4.19 D, Page 11 (08-09)

10. SUBJECT OF AMENDMENT: This amendment is being submitted to reflect changes in the regulations related to reimbursement for nursing facility services

11. GOVERNOR'S REVIEW (Check One):

- GOVERNOR'S OFFICE REPORTED NO COMMENT
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

X OTHER, AS SPECIFIED: The Secretary of the
Department of Health and Mental Hygiene

12. SIGNATURE OF STATE AGENCY OFFICIAL: 	16. RETURN TO: Susan Tucker Executive Director Office of Health Services Department of Health & Mental Hygiene 201 W Preston St, 1 st floor Baltimore MD 21201
13. TYPED NAME: John M. Colmers	
14. TITLE: Secretary, Department of Health & Mental Hygiene	
15. DATE SUBMITTED:	

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED:	18. DATE APPROVED:
PLAN APPROVED - ONE COPY ATTACHED	
19. EFFECTIVE DATE OF APPROVED MATERIAL:	20. SIGNATURE OF REGIONAL OFFICIAL:
21. TYPED NAME:	22. TITLE:

23. REMARKS:

4.19(d) Nursing facility payment rates are based on Maryland regulations COMAR 10.09.10 in order to account for the cost of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for Medicaid benefits. Payment rates for nursing facilities are the sum of per diem reimbursement calculations in 4 cost centers: administrative/routine, other patient care, capital, and nursing service; and payment for therapy services. Payments in the aggregate may not exceed Medicare upper limits as specified at 42 CFR 447.272.

In accordance with the Omnibus Budget Reconciliation Act of 1987, nursing facility payment rates, effective October 1, 1990, take into account the costs of nursing facilities' compliance with the requirements of Sections 1919(b) (other than paragraph (3)(F)), 1919(c), and 1919(d) of the Social Security Act.

Nursing facilities that are owned and operated by the State are not paid in accordance with the provisions described below, but are reimbursed reasonable costs based upon Medicare principles of reasonable cost as described at 42 CFR 413. Aggregate payments for these facilities may not exceed Medicare upper payments limits as specified at 42 CFR 447.272.

Administrative/Routine Costs

The Administrative/Routine cost center includes the following expenses: administrative, medical records, nurse aide registry fees, training, dietary, laundry, housekeeping, operation and maintenance, and capitalized organization and start-up costs. There are 3 reimbursement groups in this cost center; based on geographic location, as specified under COMAR 10.09.10.24A (which is appended to this attachment).

Provider's per diem costs are calculated at the actual occupancy of the nursing facility beds or at the Statewide average occupancy of nursing facility beds plus 2 percent, whichever is higher, for the calculation of ceilings, current interim costs and final costs.

Although an interim Administrative/Routine rate is calculated for each provider, based on indexed cost report data, the final per diem reimbursement rate, after cost settlement, is the sum of:

- (1) The provider's allowable per diem costs for covered services according to the principles of reasonable cost reimbursement established under 42 CFR Part 413, subject to the ceiling calculated for the provider's reimbursement class, and
- (2) For those providers with costs below the ceiling, an efficiency allowance equal to 40 percent of the difference between the ceiling and the provider's costs, subject to a cap of 10 percent of the ceiling.

TN _____ Approval Date _____ Effective Date _____

Supersedes

TN 08-09

The interim per diem rates for the Administrative/Routine cost center is the sum of:

- (1) The provider's indexed per diem costs subject to the ceiling calculated for the provider's reimbursement group, and
- (2) For those providers with projected costs below the ceiling, 90 percent of the efficiency allowance as calculated above.

Ceilings are calculated for each of the 3 reimbursement groups. Each year all providers enrolled in the Program are required to submit a cost report within 3 months of their fiscal year end. Current administrative and routine costs are adjusted, using indices established under COMAR 10.09.10.20 (which is appended to this attachment), by indexing them from the mid-point of the provider's fiscal year to the midpoint of the State's fiscal year for which rates are being established. Indexed per diem costs are calculated by dividing indexed expenses by total days of care. The indexed per diem costs for Maryland providers are then weighted by their associated paid Medical Assistance days and the median per diem costs for each reimbursement group is determined. The maximum per diem rate is 112 percent of the median cost in each group. The ceilings are applied, as described above, to determine each provider's interim per diem payment.

Providers that maintain kosher kitchens and have administrative and routine costs in excess of the ceiling that are attributable to dietary expense, shall receive an add-on to its interim and final per diem payments in an amount up to 15 percent of the median per diem cost for dietary expense in its reimbursement group.

For the period November 1, 2008 through June 30, 2010, the interim and final per diem rates in the Administrative/Routine cost center are reduced by 4.816 percent in order to meet State budget requirements.

Other Patient Care Costs

The Other Patient Care cost center includes expenses for providing: a medical director, pharmacy, recreational activities, patient care consultant services, raw food, social services and religious services. There are 3 reimbursement groups in this cost center, based on geographic location, as specified under COMAR 10.09.10.24 (which is appended to this attachment). Both the final per diem and interim per diem rates for the Other Patient Care cost center are determined as are those in the Administrative/Routine cost center. (Indices for Other Patient Care are established under COMAR 10.09.10.21 which is appended to this attachment.) Ceiling calculations are also identical except that the maximum per diem rate is 118 percent of the projected per diem cost in each group. For providers with costs below the ceiling, the efficiency allowance is 25 percent of the difference between the ceiling and the provider's costs, subject to a cap of 5 percent of the ceiling.

TN _____ Approval Date _____ Effective Date _____

Supersedes

TN 08-09

Providers that maintain kosher kitchens and have other patient care costs in excess of the ceiling that are attributable to raw food expense, shall receive an add-on to its interim and final per diem payments in an amount up to 15 percent of the median per diem cost for raw food expense in its reimbursement group.

For the period November 1, 2008 through June 30, 2010, the interim and final per diem rates in the Other Patient Care cost center are reduced by 4.816 percent in order to meet State budget requirements.

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Approval Date _____

Effective Date _____

Supersedes

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A facility's net capital value rental per diem component is calculated as follows. At a minimum of every 4 years, each facility's building(s), nonmovable equipment and land are appraised. Using indices established by regulation, these appraisal amounts are indexed to the midpoint of the State fiscal year for which rates are being set. (Building value and nonmovable equipment are indexed by Quarterly Index for Construction, Baltimore, from Marshall Valuation Service - mean of indices for reinforced concrete and masonry bearing walls. Land value is indexed by Maryland land value statistics from the Bureau of Appraisal Review, Office of Real Estate, State Highway Administration, Department of Transportation. See COMAR 10.09.10.22 which is appended to this attachment.) The per bed value is subject to a ceiling which is established in accordance with COMAR 10.09.10.10G(4) (which is appended to this attachment.) The resulting allowable per bed value is then increased by adding an equipment allowance, which is also indexed each year based on indices set in regulation. (Quarterly Index for Hospital Equipment from Marshall Valuation Service. See COMAR 10.09.10.22 which is appended to this attachment.) The facility's allowable debt, that amount that does not exceed allowable capital value, is subtracted from the allowable capital value to arrive at the facility's net capital value. Net capital value is multiplied by the appropriate rental rate established at COMAR 10.09.10.10G(9) (which is appended to this attachment) to arrive at the provider's total net capital value rental. The per diem payment is derived by dividing this amount by the actual occupancy of the nursing facility beds plus 95 percent of licensed capacity of the non-nursing facility beds, or the Statewide average occupancy of nursing facility beds plus 2 percent, plus 95 percent of licensed capacity of the non-nursing facility beds, whichever is higher.

For leased facilities, the above procedure is modified as follows. A debt amount is calculated based on the assumptions that the original portion mortgaged was equal to 85 percent of the appraised value at the time the provider's original lease for the facility was executed, and that the mortgage was taken for a 20 year period with amortization calculated with constant payments. A mortgage interest rate is calculated using indices established at COMAR 10.09.10.10D (which is appended to this attachment).

A facility's recurring capital cost per diem component is calculated as follows. The sum of all recurring costs: taxes, insurance, allowable interest (interest on mortgage debt that does not exceed the facility's allowable capital value) and central office capital costs, are divided by actual occupancy of the nursing facility beds or the Statewide average occupancy of nursing facility beds plus 2 percent, whichever is higher. For leased facilities, taxes and insurance costs are included whether paid by the lessor or the lessee.

For the period November 1, 2008 through June 30, 2010, the interim and final per diem rates in the Capital cost center are reduced by 4.816 percent in order to meet State budget requirements.

The interim capital per diem payment is subject to final reconciliation at cost settlement.

TN _____ Approval Date _____ Effective Date _____

Supersedes
TN 08-09

When an improvement in ADL classification is achieved by a facility for a resident who has been at the prior (higher) ADL classification for a minimum of 2 consecutive months, reimbursement for that resident will continue at the prior (higher) ADL classification until discharge, transfer, a return to the prior (higher) ADL classification, or for 2 subsequent months, whichever is less, in order to provide a transitional staffing adjustment to the facility in the amount of the difference between the reimbursement associated with the prior (higher) and the current (lower) ADL classifications.

The interim nursing service payment is subject to cost settlement. Providers with nursing costs less than reimbursement at standard per diem rates are allowed profit in the amount of 60 percent of the difference between their costs and the rate. Profit may not exceed 3 percent of the provider's maximum allowable reimbursement based upon standard per diem rates.

Nursing reimbursement in excess of costs and allowable profit is subject to recovery. Providers that are projected to spend less than their full reimbursement in this cost center, based on nursing costs reported in the most recent desk-reviewed cost report, indexed to the mid-point of the rate setting year, will have their interim rates reduced by 95 percent of the amount projected to be recovered. The balance of the recovery will occur at final cost settlement.

The above-mentioned percentage adjustments for communicable disease care and central intravenous line are not subject to cost settlement.

A provider that renders care to Maryland Medicaid recipients of less than 1,000 days of care during the provider's fiscal year may choose to not be subject to cost reporting or field verification requirements and choose to accept as payment the projected Medicaid statewide average payment for each day of care. Any provider choosing this option is exempt from the subsequent nursing cost center wage survey.

Intermediate Care Facilities for the Mentally Retarded are a separate class and such facilities are reimbursed reasonable costs. The determination of reasonable costs is based on Medicare principles of reasonable cost as described at 42 CFR 413. An average cost per day for provider-based physician services is developed and paid in accordance with retrospective cost reimbursement principles. Payments in the aggregate may not exceed Medicare upper limits as specified at 42 CFR 447.272.

TN _____ Approval Date _____ Effective Date _____

Supersedes
TN 08-09

- (5) The allowance for movable equipment shall be:
 - (a) Established at \$6,422 per licensed bed effective October 1, 2007;
 - (b) Indexed forward as determined from §E of this regulation; and
 - (c) Added to the appraised value determined from §G(1), (2), (4), and (5) of this regulation.
- (6) The allowance for movable equipment will exclude all items which:
 - (a) Are regularly replenished or stocked, consumed in their use or have a one-time use, or useful for a lifetime of less than 2 years; or
 - (b) Have an historical or aggregate historical cost of less than \$500.
- (7) The amount of the allowable mortgage debt as of the midpoint of the fiscal year shall be subtracted from the allowable appraised value from §G(2) of this regulation in order to establish the value of the net capital.
- (8) The debt information to be used in §G(7) of this regulation shall be supplied to the Department or its designee by each facility in the form of a monthly amortization schedule within 60 days of the establishment of the debt.
- (9) The value of net capital from §G(7) of this regulation shall be multiplied by 0.0757 in order to generate the net capital value rental.

TN _____ Approval Date _____ Effective Date _____

Supersedes
TN 08-09

FEDERAL REGULATION CITATIONS: SPA 09-04

- ___ Attachment 2.2A 42 CFR 435.10
- ___ Attachment 2.6A 42 CFR Part 435, Section 435.10 and Subparts G&H AT-78-90, AT-80-6, AT-80-34, 1902(l) and (n) of the Act, P.L. 99-509 (Secs. 9401 and 9402), 1902 (l) and (n) and 1920 of the Act, P.L. 99-509 (Secs. 9401, 9402, and 9407)
- ___ Attachment 3.1A Part 400, Subpart B and 1902(e)(5), 1905(a)(18) through (20), and 1920 of the Act, P.L. 99-272 (Sections 9501, 9505 and 9526) and 1902(a), 1902(a)(47), 1902 (e)(7) through (9), and 1920 of the Act, P.L. 99-509 (Sections 9401(d), 9403, 9406 through 9408) and P.L. 99-514 (Section 1985(c)(3))
- ___ Attachment 3.1B 42 CFR Part 440, Subpart B, 42 CFR 441.15, AT-78-90, AT-80-34
- ___ Attachment 3.1C 42 CFR 431.53, AT-78-90
- ___ Attachment 3.1F 1905(a)(24) and 1930 of the Act, P.L. 101-508 (Section 4712 OBRA 90)
- ___ Attachment 4.18A 447.51 through 447.58
- ___ Attachment 4.18C 447.51 through 447.58
- ___ Attachment 4.18-F 447.50-447.59
- ___ Attachment 4.19 A&B (a) 42 CFR 447.252, 46 FR 44964, 48 FR 56046, 50 FR 23009, 1902(e)(7) of the Act, P.L. 99-509 (Section 9401(d))
(b) 42 CFR 447.201, 42 CFR 447.302, AT-78-90, AT-80-34, 1903(a)(1) and (n) and 1920 of the Act, P.L. 99-509 (Section 9403, 9406 and 9407), 52 FR 28648
- ___ Attachment 4.16 42 CFR 431.615(c) AT-78-90
- X Attachment 4.19D (d) 42 CFR 447.252, 47 FR 47964, 48 FR 56046, 42 CFR 447.280, 47 FR 31518, 52 FR 28141
- ___ Attachment 4.22A (a) 433.137(a), 50 FR 46652, 55 FR 1423
- ___ Attachment 4.22B (b) 433.138(f), 52 FR 5967, 433.138(g)(1)(ii) and (2)(ii), 52 FR 5967, 433.133(g)(3)(i) and (iii), 52 FR 5967, 433.138(h)(4)(i) through (iii), 52 FR 5967
- ___ Attachment 4.22C Section 1906 of the Act
- ___ Attachment 4.26 1927(g) 42 CFR 456.700, 1927(g)(1)(A), 1927(g)(1)(a) 42 CFR 456.705(b) and 456.709(b), 1927(g)(1)(B) 42 CFR 456.703(d) and (f), 1927(g)(1)(D) 42 CFR 456.703(b), 1927(g)(2)(A) 42 CFR 456.705(b), 1927(g)(2)(A)(i) 42 CFR 456.705(b), 1927(g)(2)(A)(i) 42 CFR 456.705(b), (1)-(7), 1927(g)(2)(A)(ii) 42 CFR 456.705(c) and (d), 1927(g)(2)(B) 42 CFR 456.709(a), 1927(g)(2)(C) 42 CFR 456.709(b), 1927(g)(2)(D) 42 CFR 456.711, 1927 (g)(3)(A) 42 CFR 456.716(a), 1927 (g)(3)(B) 42 CFR 456.716 (A) and (B), 1927(g)(3)(C) 42 CFR 456.716 (d) 1927(g)(3)(C) 42 CFR 456.711 (a)-(d), 1927 (g)(3)(D) 42 CFR 456.712 (A) and (B), 1927(b)(1) 42 CFR 456.722, 1927(g)(2)(A)(i) 42 CFR 456.705(b), 1927(j)(2) 42 CFR 456.703(c)
- ___ Attachment 4.32A (a) 435.940 through 435.960, 52 FR 5967
- ___ Attachment 4.33A (a) 1902(a)(48) of the Act, P.L. 99-570 (Section 11005), P.L. 100-93 (Section 6(a)(3))
- ___ Attachment 4.35A (a) 1919(b)(1) and (2) of the Act, P.L. 100-103 (Section 4212(a))
- ___ Attachment 4.35B (b) Same as above